United States Code

1982 Edition ★ Supplement II

TITLES 18-27

JANUARY 15, 1983, TO JANUARY 2, 1985

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UNITED STATES CODE

1982 EDITION

SUPPLEMENT II

CONTAINING THE GENERAL AND PERMANENT LAWS OF
THE UNITED STATES, ENACTED DURING THE
98TH CONGRESS

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JANUARY 15, 1983, TO JANUARY 2, 1985

VOLUME TWO

TITLE 18—CRIMES AND CRIMINAL PROCEDURE
TO
TITLE 27—INTOXICATING LIQUORS

UNITED STATES
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TITLES OF UNITED STATES CODE

*1. General Provisions.
2. The Congress.
*3. The President.
*4. Flag and Seal, Seat of Government, and the States.
*5. Government Organization and Employees; and Appendix.
†6. [Surety Bonds.]
7. Agriculture.
8. Aliens and Nationality.
*9. Arbitration.
*10. Armed Forces; and Appendix.
*11. Bankruptcy; and Appendix.
12. Banks and Banking.
*13. Census.
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15. Commerce and Trade.
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*17. Copyrights.
*18. Crimes and Criminal Procedure; and Appendix.
19. Customs Duties.
20. Education.
21. Food and Drugs.
22. Foreign Relations and Intercourse.
*23. Highways.
24. Hospitals and Asylums.
25. Indians.
26. Internal Revenue Code.
27. Intoxicating Liquors.
*28. Judiciary and Judicial Procedure; and Appendix.
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*This title has been enacted as law. However, any Appendix to this title has not been enacted as law.
†This title was enacted as law and has been repealed by the enactment of Title 31.
‡This title has been eliminated by the enactment of Title 10.

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PREFACE

This second supplement to the 1982 edition of the United States Code has been prepared and published pursuant to section 285b of Title 2 of the Code. It contains the additions to and changes in the general and permanent laws of the United States enacted during the Ninety-eighth Congress. This supplement together with the 1982 edition establishes prima facie those laws in effect on January 2, 1985, except that Titles 1, 3, 4, 5, 9, 10, 11, 13, 14, 17, 18, 23, 28, 31, 32, 35, 37, 38, 39, 44, 46, and 49 have been revised, codified, and enacted into positive law and the text thereof is legal evidence of the laws therein contained. Pending preparation of supplemental codification bills, various sections of former Titles 46 and 49 (not included in the original codifications) are set out in the Appendixes to those Titles and retain their prior section numbers.

This supplement was prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made to the staffs of the Office of the Law Revision Counsel, the West Publishing Company, and the Government Printing Office for their untiring efforts and cooperation.

Thomas P O'Neill Jr
M.C.

Speaker of the House of Representatives

WASHINGTON, D.C., *January 2, 1985.*

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3. Navigation Rules for Harbors, Rivers, and Inland Waters Generally.
4. Navigation Rules for Great Lakes and Their Connecting and Tributary Waters [Repealed].
5. Navigation Rules for Red River of the North and Rivers Emptying Into Gulf of Mexico and Tributaries [Repealed].
5A. Exemption of Navy or Coast Guard Vessels From Certain Navigation Rules [Repealed].
6. General Duties of Ship Officers and Owners After Collision or Other Accident [Repealed].
7. Regulations for the Suppression of Piracy.
8. Summary Trials for Certain Offenses Against Navigation Laws.
9. Protection of Navigable Waters and of Harbor and River Improvements Generally.
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11. Bridges Over Navigable Waters.
12. River and Harbor Improvements Generally.
13. Mississippi River Commission.
14. California Débris Commission.
15. Flood Control.
16. Lighthouses.
17. National Ocean Survey.
18. Longshore and Harbor Workers' Compensation.
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20. Pollution of the Sea by Oil.

TITLE 33—NAVIGATION AND NAVIGABLE WATERS—Continued

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22. Sea Grant Colleges and Marine Science Development.
23. Pollution Control of Navigable Waters [Omitted or Transferred].
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25. Ports and Waterways Safety Program.
26. Water Pollution Prevention and Control.
27. Ocean Dumping.
28. Pollution Casualties on the High Seas: United States Intervention.
29. Deepwater Ports.
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31. Ocean Pollution Research and Development and Monitoring Planning.
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13. National Academy of Sciences.
14. Future Farmers of America.
15. Military Chaplains Association of the United States of America.
16. American Society of International Law.
17. United States Olympic Committee.
18. National Conference of State Societies, Washington, District of Columbia.
19. Corregidor Bataan Memorial Commission [Omitted].
20. National Conference on Citizenship.
21. National Safety Council.
22. Pershing Hall Memorial Fund.
23. Board for Fundamental Education.
24. Sons of Union Veterans of the Civil War.
25. The Foundation of the Federal Bar Association.
26. The National Fund for Medical Education.
27. Legion of Valor of the United States of America, Inc.
28. National Music Council.
29. Boys' Clubs of America.
30. Presidential Inaugural Ceremonies.
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TITLE 36—PATRIOTIC SOCIETIES AND OBSERVANCES—Continued

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39. Agricultural Hall of Fame.
40. National Woman's Relief Corps, Auxiliary to the Grand Army of the Republic.
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43. Paralyzed Veterans of America.
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51. American Council of Learned Societies.
52. National Federation of Music Clubs.
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54. Former Members of Congress.
55. National Academy of Public Administration.
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57. Polish Legion of American Veterans, U.S.A.
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7. Allowances.
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10. Payments to Missing Persons.
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13. Dependency and Indemnity Compensation for Service-Connected Deaths.
15. Pension for Non-Service-Connected Disability or Death or for Service.
17. Hospital, Nursing Home, Domiciliary, and Medical Care.
19. Insurance.
21. Specially Adapted Housing for Disabled Veterans.
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32. Post-Vietnam Era Veterans' Educational Assistance.
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35. Survivors' and Dependents' Educational Assistance.
36. Administration of Educational Benefits.
37. Housing and Small Business Loans.
39. Automobiles and Adaptive Equipment for Certain Disabled Veterans and Members of the Armed Forces.
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53. Special Provisions Relating to Benefits.
55. Minors, Incompetents, and Other Wards.
57. Records and Investigations.
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TITLE 39—POSTAL SERVICE

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2. Organization.
4. General Authority.
6. Private Carriage of Letters.

PART II—PERSONNEL

10. Employment Within the Postal Service.
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4. The Public Property.
5. Hours of Labor and Safety on Public Works.

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8. Emergency Public Works and Construction Projects.
9. Non-Federal Public Works.
10. Management and Disposal of Government Property.
11. Real Property Transactions by Military Departments [Repealed].
12. Construction, Alteration, and Acquisition of Public Buildings.
13. National Capital Transportation Program [Repealed or Omitted].
14. Safety Standards for Motor Vehicles.
15. Government Losses in Shipment.
16. General Services Administration.
17. Alaska Communications Disposal.
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18. National Visitor Center Facilities; Union Station Redevelopment; Capitol Guide Service.
19. Capitol and White House-Pennsylvania Avenue Development.

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3. Procurement of Supplies and Services by Armed Services [Repealed].
4. Procurement Procedures.
5. Judicial Review of Administrative Decisions.
6. Service Contract Labor Standards.
7. Office of Federal Procurement Policy.
8. Federal Grants and Cooperative Agreements [Repealed, See Chapter 63 of Title 31, Money and Finance].
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1. The Public Health Service [Repealed or Omitted, See Chapter 6A].
1A. The Public Health Service; Supplemental Provisions [Transferred or Omitted].
2. Sanitation and Quarantine.
3. Leprosy [Repealed].
3A. Cancer [Repealed].
4. Viruses, Serums, Toxins, Antitoxins, etc. [Repealed].
5. Maternity and Infancy Welfare and Hygiene [Repealed].
6. The Children's Bureau.
6A. Public Health Service.

TITLE 42—THE PUBLIC HEALTH AND WELFARE—Continued

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7A. Temporary Unemployment Compensation Program [Omitted].
8. Low-Income Housing.
8A. Slum Clearance, Urban Renewal, and Farm Housing.
8B. Public Works or Facilities [Omitted].
8C. Open-Space Land [Omitted].
9. Housing of Persons Engaged in National Defense.
10. Federal Security Agency [Transferred or Omitted].
11. Compensation for Disability or Death to Persons Employed at Military, Air, and Naval Bases Outside the United States.
12. Compensation for Injury, Death, or Detention of Employees of Contractors With the United States Outside the United States.
13. School Lunch Programs.
13A. Child Nutrition.
14. Development and Control of Atomic Energy [Transferred to Chapter 23].
15. Disaster Relief [Repealed].
15A. Reciprocal Fire Protection Agreements.
15B. Air Pollution Control [Transferred or Repealed].
16. National Science Foundation.
16A. Grants for Support of Scientific Research [Repealed].
16B. Contracts for Scientific and Technological Research.
17. Federal Employment Service [Transferred].
18. Youth Medals.
19. Saline and Salt Waters [Repealed, Omitted, or Transferred].
19A. Water Resources Research Program [Repealed].
19B. Water Resources Planning.
20. Elective Franchise.
20A. Civil Rights Commission.
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21A. Privacy Protection.
22. Indian Hospitals and Health Facilities.
23. Development and Control of Atomic Energy.
24. Disposal of Atomic Energy Communities.
25. Federal Flood Insurance.
26. National Space Program.
27. Loan Service of Captioned Films and Educational Media for Handicapped.
28. Area Redevelopment Program [Omitted or Repealed].
29. Juvenile Delinquency and Youth Offenses Control [Omitted].
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33. Community Mental Health Centers [Omitted, Transferred, or Repealed].
34. Economic Opportunity Program.
35. Programs for Older Americans.
35A. Community Service Employment for Older Americans [Repealed].
36. Compensation of Condemnees in Development Programs [Repealed].
37. Community Facilities and Advance Land Acquisition.
38. Public Works and Economic Development.
39. Solid Waste Disposal [Omitted and Repealed, See Chapter 82].
40. Soil Information Assistance for Community Planning and Resource Development.
41. Demonstration Cities and Metropolitan Development Program.
42. Narcotic Addict Rehabilitation.
43. Department of Health and Human Services.
44. Department of Housing and Urban Development.
45. Fair Housing.
46. Justice System Improvement.
47. Juvenile Delinquency Prevention and Control [Omitted].
48. Guarantees for Financing New Community Land Development [Repealed or Omitted].
49. National Housing Partnerships.
50. National Flood Insurance.
51. Design and Construction of Public Buildings to Accommodate the Physically Handicapped.
52. Intergovernmental Cooperation [Repealed, See Chapter 65 of Title 31].
52A. Joint Funding Simplification [Repealed].
53. Advisory Commission on Intergovernmental Relations.
54. Cabinet Committee on Opportunities for Spanish-Speaking People [Omitted].
55. National Environmental Policy.
56. Environmental Quality Improvement.
57. Environmental Pollution Study.
58. Disaster Relief [Repealed or Transferred].
59. National Urban Policy and New Community Development.
60. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Program.
61. Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs.
62. Intergovernmental Personnel Program.
63. Lead-Based Paint Poisoning Prevention.
64. Public Service Employment Programs [Omitted].
65. Noise Control.
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TITLE 42—THE PUBLIC HEALTH AND WELFARE—Continued

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68. Disaster Relief.
69. Community Development.
70. Manufactured Home Construction and Safety Standards.
71. Solar Energy.
72. Juvenile Justice and Delinquency Prevention.
73. Development of Energy Sources.
74. Nonnuclear Energy Research and Development.
75. Developmentally Disabled Assistance and Bill of Rights.
76. Age Discrimination in Federally Assisted Programs.
77. Energy Conservation.
78. National Petroleum Reserve in Alaska.
79. Science and Technology Policy, Organization and Priorities.
80. Public Works Employment.
81. Energy Conservation and Resource Renewal.
82. Solid Waste Disposal.
83. Energy Extension Service.
84. Department of Energy.
85. Air Pollution Prevention and Control.
86. Earthquake Hazards Reduction.
87. Water Research and Development [Repealed or Transferred].
88. Uranium Mill Tailings Radiation Control.
89. Congregate Housing Services.
90. Neighborhood and City Reinvestment, Self-Help and Revitalization.
91. National Energy Conservation Policy.
92. Powerplant and Industrial Fuel Use.
93. Emergency Energy Conservation.
94. Low-Income Energy Assistance.
95. United States Synthetic Fuels Corporation.
96. Biomass Energy and Alcohol Fuels.
97. Acid Precipitation Program and Carbon Dioxide Study.
98. Ocean Thermal Energy Conversion Research and Development.
99. Ocean Thermal Energy Conversion.
100. Wind Energy Systems.
101. Magnetic Fusion Energy Engineering.
102. Mental Health Systems.
103. Comprehensive Environmental Response, Compensation, and Liability.
104. Nuclear Safety Research, Development, and Demonstration.
105. Community Services Programs.
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107. Consumer-Patient Radiation Health and Safety.
108. Nuclear Waste Policy.
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112. Victim Compensation and Assistance.
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4. District Land Offices.
5. Land Districts.
6. Withdrawal from Settlement, Location, Sale, or Entry.
7. Homesteads.
8. Timber and Stone Lands [Repealed].
8A. Grazing Lands.
9. Desert-Land Entries.
10. Underground-Water Reclamation Grants [Repealed].
11. Discovery, Development, and Marking of Water Holes, etc., by Government.
11A. Board on Geographic Names.
12. Reclamation and Irrigation of Lands by Federal Government.
12A. Boulder Canyon Project.
12B. Colorado River Storage Project.
13. Federal Lands Included in State Irrigation Districts.
14. Grants of Desert Lands to States for Reclamation.
15. Appropriation of Waters; Reservoir Sites.
16. Sale and Disposal of Public Lands.
17. Reservation and Sale of Town Sites on Public Lands.
18. Survey of Public Lands.
19. Bounty Lands [Repealed].
20. Reservations and Grants to States for Public Purposes.
21. Grants in Aid of Railroads and Wagon Roads.
21A. Forfeiture of Northern Pacific Railroad Indemnity Land Grants [Omitted].
22. Rights-of-Way and Other Easements in Public Lands.
23. Grants of Swamp and Overflowed Lands.
24. Drainage Under State Laws [Repealed].
25. Unlawful Inclosures or Occupancy; Obstructing Settlement or Transit.
25A. Lands Held Under Color of Title.
26. Abandoned Military Reservations [Repealed].
27. Public Lands in Oklahoma.
28. Miscellaneous Provisions Relating to the Public Lands.
29. Submerged Lands.
30. Administration of Public Lands [Repealed or Omitted].
31. Department of the Interior.
32. Colorado River Basin Project.
32A. Colorado River Basin Salinity Control.
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TITLE 43—PUBLIC LANDS—Continued

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33A. Implementation of Alaska Native Claims Settlement and Alaska Statehood.
34. Trans-Alaska Pipeline.
35. Federal Land Policy and Management.
36. Outer Continental Shelf Resource Management.
37. Public Rangelands Improvement.
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TITLE 44—PUBLIC PRINTING AND DOCUMENTS

1. Joint Committee on Printing.
3. Government Printing Office.
5. Production and Procurement of Printing and Binding.
7. Congressional Printing and Binding.
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11. Executive and Judiciary Printing and Binding.
13. Particular Reports and Documents.
15. Federal Register and Code of Federal Regulations.
17. Distribution and Sale of Public Documents.
19. Depository Library Program.
21. National Archives and Records Administration.
22. Presidential Records.
23. National Archives Trust Fund Board.
25. National Historical Publications and Records Commission.
27. [Repealed].
29. Records Management by the Archivist of the United States and by the Administrator of General Services.
31. Records Management by Federal Agencies.
33. Disposal of Records.
35. Coordination of Federal Information Policy.
37. Advertisements by Government Agencies.

TITLE 45—RAILROADS

1. Safety Appliances and Equipment on Railroad Engines and Cars, and Protection of Employees and Travelers.
2. Liability for Injuries to Employees.
3. Hours of Service of Employees.
4. Care of Animals in Transit.
5. Government-Aided Railroads.
6. Mediation, Conciliation, and Arbitration in Controversies Between Carriers and Employees [Repealed or Omitted].
7. Adjustment Boards and Labor Boards [Repealed].
8. Railway Labor.
9. Retirement of Railroad Employees.

Chap.
10. Tax on Carriers and Employees [Repealed or Omitted].
11. Railroad Unemployment Insurance.
12. Temporary Railroad Unemployment Insurance Program.
13. Railroad Safety.
14. Rail Passenger Service.
15. Emergency Rail Services.
16. Regional Rail Reorganization.
17. Railroad Revitalization and Regulatory Reform.
18. Milwaukee Railroad Restructuring.
19. Rock Island Railroad Employee Assistance.
20. Northeast Rail Service.
21. Alaska Railroad Transfer.

TITLE 46—SHIPPING

[SUBTITLE I—RESERVED]

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21. General.
23. Operation of Vessels Generally.

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35. Carriage of Passengers.
37. Carriage of Liquid Bulk Dangerous Cargoes.
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41. Uninspected Vessels Generally.
43. Recreational Vessels.
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PART D—MARINE CASUALTIES

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PART E—LICENSES, CERTIFICATES, AND MERCHANT MARINERS' DOCUMENTS

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81. General.
83. Masters and Officers.
85. Pilots.
87. Unlicensed Personnel.
89. Small Vessel Manning.
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109. Proceedings on Unseaworthiness.
111. Protection and Relief.
113. Official Logbooks.
115. Offenses and Penalties.

PART H—IDENTIFICATION OF VESSELS

121. Documentation of Vessels.
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PART I—STATE BOATING SAFETY PROGRAMS

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[PART J—RESERVED FOR MEASUREMENT OF VESSELS]

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1. Administration of Shipping Laws.
2. Documentation, Recording, and Measurement.
2A. Load Lines for American Vessels.
3. Clearance and Entry.
4. Tonnage Duties.
5. Discriminating Duties and Reciprocal Privileges.
6. Regulation as to Vessels Carrying Steerage Passengers.
8. Limitation of Vessel Owner's Liability.
11. Officers and Crews of Vessels.
12. Regulation of Vessels in Domestic Commerce.
13. Passports and Papers of Vessels Engaged in Foreign Commerce.
14. Inspection of Steam Vessels.
15. Transportation of Passengers and Merchandise by Steam Vessels.
17. Regulation of Fishing Voyages.
18. Merchant Seamen.
19. Wrecks and Salvage.
19A. Admiralty and Maritime Jurisdiction.
20. Suits in Admiralty by or Against Vessels or Cargoes of United States.
21. Death on the High Seas by Wrongful Act.
22. Suits in Admiralty Against United States for Damages Caused by Public Vessels or for Towage or Salvage Services.
23. Shipping Act.
23A. Intercoastal Shipping.
24. Merchant Marine Act, 1920.
24A. Merchant Marine Act, 1928.
25. Ship Mortgages.
26. Home Port of Vessels.
27. Merchant Marine Act, 1936.
28. Carriage of Goods by Sea.
32. Construction Assistance for Fishing Vessels [Omitted].
34. Safe Containers for International Cargo.
35. Maritime Administration.
36. International Ocean Commerce Transportation.

TITLE 47—TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS

Chap.
1. Telegraphs.
2. Submarine Cables.
3. Radiotelegraphs [Repealed].
4. Radio Act of 1927 [Repealed or Omitted].
5. Wire or Radio Communication.
6. Communications Satellite System.
7. Campaign Communications [Repealed].

TITLE 48—TERRITORIES AND INSULAR POSSESSIONS

1. The Bureau of Insular Affairs [Omitted or Repealed].
2. Alaska [Omitted, Repealed, or Transferred].
3. Hawaii.
4. Puerto Rico.
5. The Philippine Islands [Omitted, Repealed, or Transferred].
6. Canal Zone [Omitted, Repealed, or Transferred].
7. The Virgin Islands.
8. Guano Islands.
8A. Guam.
9. Samoa, Tutuila, Manua, Swains Island, and Trust Territory of the Pacific Islands [Transferred].
10. Territorial Provisions of a General Nature.
11. Alien Owners of Land.
12. The Virgin Islands.
13. Eastern Samoa.
14. Trust Territory of the Pacific Islands.
15. Conveyance of Submerged Lands to Territories.
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TITLE 49—TRANSPORTATION

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SUBTITLE II—TRANSPORTATION PROGRAMS

31. Motor Carrier Safety.

SUBTITLE III [RESERVED—AIR TRANSPORTATION]

SUBTITLE IV—INTERSTATE COMMERCE

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103. Interstate Commerce Commission.
105. Jurisdiction.
107. Rates, Tariffs, and Valuations.
109. Licensing.
111. Operations of Carriers.
113. Finance.
115. Federal-State Relations.
117. Enforcement: Investigations, Rights, and Remedies.
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1. Interstate Commerce Act, Part I; General Provisions and Railroad and Pipe Line Carriers [Repealed in Part].
2. Legislation Supplementary to "Interstate Commerce Act" [Repealed, Transferred, or Omitted].
3. Termination of Federal Control [Repealed or Transferred].
4. Bills of Lading.
5. Inland Waterways Transportation.
6. Air Commerce.
7. Coordination of Interstate Railroad Transportation [Repealed].
8. Interstate Commerce Act, Part II; Motor Carriers [Repealed or Transferred].
9. Civil Aeronautics [Repealed, Omitted, or Transferred].
10. Training of Civil Aircraft Pilots [Omitted or Repealed].
11. Seizure and Forfeiture of Carriers Transporting, etc., Contraband Articles.
12. Interstate Commerce Act, Part III; Water Carriers [Repealed].
13. Interstate Commerce Act, Part IV; Freight Forwarders [Repealed].
14. Federal Aid for Public Airport Development [Repealed or Transferred].
15. International Aviation Facilities.
16. Development of Commercial Aircraft [Omitted].
17. Medals of Honor for Acts of Heroism.
18. Airways Modernization [Repealed].
19. Interstate Commerce Act, Part V; Loan Guaranties [Repealed].
20. Federal Aviation Program.
21. Urban Mass Transportation.
22. High-Speed Ground Transportation [Omitted or Repealed].
23. Department of Transportation [Repealed in Part].
24. Natural Gas Pipeline Safety.
25. Aviation Facilities Expansion and Improvement [Repealed in Part].
26. Hazardous Materials Transportation Control [Repealed].
27. Hazardous Materials Transportation.
28. National Transportation Safety Board.
29. Hazardous Liquid Pipeline Safety.
30. Abatement of Aviation Noise.
31. Airport and Airway Improvement.
32. Commercial Motor Vehicles.
33. Public Airports.
34. Motor Carrier Safety.
35. Commercial Space Launch.

TITLE 50—WAR AND NATIONAL DEFENSE

1. Council of National Defense.
2. Board of Ordnance and Fortification [Repealed].
Chap.
3. Alien Enemies.
4. Espionage [Repealed or Transferred].
4A. Photographing, Sketching, Mapping, etc., Defensive Installations [Repealed].
4B. Disclosure of Classified Information [Repealed].
4C. Atomic Weapons and Special Nuclear Materials Information Rewards.
5. Arsenals, Armories, Arms, and War Material Generally.
6. Willful Destruction, etc., of War or National-Defense Material [Repealed].
7. Interference with Homing Pigeons Owned by United States [Repealed].
8. Explosives; Manufacture, Distribution, Storage, Use, and Possession Regulated [Repealed].
9. Aircraft [Omitted, Repealed, or Transferred].
10. Helium Gas.
11. Acquisition of and Expenditures on Land for National-Defense Purposes [Repealed, Omitted, or Transferred].
12. Vessels in Territorial Waters of United States.
13. Insurrection.
14. Wartime Voting by Land and Naval Forces [Repealed].
15. National Security.
16. Defense Industrial Reserves.
17. Arming American Vessels [Repealed].
18. Air-Warning Screen.
19. Guided Missiles.
20. Wind Tunnels.
21. Abaca Production [Omitted].
22. Uniform Code of Military Justice [Repealed or Omitted].
22A. Representation of Armed Forces Personnel Before Foreign Judicial Tribunals [Repealed].
23. Internal Security.
24. National Defense Facilities [Repealed].
25. Armed Forces Reserve [Repealed or Omitted].
26. Gifts for Defense Purposes.
27. Reserve Officer Personnel Program [Repealed or Omitted].
28. Status of Armed Forces Personnel Appointed to Service Academies [Repealed].
29. National Defense Contracts.
30. Federal Absentee Voting Assistance [Transferred].
31. Advisory Commission on Intergovernmental Relations [Transferred, See Chapter 53 of Title 42].
32. Chemical and Biological Warfare Program.
33. War Powers Resolution.
34. National Emergencies.
35. International Emergency Economic Powers.
36. Foreign Intelligence Surveillance.

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE

Proclamations, Executive Orders, Joint Resolutions and Treaties Respecting War, Neutrality and Peace.

Trading With the Enemy Act of 1917.

Soldiers' and Sailors' Civil Relief Act of 1918 [Omitted].

Selective Draft Act of 1917 [Omitted or Repealed].

Selective Training and Service Act of 1940 [Omitted or Repealed].

Office of Selective Service Records.

Service Extension Act of 1941 [Repealed].

Army Reserve and Retired Personnel Service Law of 1940 [Omitted].

Military Selective Service Act.

Soldiers' and Sailors' Civil Relief Act of 1940.

First War Powers Act, 1941 [Repealed, Omitted, or Transferred].

Second War Powers Act, 1942 [Repealed or Omitted].

Exportation Restrictions on Certain Articles [Repealed or Omitted].

Requisition of Military Equipment, Materials and Supplies [Omitted].

Territorial Use of Army and Extension of Service Period [Omitted, Transferred, or Repealed].

Civilian Protection From War Hazards [Omitted].

Decorations, etc., for Merchant Marine [Repealed].

Use of Public Lands for War Purposes [Repealed].

Miscellaneous Provisions Affecting Military Establishment [Omitted, Repealed, or Transferred].

Photographing, Mapping or Other Representation of Military or Defense Properties [Omitted].

Exemption of Certain Articles From Import Duties and Taxes [Omitted or Repealed].

Temporary Appointments, Promotions, etc., of Navy, Marine Corps, and Coast Guard Officers [Omitted or Repealed].

Jurisdiction of Prizes and Prize Proceedings [Transferred].

Certain Allowance Assistance for Civilian and Military Personnel [Repealed or Omitted].

Free Entry of Gifts From Members of Armed Forces [Omitted].

Free Postage for Armed Forces Personnel [Omitted].

Emergency Price Control Act of 1942 [Omitted].

Stabilization Act of 1942 [Omitted].

Extension of Sugar Controls [Omitted].

Missing Persons Act [Repealed].

Small Business Mobilization Act [Omitted, Transferred, or Repealed].

War and Defense Contract Acts [Omitted or Repealed].

National Emergency and War Shipping Acts.

Farm Labor Supply Appropriation Act, 1944 [Omitted].

War Overtime Pay Act of 1943 [Repealed].

Training of Nurses Through Grants to Institutions [Omitted].

Civilian Reemployment of Members of Merchant Marine [Repealed].

War Labor Disputes Act [Omitted].

Voluntary Enlistments in the Regular Military Establishment [Repealed].

Women's Army Corps [Repealed].

United Nations Relief and Rehabilitation Administration [Omitted].

Temporary Appointments of Army Nurse Corps Members, etc., as Officers of Army of the United States [Omitted].

Disposal of Materials on Public Lands [Omitted].

Surplus Property Act of 1944.

War Mobilization and Reconversion Act of 1944 [Omitted].

Fleet Admiral of the Navy and General of the Army [Repealed].

Disposal of Censored Mail [Omitted].

Disbursing Officers' Additional Functions [Transferred].

General of the Marine Corps [Omitted].

Admiral in the Coast Guard [Omitted].

Exception of Navy or Coast Guard Vessels From Certain Navigation Rules [Transferred].

Sale of Surplus War-Built Vessels.

Rehabilitation of Philippines [Omitted].

TITLE 50, APPENDIX—WAR AND NATIONAL DEFENSE—Continued

Return and Interment of Persons Buried Outside United States [Repealed].

Veterans' Emergency Housing Program [Repealed or Omitted].

Naval Vessels as Atomic Targets [Omitted].

Admission of Alien Fiancées Into United States [Omitted].

Military Assistance to Philippine Republic [Omitted].

Naval Aid to China [Omitted].

Naval Aid to Foreign Nations [Omitted].

Housing and Rent Acts.

Stabilization of Economy and Commodity Prices.

Domestic Rubber-Producing Industry [Omitted].

Disposal of Government-Owned Rubber-Producing Facilities.

Displaced Persons, Refugees and Orphans [Omitted].

American-Japanese Evacuation Claims.

Medical Care for Philippine Veterans [Repealed].

War Claims.

Micronesian War and Postwar Claims [Omitted].

Export Controls [Omitted].

Alien Property Damage Claims [Omitted].

Defense Production Act of 1950.

Domestic Minerals Program Extension.

Domestic Tungsten, Asbestos, Fluorspar and Columbium-Tantalum Purchase Programs [Omitted].

Dependents Assistance Act of 1950 [Omitted or Repealed].

Civil Defense.

Emergency Food Aid to India [Omitted].

Korean Combat Pay [Repealed].

World War II License Agreements.

Emergency Ship Repair Program [Omitted].

Export Regulation.

TITLE 18—CRIMES AND CRIMINAL PROCEDURE

This title was enacted by act June 25, 1948, ch. 645, 62 Stat. 683

PART I—CRIMES

CHAPTER 1—GENERAL PROVISIONS

Sec.
16. Crime of violence defined.
20. Insanity Defense.[1]

AMENDMENT OF ANALYSIS

Pub. L. 98-473, title II, §§ 218(b), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), item 1 of the analysis is amended to read: "1. Repealed."

AMENDMENTS

1984—Pub. L. 98-473, title II, §§ 402(b), 1001(b), Oct. 12, 1984, 98 Stat. 2057, 2136, added items 16 and 20.

§ 1. Offenses classified

Notwithstanding any Act of Congress to the contrary:

[*See main edition for text of (1) and (2)*]

(3) Any misdemeanor, the penalty for which, as set forth in the provision defining the offense, does not exceed imprisonment for a period of six months or a fine of not more than $5,000 for an individual and $10,000 for a person other than an individual, or both, is a petty offense.

(As amended Oct. 30, 1984, Pub. L. 98-596, § 8, 98 Stat. 3138.)

REPEAL OF SECTION

Pub. L. 98-473, title II, §§ 218(a)(1), 235(a)(1), Oct. 12, 1984, 98 Stat. 2030, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is repealed.

AMENDMENTS

1984—Par. (3). Pub. L. 98-596 added ", as set forth in the provision defining the offense," and substituted "$5,000 for an individual and $10,000 for a person other than an individual" for "$500".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 10 of Pub. L. 98-596 provided that: "The amendments made by sections 2 through 9 of this Act [enacting sections 3621 to 3624 of this title and amending sections 1, 3565, 3569, 3579, 3651, 3655, and 4209 of this title] shall apply with respect to offenses committed after December 31, 1984."

SHORT TITLE OF 1984 AMENDMENT

Section 200 of title II (§§ 200-2304) of Pub. L. 98-473 provided that: "This title [see Tables for classification] may be cited as the 'Comprehensive Crime Control Act of 1984'."

CROSS REFERENCES

Punishment for acts declared in Merchant Marine Act, 1936 to be a misdemeanor to be by fine of not more than $10,000 or imprisonment for not less than one or more than five years, or both, see section 1228 of Title 46, Appendix, Shipping.

§ 2. Principals

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1962 of this title; title 21 section 854; title 49 App. section 1473; title 50 section 422.

§ 4. Misprision of felony

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 section 422.

§ 7. Special maritime and territorial jurisdiction of the United States defined

The term "special maritime and territorial jurisdiction of the United States", as used in this title, includes:

[*See main edition for text of (1) to (6)*]

(7) Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1210, 98 Stat. 2164.)

AMENDMENTS

1984—Par. (7). Pub. L. 98-473 added par. (7).

§ 16. Crime of violence defined

The term "crime of violence" means—

(a) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or

(b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(Added Pub. L. 98-473, title II, § 1001(a), Oct. 12, 1984, 98 Stat. 2136.)

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[1] So in original. Capitalization does not conform to section catchline.

§ 20.[2] Insanity defense

(a) Affirmative defense

It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

(b) Burden of proof

The defendant has the burden of proving the defense of insanity by clear and convincing evidence.

(Added Pub. L. 98-473, title II, § 402(a), Oct. 12, 1984, 98 Stat. 2057.)

CHAPTER 2—AIRCRAFT AND MOTOR VEHICLES

§ 31. Definitions

When used in this chapter the term—

"Aircraft engine", "air navigation facility", "appliance", "civil aircraft", "foreign air commerce", "interstate air commerce", "landing area", "overseas air commerce", "propeller", "spare part" and "special aircraft jurisdiction of the United States" shall have the meaning ascribed to those terms in the Federal Aviation Act of 1958, as amended.

"Motor vehicle" means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo;

"Destructive substance" means any explosive substance, flammable material, infernal machine, or other chemical, mechanical, or radioactive device or matter of a combustible, contaminative, corrosive, or explosive nature;

"Used for commercial purposes" means the carriage of persons or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit;

"In flight" means any time from the moment all the external doors of an aircraft are closed following embarkation until the moment when any such door in [3] opened for disembarkation. In the case of a forced landing the flight shall be deemed to continue until competent authorities take over the responsibility for the aircraft and the persons and property on board; and

"In service" means any time from the beginning of preflight preparation of the aircraft by ground personnel or by the crew for a specific flight until twenty-four hours after any landing; the period of service shall, in any event, extend for the entire period during which the aircraft is in flight.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, §§ 1010, 2013(a), 98 Stat. 2141, 2187.)

References in Text

The Federal Aviation Act of 1958, referred to in text, is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, which is classified principally to chapter 20 (§ 1301 et seq.) of Title 49, Appendix, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49, Appendix, and Tables.

Amendments

1984—Pub. L. 98-473, § 2013(a)(1), in first par. struck out "and" before "spare part" and added "and 'special aircraft jurisdiction of the United States' " and substituted "Federal Aviation Act of 1958" for "Civil Aeronautics Act of 1938".

Pub. L. 98-473, § 1010, substituted "passengers and property, or property or cargo" for "or passengers and property" in definition of motor vehicle.

Pub. L. 98-473, § 2013(a)(2)-(4), added definitions of "in flight" and "in service".

Effective Date of 1984 Amendment

Section 2015 of part B (§§ 2011-2015) of chapter XX of title II of Pub. L. 98-473 provided that: "This part [amending sections 31 and 32 of this title and sections 1301, 1471, and 1472 of Title 49, Appendix, Transportation, and enacting provisions set out as notes under this section] shall become effective on the date of the enactment of this joint resolution [Oct. 12, 1984]."

Short Title of 1984 Amendment

Section 2011 of part B (§§ 2011-2015) of chapter XX of title II of Pub. L. 98-473 provided that: "This part [amending sections 31 and 32 of this title and sections 1301, 1471, and 1472 of Title 49, Appendix, Transportation, and enacting provisions set out as notes under this section] may be cited as the 'Aircraft Sabotage Act'."

Statement of Findings and Purpose for 1984 Amendment

Section 2012 of part B (§§ 2011-2015) of chapter XX of title II of Pub. L. 98-473 provided that: "The Congress hereby finds that—

"(1) the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (ratified by the United States on November 1, 1972) requires each contracting State to establish its jurisdiction over certain offenses affecting the safety of civil aviation;

"(2) such offenses place innocent lives in jeopardy, endanger national security, affect domestic tranquility, gravely affect interstate and foreign commerce, and are offenses against the law of nations; and

"(3) the purpose of this subtitle [part, see Short Title note above] is to implement fully the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and to expand the protection accorded to aircraft and related facilities."

§ 32. Destruction of aircraft or aircraft facilities

(a) Whoever willfully—

(1) sets fire to, damages, destroys, disables, or wrecks any aircraft in the special aircraft jurisdiction of the United States or any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce;

(2) places or causes to be placed a destructive device or substance in, upon, or in proximity to, or otherwise makes or causes to be made unworkable or unusable or hazardous to work or use, any such aircraft, or any part or other materials used or intended to be used in connection with the operation of such aircraft, if such placing or causing to be placed

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[2] No sections 17 to 19 of this title have been enacted.

[3] So in original. Probably should be "is".

or such making or causing to be made is likely to endanger the safety of any such aircraft;

(3) sets fire to, damages, destroys, or disables any air navigation facility, or interferes by force or violence with the operation of such facility, if such fire, damaging, destroying, disabling, or intefering[4] is likely to endanger the safety of any such aircraft in flight;

(4) with the intent to damage, destroy, or disable any such aircraft, sets fire to, damages, destroys, or disables or places a destructive device or substance in, upon, or in proximity to, any appliance or structure, ramp, landing area, property, machine, or apparatus, or any facility or other material used, or intended to be used, in connection with the operation, maintenance, loading, unloading or storage of any such aircraft or any cargo carried or intended to be carried on any such aircraft;

(5) performs an act of violence against or incapacitates any individual on any such aircraft, if such act of violence or incapacitation is likely to endanger the safety of such aircraft;

(6) communicates information, knowing the information to be false and under circumstances in which such information may reasonably be believed, thereby endangering the safety of any such aircraft in flight; or

(7) attempts to do anything prohibited under paragraphs (1) through (6) of this subsection;

shall be fined not more than $100,000 or imprisoned not more than twenty years or both.

(b) Whoever willfully—

(1) performs an act of violence against any individual on board any civil aircraft registered in a country other than the United States while such aircraft is in flight, if such act is likely to endanger the safety of that aircraft;

(2) destroys a civil aircraft registered in a country other than the United States while such aircraft is in service or causes damage to such an aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight;

(3) places or causes to be placed on a civil aircraft registered in a country other than the United States while such aircraft is in service, a device or substance which is likely to destroy that aircraft, or to cause damage to that aircraft which renders that aircraft incapable of flight or which is likely to endanger that aircraft's safety in flight; or

(4) attempts to commit an offense described in paragraphs (1) through (3) of this subsection;

shall, if the offender is later found in the United States, be fined not more than $100,000 or imprisoned not more than twenty years, or both.

(c) Whoever willfully imparts or conveys any threat to do an act which would violate any of paragraphs (1) through (5) of subsection (a) or any of paragraphs (1) through (3) of subsection (b) of this section, with an apparent determination and will to carry the threat into execution shall be fined not more than $25,000 or imprisoned not more than five years, or both.

(As amended Oct. 12, 1984, Pub. L. 98–473, title II, § 2013(b), 98 Stat. 2187.)

AMENDMENTS

1984—Pub. L. 98–473 amended section generally. Prior to amendment section read:

"Whoever willfully sets fire to, damages, destroys, disables, or wrecks any civil aircraft used, operated, or employed in interstate, overseas, or foreign air commerce; or

"Whoever willfully sets fire to, damages, destroys, disables, or wrecks any aircraft engine, propeller, appliance, or spare part with intent to damage, destroy, disable, or wreck any such aircraft; or

"Whoever, with like intent, willfully places or causes to be placed any destructive substance in, upon, or in proximity to any such aircraft, or any aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, or other material used or intended to be used in connection with the operation of any such aircraft, or any cargo carried or intended to be carried on any such aircraft, or otherwise makes or causes to be made any such aircraft, aircraft engine, propeller, appliance, spare part, fuel, lubricant, hydraulic fluid, or other material unworkable or unusable or hazardous to work or use; or

"Whoever, with like intent, willfully sets fire to, damages, destroys, disables, or wrecks, or places or causes to be placed any destructive substance in, upon, or in proximity to any shop, supply, structure, station, depot, terminal, hanger, ramp, landing area, air-navigation facility or other facility, warehouse, property, machine, or apparatus used or intended to be used in connection with the operation, loading, or unloading of any such aircraft or making any such aircraft ready for flight, or otherwise makes or causes to be made any such shop, supply, structure, station, depot, terminal, hangar, ramp, landing area, air-navigation facility or other facility, warehouse, property, machine, or apparatus unworkable or unusable or hazardous to work or use; or

"Whoever, with like intent, willfully incapacitates any member of the crew of any such aircraft; or

"Whoever willfully attempts to do any of the aforesaid acts or things—

"shall be fined not more than $10,000 or imprisoned not more than twenty years, or both."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–473 effective Oct. 12, 1984, see section 2015 of Pub. L. 98–473, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5032 of this title.

CHAPTER 5—ARSON

§ 81. Arson within special maritime and territorial jurisdiction

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5032 of this title.

CHAPTER 7—ASSAULT

Sec.
115. Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member.

AMENDMENTS

1984—Pub. L. 98–473, title II, § 1008(b), Oct. 12, 1984, 98 Stat. 2140, added item 115.

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[4] So in original. Probably should be "interfering".

§ 111. Assaulting, resisting, or impeding certain officers or employees

Section Referred to in Other Sections

This section is referred to in section 115 of this title; title 7 sections 84, 87c; title 16 section 742*l*; title 22 section 2667; title 42 sections 2000e-13, 2283.

§ 114. Maiming within maritime and territorial jurisdiction

[*See main edition for text of first and second pars.*]

Shall be fined not more than $25,000 and [1] imprisoned not more than twenty years, or both.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1009A, 98 Stat. 2141.)

Amendments

1984—Pub. L. 98-473 substituted "and imprisoned" for "or imprisoned" and provisions raising maximum fine from $1,000 to $25,000 and raising maximum term of imprisonment from seven years to twenty years.

§ 115. Influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member

(a) Whoever assaults, kidnaps, or murders, or attempts to kidnap or murder, or threatens to assault, kidnap or murder a member of the immediate family of a United States official, a United States judge, a Federal law enforcement officer, or an official whose killing would be a crime under 18 U.S.C. 1114, as amended, with intent to impede, intimidate, interfere with, or retaliate against such official, judge or law enforcement officer while he is engaged in or on account of the performance of his official duties, shall be punished as provided in subsection (b).

(b)(1) An assault in violation of this section shall be punished as provided in section 111 of this title.

(2) A kidnaping or attempted kidnaping in violation of this section shall be punished as provided in section 1201 of this title.

(3) A murder or attempted murder in violation of this section shall be punished as provided in sections 1111 and 1113 of this title.

(4) A threat made in violation of this section shall be punished by a fine of not more than $5,000 or imprisonment for a term of not more than five years, or both, except that imprisonment for a threatened assault shall not exceed three years.

(c) As used in this section, the term—

(1) "Federal law enforcement officer" means any officer, agent, or employee of the United States authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal criminal law;

(2) "immediate family member" of an individual means—

(A) his spouse, parent, brother or sister, child or person to whom he stands in loco parentis; or

(B) any other person living in his household and related to him by blood or marriage;

(3) "United States judge" means any judicial officer of the United States, and includes a justice of the Supreme Court and a United States magistrate; and

(4) "United States official" means the President, President-elect, Vice President, Vice President-elect, a Member of Congress, a member-elect of Congress, a member of the executive branch who is the head of a department listed in 5 U.S.C. 101, or the Director of The [2] Central Intelligence Agency.

(Added Pub. L. 98-473, title II, § 1008(a), Oct. 12, 1984, 98 Stat. 2140.)

CHAPTER 9—BANKRUPTCY

§ 151. Definition

Savings Provision

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 152. Concealment of assets; false oaths and claims; bribery

Savings Provision

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 153. Embezzlement by trustee or officer

Savings Provision

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 154. Adverse interest and conduct of officers

Savings Provision

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

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[1] So in original. Probably should be "or".

[2] So in original.

§ 155. Fee agreements in cases under title 11 and receiverships

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 11—BRIBERY, GRAFT, AND CONFLICTS OF INTEREST

Sec.	
216.	Repealed.

AMENDMENTS

1984—Pub. L. 98-473, title II, § 1107(b), Oct. 12, 1984, 98 Stat. 2146, in item 216 substituted "Repealed" for "Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions".

§ 208. Acts affecting a personal financial interest

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14, 202 of this title; title 2 section 702; title 5 section 3374; title 12 section 1457; title 22 sections 3507, 3508, 3622; title 28 App. section 302; title 40 App. section 108; title 42 sections 1396a, 1975d, 7218; title 46 App. section 1717; title 47 section 154.

§ 215. Receipt of commissions or gifts for procuring loans

(a) Whoever, being an officer, director, employee, agent, or attorney of any financial institution, bank holding company, or savings and loan holding company, except as provided by law, directly or indirectly, asks, demands, exacts, solicits, seeks, accepts, receives or agrees to receive anything of value, for himself or for any other person or entity, other than such financial institution, from any person or entity for or in connection with any transaction or business of such financial institution; or

(b) Whoever, except as provided by law, directly or indirectly, gives, offers, or promises anything of value to any officer, director, employee, agent, or attorney of any financial institution, bank holding company, or savings and loan holding company, or offers or promises any such officer, director, employee, agent, or attorney to give anything of value to any person or entity, other than such financial institution, for or in connection with any transaction or business of such financial institution, shall be fined not more than $5,000 or three times the value of anything offered, asked, given, received, or agreed to be given or received, whichever is greater, or imprisoned not more than five years, or both; but if the value of anything offered, asked, given, received, or agreed to be given or received does not exceed $100, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(c) As used in this section—

(1) "financial institution" means—

(A) any bank the deposits of which are insured by the Federal Deposit Insurance Corporation;

(B) any member, as defined in section 2 of the Federal Home Loan Bank Act, as amended, of the Federal Home Loan Bank System and any Federal Home Loan Bank;

(C) any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation;

(D) any credit union the accounts of which are insured by the Administrator of the National Credit Union Administration;

(E) any Federal land bank, Federal land bank association, Federal intermediate credit bank, production credit association, bank for cooperatives; and

(F) a small business investment company, as defined in section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662); and

(2) "bank holding company" or "savings and loan holding company" means any person, corporation, partnership, business trust, association or similar organization which controls a financial institution in such a manner as to be a bank holding company or a savings and loan holding company under the Bank Holding Company Act Amendments of 1956 (12 U.S.C. 1841) or the Savings and Loan Holding Company Amendments of 1967 (12 U.S.C. 1730a).

(d) This section shall not apply to the payment by a financial institution of the usual salary or director's fee paid to an officer, director, employee, agent, or attorney thereof, or to a reasonable fee paid by such financial institution to such officer, director, employee, agent, or attorney for services rendered to such financial institution.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1107(a), 98 Stat. 2145.)

REFERENCES IN TEXT

Section 2 of the Federal Home Loan Bank Act, referred to in subsec. (c)(1)(B), is classified to section 1422 of Title 12, Banks and Banking.

The Bank Holding Company Act Amendments of 1956, referred to in subsec. (c)(2), probably means the Bank Holding Company Act of 1956, which is act May 9, 1956, ch. 240, 70 Stat. 133, as amended, and is classified principally to chapter 17 (§ 1841 et seq.) of Title 12. For complete classification of this Act to the Code, see Short Title note set out under section 1841 of Title 12 and Tables.

The Savings and Loan Holding Company Amendments of 1967, referred to in subsec. (c)(2), is Pub. L. 90-255, Feb. 14, 1968, 82 Stat. 5, as amended, which amended generally section 1730a of Title 12. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1984—Pub. L. 98-473 amended section generally. Prior to amendment section read: "Whoever, being an officer, director, employee, agent, or attorney of any bank, the deposits of which are insured by the Federal Deposit Insurance Corporation, of a Federal intermediate credit bank, or of a National Agricultural Credit Corporation, except as provided by law, stipulates for or receives or consents or agrees to receive any fee, commission, gift, or thing of value, from any person, firm, or corporation, for procuring or endeavoring to procure for such person, firm, or corporation, or for any other person, firm, or corporation, from any such bank or corporation, any loan or extension or renewal of loan or substitution of security, or the purchase or discount or acceptance of any paper, note, draft, check, or bill of exchange by any such bank or corporation, shall be fined not more than $5,000 or imprisoned not more than one year or both."

[§ 216. Repealed. Pub. L. 98-473, title II, § 1107(b), Oct. 12, 1984, 98 Stat. 2146]

Section, acts June 25, 1948, ch. 645, 62 Stat. 695, § 216, formerly § 221, amended Aug. 21, 1958, Pub. L. 85-699, title VII, § 702(a)-(c), 72 Stat. 698; Aug. 18, 1959, Pub. L. 86-168, title I, § 104(h), 73 Stat. 387, and renumbered Oct. 23, 1962, Pub. L. 87-849, § 1(d), 76 Stat. 1125, related to the receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions. See section 215 of this title.

A prior section 216, act June 25, 1948, ch. 645, 62 Stat. 694, which related to the procurement of a contract by an officer or Member of Congress, was repealed by section 1(c) of Pub. L. 87-849.

§ 218. Voiding transactions in violation of chapter; recovery by the United States

Ex. Ord. No. 12448. Exercise of Authority

Ex. Ord. No. 12448, Nov. 4, 1983, 48 F.R. 51281, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 218 of title 18 of the United States Code, and in order to provide federal agencies with the authority to promulgate regulations for voiding or rescinding contracts or other benefits obtained through bribery, graft or conflict of interest, it is hereby ordered as follows:

Section 1. The head of each Executive department, Military department and Executive agency is hereby delegated the authority vested in the President to declare void and rescind the transactions set forth in section 218 of title 18 of the United States Code in relation to which there has been a final conviction for any violation of chapter 11 of title 18.

Sec. 2. The head of each Executive department and agency described in section 1 may exercise the authority hereby delegated by promulgating implementing regulations; provided that the Secretary of Defense, the Administrator of General Services and the Administrator of the National Aeronautics and Space Administration jointly shall issue government-wide implementing regulations related to voiding or rescission of contracts.

Sec. 3. Implementing regulations adopted pursuant to this Order shall, at a minimum, provide the following procedural protections:

(a) Written notice of the proposed action shall be given in each case to the person or entity affected;

(b) The person or entity affected shall be afforded an opportunity to submit pertinent information on its behalf before a final decision is made;

(c) Upon the request of the person or entity affected, a hearing shall be held at which it shall have the opportunity to call witnesses on its behalf and confront any witness the agency may present; and

(d) The head of the agency or his designee shall issue a final written decision specifying the amount of restitution or any other remedy authorized by section 218, provided that such remedy shall take into consideration the fair value of any tangible benefits received and retained by the agency.

Ronald Reagan.

§ 219. Officers and employees acting as agents of foreign principals

Whoever, being a public official of the United States in the executive, legislative, or judicial branch of the Government or in any agency of the United States, including the District of Columbia, is or acts as an agent of a foreign principal required to register under the Foreign Agents Registration Act of 1938, as amended, shall be fined not more than $10,000 or imprisoned for not more than two years, or both.

[*See main edition for text of second par.*]

For the purpose of this section "public official" means Member of Congress, the Delegate from the District of Columbia, or Resident Commissioner, either before or after he has qualified, or an officer or employee or person acting for or on behalf of the United States, or any department, agency, or branch of Governments[4] thereof, including the District of Columbia, in any official function, under or by authority of any such department, agency, or branch of Government, or a juror.

(As amended Pub. L. 98-473, title II, § 1116, Oct. 12, 1984, 98 Stat. 2149.)

Amendments

1984—Pub. L. 98-473 substituted "a public official" for "an officer or employee" in first par., and added par. defining "public official".

CHAPTER 19—CONSPIRACY

Sec.	
373.	Solicitation to commit a crime of violence.

Amendments

1984—Pub. L. 98-473, title II, § 1003(b), Oct. 12, 1984, 98 Stat. 2136, added item 373.

§ 373. Solicitation to commit a crime of violence

(a) Whoever, with intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against the person or property of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in such conduct, shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half of the maximum fine prescribed for the punishment of the crime solicited, or both; or if the crime solicited is punishable by death, shall be imprisoned for not more than twenty years.

(b) It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited. A renunciation is not "voluntary and complete" if it is motivated in whole or in part by a decision to postpone the commission of the crime until another time or to substitute another victim or another but similar objective. If the defendant raises the affirmative defense at trial, the defendant has the burden of proving the defense by a preponderance of the evidence.

(c) It is not a defense to a prosecution under this section that the person solicited could not be convicted of the crime because he lacked the state of mind required for its commission, because he was incompetent or irresponsible, or because he is immune from prosecution or is not subject to prosecution.

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[4] So in original. Probably should be "Government".

(Added Pub. L. 98-473, title II, § 1003(a), Oct. 12, 1984, 98 Stat. 2138.)

CHAPTER 21—CONTEMPTS

§ 401. Power of court

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3148, 3583 of this title.

CHAPTER 25—COUNTERFEITING AND FORGERY

Sec.
510. Forging endorsements on Treasury checks or bonds or securities of the United States.
510. Securities of the State and private entities.[3]
511. Altering or removing motor vehicle identification numbers.
512. Forfeiture of certain motor vehicles and motor vehicle parts.

AMENDMENTS

1984—Pub. L. 98-547, title II, § 201(b), Oct. 25, 1984, 98 Stat. 2770, added items 511 and 512.

Pub. L. 98-473, title II, § 1105(b), Oct. 12, 1984, 98 Stat. 2145, added the second item 510, "Securities of the State and private entities" which does not correspond to the section 511 added by Pub. L. 98-473.

1983—Pub. L. 98-151, § 115(c), Nov. 14, 1983, 97 Stat. 977, added item 510, relating to forging endorsements.

§ 474. Plates or stones for counterfeiting obligations or securities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 12 section 1457; title 16 section 718e.

§ 490. Minor coins

Whoever falsely makes, forges, or counterfeits any coin in the resemblance or similitude of any of the one-cent and 5-cent coins minted at the mints of the United States; or

[*See main edition for text of second par.*]

(As amended Feb. 14, 1984, Pub. L. 98-216, § 3(b)(1), 98 Stat. 6.)

AMENDMENTS

1984—Pub. L. 98-216 substituted "one-cent and 5-cent coins minted" for "minor coins coined".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 4(c) of Pub. L. 98-216 provided that: "The amendments made by sections 1(3), (4), and (7) and 3(b)(1) of this Act [amending this section and sections 3322, 3528, and 5132 of Title 31, Money and Finance] are effective as of September 13, 1982."

§ 504. Printing and filming of United States and foreign obligations and securities

Notwithstanding any other provision of this chapter, the following are permitted:

(1) the printing, publishing, or importation, or the making or importation of the necessary plates for such printing or publishing, of illustrations of—

[*See main edition for text of* (*A*) *to* (*D*)]

for philatelic, numismatic, educational, historical, or newsworthy purposes in articles, books, journals, newspapers, or albums (but not for advertising purposes, except illustrations of stamps and paper money in philatelic or numismatic advertising of legitimate numismatists and dealers in stamps or publishers of or dealers in philatelic or numismatic articles, books, journals, newspapers, or albums). Illustrations permitted by the foregoing provisions of this section shall be made in accordance with the following conditions—

(i) all illustrations shall be in black and white, except that illustrations of postage stamps issued by the United States or by any foreign government and stamps issued under the Migratory Bird Hunting Stamp Act of 1934 may be in color;

(ii) all illustrations (including illustrations of uncanceled postage stamps in color and illustrations of stamps issued under the Migratory Bird Hunting Stamp Act of 1934 in color) shall be of a size less than three-fourths or more than one and one-half, in linear dimension, of each part of any matter so illustrated which is covered by subparagraph (A), (B), (C), or (D) of this paragraph, except that black and white illustrations of postage and revenue stamps issued by the United States or by any foreign government and colored illustrations of canceled postage stamps issued by the United States may be in the exact linear dimension in which the stamps were issued; and

[*See main edition for text of* (*iii*), (*2*)]

For the purposes of this section the term "postage stamp" includes postage meter stamps.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1077(b)(1), (2), 98 Stat. 1054.)

REFERENCES IN TEXT

The Migratory Bird Hunting Stamp Act, referred to in par. (1)(i), (ii), is act Mar. 16, 1934, ch. 71, 48 Stat. 451, as amended, which is classified generally to subchapter IV (§ 718 et seq.) of chapter 7 of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 718 of Title 16 and Tables.

AMENDMENTS

1984—Par. (1)(i). Pub. L. 98-369, § 1077(b)(1), inserted "and stamps issued under the Migratory Bird Hunting Stamp Act of 1934".

Par. (1)(ii). Pub. L. 98-369, § 1077(b)(2), inserted "and illustrations of stamps issued under the Migratory Bird Hunting Stamp Act of 1934 in color".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, see section 1077(c) of Pub. L. 98-369, set out as a note under section 718e of Title 16, Conservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 718e.

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[3] So in original. Does not conform to section catchline for the section 511 added by Pub. L. 98-473.

§ 507. Ship's papers

CROSS REFERENCES

Provisions relating to recording, registry, or enrollment of vessels, etc., see section 12101 et seq. of Title 46, Shipping.

Definition of registry and license with respect to vessel documentation, see section 12101 of Title 46.

§ 510. Forging endorsements on Treasury checks or bonds or securities of the United States

(a) Whoever, with intent to defraud—

(1) falsely makes or forges any endorsement or signature on a Treasury check or bond or security of the United States; or

(2) passes, utters, or publishes, or attempts to pass, utter, or publish, any Treasury check or bond or security of the United States bearing a falsely made or forged endorsement or signature [4] shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(b) Whoever, with knowledge that such Treasury check or bond or security of the United States is stolen or bears a falsely made or forged endorsement or signature buys, sells, exchanges, receives, delivers, retains, or conceals any such Treasury check or bond or security of the United States that in fact is stolen or bears a forged or falsely made endorsement or signature shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) If the face value of the Treasury check or bond or security of the United States or the aggregate face value, if more than one Treasury check or bond or security of the United States, does not exceed $500, in any of the above-mentioned offenses, the penalty shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both.

(Added Pub. L. 98-151, § 115(a), Nov. 14, 1983, 97 Stat. 976.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title.

§ 511.[5] Securities of the States and private entities

(a) Whoever makes, utters or possesses a counterfeited security of a State or a political subdivision thereof or of an organization, or whoever makes, utters or possesses a forged security of a State or political subdivision thereof or of an organization, with intent to deceive another person, organization, or government shall be fined not more than $250,000 or imprisoned for not more than ten years, or both.

(b) Whoever makes, receives, possesses, sells or otherwise transfers an implement designed for or particularly suited for making a counterfeit or forged security with the intent that it be so used shall be punished by a fine of not more than $250,000 or by imprisonment for not more than ten years, or both.

(c) For purposes of this section—

(1) the term "counterfeited" means a document that purports to be genuine but is not, because it has been falsely made or manufactured in its entirety;

(2) the term "forged" means a document that purports to be genuine but is not because it has been falsely altered, completed, signed, or endorsed, or contains a false addition thereto or insertion therein, or is a combination of parts of two or more genuine documents;

(3) the term "security" means—

(A) a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, certificate of deposit, interest coupon, bill, check, draft, warrant, debit instrument as defined in section 916(c) of the Electronic Fund Transfer Act (15 U.S.C. 1693(c)),[6] money order, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest in or participation in any profit-sharing agreement [7] collateral-trust certificate, pre-reorganization certificate of subscription, transferable share, investment contract, voting trust certificate, or certificate of interest in tangible or intangible property;

(B) an instrument evidencing ownership of goods, wares, or merchandise;

(C) any other written instrument commonly known as a security;

(D) a certificate of interest in, certificate of participation in, certificate for, receipt for, or warrant or option or other right to subscribe to or purchase, any of the foregoing; or

(E) a blank form of any of the foregoing;

(4) the term "organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, society, union, or any other association or persons which operates in or the activities of which affect interstate or foreign commerce; and

(5) the term "State" includes a State of the United States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and any other territory or possession of the United States.

(Added Pub. L. 98-473, title II, § 1105(a), Oct. 12, 1984, 98 Stat. 2144.)

§ 511.[8] Altering or removing motor vehicle identification numbers

(a) Whoever knowingly removes, obliterates, tampers with, or alters an identification number for a motor vehicle, or motor vehicle part, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

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[4] So in original. Par. (2) probably should have ended after "signature" and words commencing with "shall" set flush left.

[5] So in original. There are two sections designated 511.

[6] So in original. Probably should be "15 U.S.C. 1693n(c)".

[7] So in original. Probably should be followed by a comma.

[8] So in original. There are two sections designated 511.

(b)(1) Subsection (a) of this section does not apply to a removal, obliteration, tampering, or alteration by a person specified in paragraph (2) of this subsection (unless such person knows that the vehicle or part involved is stolen).

(2) The persons referred to in paragraph (1) of this subsection are—

(A) a motor vehicle scrap processor or a motor vehicle demolisher who complies with applicable State law with respect to such vehicle or part;

(B) a person who repairs such vehicle or part, if the removal, obliteration, tampering, or alteration is reasonably necessary for the repair; and

(C) a person who restores or replaces an identification number for such vehicle or part in accordance with applicable State law.

(c) As used in this section, the term—

(1) "identification number" means a number or symbol that is inscribed or affixed for purposes of identification under the National Traffic and Motor Vehicle Safety Act of 1966, or the Motor Vehicle Information and Cost Savings Act;

(2) "motor vehicle" has the meaning given that term in section 2 of the Motor Vehicle Information and Cost Savings Act;

(3) "motor vehicle demolisher" means a person, including any motor vehicle dismantler or motor vehicle recycler, who is engaged in the business of reducing motor vehicles or motor vehicle parts to metallic scrap that is unsuitable for use as either a motor vehicle or a motor vehicle part;

(4) "motor vehicle scrap processor" means a person—

(A) who is engaged in the business of purchasing motor vehicles or motor vehicle parts for reduction to metallic scrap for recycling;

(B) who, from a fixed location, uses machinery to process metallic scrap into prepared grades; and

(C) whose principal product is metallic scrap for recycling;

but such term does not include any activity of any such person relating to the recycling of a motor vehicle or a motor vehicle part as a used motor vehicle or a used motor vehicle part.

(Added Pub. L. 98-547, title II, § 201(a), Oct. 25, 1984, 98 Stat. 2768.)

REFERENCES IN TEXT

The National Traffic and Motor Vehicle Safety Act of 1966, referred to in subsec. (c)(1), is Pub. L. 89-563, Sept. 9, 1966, 80 Stat. 718, as amended, which is classified generally to chapter 38 (§ 1381 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1381 of Title 15 and Tables.

The Motor Vehicle Information and Cost Savings Act, referred to in subsec. (c)(1), is Pub. L. 92-513, Oct. 20, 1972, 86 Stat. 947, as amended, which is classified generally to chapter 46 (§ 1901 et seq.) of Title 15. Section 2 of the Act is classified to section 1901 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 1901 of Title 15 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 512, 553, 2320 of this title; title 15 sections 2033, 2034; title 19 section 1627.

§ 512. Forfeiture of certain motor vehicles and motor vehicle parts

(a) If an identification number for a motor vehicle or motor vehicle part is removed, obliterated, tampered with, or altered, such vehicle or part shall be subject to seizure and forfeiture to the United States unless—

(1) in the case of a motor vehicle part, such part is attached to a motor vehicle and the owner of such motor vehicle does not know that the identification number has been removed, obliterated, tampered with, or altered;

(2) such motor vehicle or part has a replacement identification number that—

(A) is authorized by the Secretary of Transportation under the National Traffic and Motor Vehicle Safety Act of 1966; or

(B) conforms to applicable State law;

(3) such removal, obliteration, tampering, or alteration is caused by collision or fire or is carried out as described in section 511(b) of this title; or

(4) such motor vehicle or part is in the possession or control of a motor vehicle scrap processor who does not know that such identification number was removed, obliterated, tampered with, or altered in any manner other than by collision or fire or as described in section 511(b) of this title.

(b) All provisions of law relating to—

(1) the seizure and condemnation of vessels, vehicles, merchandise, and baggage for violation of customs laws, and procedures for summary and judicial forfeiture applicable to such violations;

(2) the disposition of such vessels, vehicles, merchandise, and baggage or the proceeds from such disposition;

(3) the remission or mitigation of such forfeiture; and

(4) the compromise of claims and the award of compensation to informers with respect to such forfeiture;

shall apply to seizures and forfeitures under this section, to the extent that such provisions are not inconsistent with this section. The duties of the collector of customs or any other person with respect to seizure and forfeiture under such provisions shall be performed under this section by such persons as may be designated by the Attorney General.

(c) As used in this section, the terms "identification number", "motor vehicle", and "motor vehicle scrap processor" have the meanings given those terms in section 511 of this title.

(Added Pub. L. 98-547, title II, § 201(a), Oct. 25, 1984, 98 Stat. 2769.)

REFERENCES IN TEXT

The National Traffic and Motor Vehicle Safety Act of 1966, referred to in subsec. (a)(2)(A), is Pub. L.

89-563, Sept. 9, 1966, 80 Stat. 718, as amended, which is classified generally to chapter 38 (§ 1381 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1381 of Title 15 and Tables.

Section 511 of this title, referred to in subsecs. (a)(3), (4), (c), probably means the section 511 of this title relating to altering or removing motor vehicle identification numbers which was enacted by Pub. L. 98-547, title II, § 201(a), Oct. 25, 1984, 98 Stat. 2768.

The customs laws, referred to in subsec. (b)(1), are classified generally to Title 19, Customs Duties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 2034.

CHAPTER 27—CUSTOMS

Sec.

553. Importation or exportation of stolen motor vehicles, off-highway mobile equipment, vessels, or aircraft.

AMENDMENTS

1984—Pub. L. 98-547, title III, § 301(b), Oct. 25, 1984, 98 Stat. 2771, added item 553.

§ 553. Importation or exportation of stolen motor vehicles, off-highway mobile equipment, vessels, or aircraft

(a) Whoever knowingly imports, exports, or attempts to import or export—

(1) any motor vehicle, off-highway mobile equipment, vessel, aircraft, or part of any motor vehicle, off-highway mobile equipment, vessel, or aircraft, knowing the same to have been stolen; or

(2) any motor vehicle or off-highway mobile equipment or part of any motor vehicle or off-highway mobile equipment, knowing that the identification number of such motor vehicle, equipment, or part has been removed, obliterated, tampered with, or altered;

shall be fined not more than $15,000 or imprisoned not more than five years, or both.

(b) Subsection (a)(2) shall not apply if the removal, obliteration, tampering, or alteration—

(1) is caused by collision or fire; or

(2) is not a violation of section 511 of this title.

(c) As used in this section, the term—

(1) "motor vehicle" has the meaning given that term in section 2 of the Motor Vehicle Information and Cost Savings Act;

(2) "off-highway mobile equipment" means any self-propelled agricultural equipment, self-propelled construction equipment, and self-propelled special use equipment, used or designed for running on land but not on rail or highway;

(3) "vessel" has the meaning given that term in section 401 of the Tariff Act of 1930 (19 U.S.C. 1401);

(4) "aircraft" has the meaning given that term in section 101 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301); and

(5) "identification number"—

(A) in the case of a motor vehicle, has the meaning given that term in section 511 of this title; and

(B) in the case of any other vehicle or equipment covered by this section, means a number or symbol assigned to the vehicle or equipment, or part thereof, by the manufacturer primarily for the purpose of identifying such vehicle, equipment, or part.

(Added Pub. L. 98-547, title III, § 301(a), Oct. 25, 1984, 98 Stat. 2771.)

REFERENCES IN TEXT

Section 511 of this title, referred to in subsecs. (b)(2), (c)(5)(A), probably means the section 511 of this title relating to altering or removing motor vehicle identification numbers which was enacted by Pub. L. 98-547, title II, § 201(a), Oct. 25, 1984, 98 Stat. 2768.

Section 2 of the Motor Vehicle Information and Cost Savings Act, referred to in subsec. (c)(1), is classified to section 1901 of Title 15, Commerce and Trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 2034; title 19 section 1627.

CHAPTER 31—EMBEZZLEMENT AND THEFT

Sec.

666. Theft or bribery concerning programs receiving Federal funds.

667. Theft of livestock.

AMENDMENTS

1984—Pub. L. 98-473, title II, §§ 1104(b), 1112, Oct. 12, 1984, 98 Stat. 2144, 2149, added items 666 and 667.

CROSS REFERENCES

Merchant seamen, punishment for embezzlement of ship's stores or cargo, see section 11501 of Title 46, Shipping.

Vessel's owner, limitation of liability for embezzlement of merchandise, see section 183 et seq. of Title 46, Appendix.

§ 641. Public money, property or records

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-473, title II, chapter XI, part I (§§ 1110-1115), § 1110, Oct. 12, 1984, 98 Stat. 2148, provided that: "This Part [enacting section 667 of this title and amending sections 2316 and 2317 of this title] may be cited as the 'Livestock Fraud Protection Act'."

§ 661. Within special maritime and territorial jurisdiction

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1153 of this title; title 49 App. section 1472.

§ 666. Theft or bribery concerning programs receiving Federal funds

(a) Whoever, being an agent of an organization, or of a State or local government agency, that receives benefits in excess of $10,000 in any one year period pursuant to a Federal program involving a grant, a contract, a subsidy, a loan, a guarantee, insurance, or another form of Federal assistance, embezzles, steals, purloins, willfully misapplies, obtains by fraud, or otherwise knowingly without authority converts to his own use or to the use of another, property having a value of $5,000 or more owned by or under the care, custody, or control of such organization or State or local government agency, shall be imprisoned for not more than ten years and fined not more than $100,000 or an amount equal to twice that which was obtained in violation of this subsection, whichever is greater, or both so imprisoned and fined.

(b) Whoever, being an agent of an organization, or of a State or local government agency, described in subsection (a), solicits, demands, accepts, or agrees to accept anything of value from a person or organization other than his employer or principal for or because of the recipient's conduct in any transaction or matter or a series of transactions or matters involving $5,000 or more concerning the affairs of such organization or State or local government agency, shall be imprisoned for not more than ten years or fined not more than $100,000 or an amount equal to twice that which was obtained, demanded, solicited or agreed upon in violation of this subsection, whichever is greater, or both so imprisoned and fined.

(c) Whoever offers, gives, or agrees to give to an agent of an organization or of a State or local government agency, described in subsection (a), anything of value for or because of the recipient's conduct in any transaction or matter or any series of transactions or matters involving $5,000 or more concerning the affairs of such organization or State or local government agency, shall be imprisoned not more than ten years or fined not more than $100,000 or an amount equal to twice that offered, given or agreed to be given, whichever is greater, or both so imprisoned and fined.

(d) For purposes of this section—

(1) "agent" means a person or organization authorized to act on behalf of another person, organization or a government and, in the case of an organization or a government, includes a servant or employee, a partner, director, officer, manager and representative;

(2) "organization" means a legal entity, other than a government, established or organized for any purpose, and includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, and any other association of persons;

(3) "government agency" means a subdivision of the executive, legislative, judicial, or other branch of a government, including a department, independent establishment, commission, administration, authority, board, and bureau; or a corporation or other legal entity established by, and subject to control by, a government or governments for execution of a governmental or intergovernmental program; and

(4) "local" means of or pertaining to a political subdivision within a State.

(Added Pub. L. 98–473, title II, § 1104(a), Oct. 12, 1984, 98 Stat. 2143.)

§ 667. Theft of livestock

Whoever obtains or uses the property of another which has a value of $10,000 or more in connection with the marketing of livestock in interstate or foreign commerce with intent to deprive the other of a right to the property or a benefit of the property or to appropriate the property to his own use or the use of another shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(Added Pub. L. 98–473, title II, § 1111, Oct. 12, 1984, 98 Stat. 2149.)

CHAPTER 40—IMPORTATION, MANUFACTURE, DISTRIBUTION AND STORAGE OF EXPLOSIVE MATERIALS

§ 844. Penalties

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property, shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection,,[3] shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

[*See main edition for text of* (*e*)]

(f) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other personal or real property in whole or in part owned, possessed, or used by, or leased to, the United States, any department or agency thereof, or any institution or organization receiving Federal financial assistance shall be imprisoned for not more than ten years, or fined not more than $10,000, or both; and if personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years, or fined not more than $20,000, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

[*See main edition for text of* (*g*) *and* (*h*)]

(i) Whoever maliciously damages or destroys, or attempts to damage or destroy, by means of fire or an explosive, any building, vehicle, or other real or personal property used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce shall be imprisoned for not more than ten years or fined not more than $10,000, or both; and if personal

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[3] So in original.

injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall be imprisoned for not more than twenty years or fined not more than $20,000, or both; and if death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection, shall also be subject to imprisonment for any term of years, or to the death penalty or to life imprisonment as provided in section 34 of this title.

[See main edition for text of (j)]

(As amended Pub. L. 98-473, title II, § 1014, Oct. 12, 1984, 98 Stat. 2142.)

AMENDMENTS

1984—Subsecs. (d), (f), (i). Pub. L. 98-473 substituted "personal injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection," for "personal injury results" and "death results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this subsection," for "death results".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 845, 846, 2516, 5032 of this title.

CHAPTER 41—EXTORTION AND THREATS

§ 879. Threats against former Presidents and certain other persons protected by the Secret Service

[See main edition for text of (a)]

(b) As used in this section—

[See main edition for text of (1)]

(2) the term "major candidate for the office of President or Vice President" means a candidate referred to in subsection (a)(7) of section 3056 of this title; and

[See main edition for text of (3)]

(As amended Pub. L. 98-587, § 3(a), Oct. 30, 1984, 98 Stat. 3111.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-587 substituted "subsection (a)(7) of section 3056 of this title" for "the first section of the joint resolution entitled 'Joint resolution to authorize the United States Secret Service to furnish protection to major Presidential or Vice Presidential candidates', approved June 6, 1968 (18 U.S.C. 3056 note)".

CHAPTER 44—FIREARMS

Sec.	
929.	Use of restricted ammunition.

AMENDMENTS

1984—Pub. L. 98-473, title II, § 1006(b), Oct. 12, 1984, 98 Stat. 2139, added item 929.

§ 921. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 845, 925, 1791 of this title.

§ 924. Penalties

[See main edition for text of (a) and (b)]

(c) Whoever, during and in relation to any crime of violence, including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device, for which he may be prosecuted in a court of the United States, uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence, be sentenced to imprisonment for five years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for ten years. Notwithstanding any other provision of law, the court shall not place on probation or suspend the sentence of any person convicted of a violation of this subsection, nor shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment including that imposed for the crime of violence in which the firearm was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

[See main edition for text of (d)]

(As amended Pub. L. 98-473, title II, § 1005(a), Oct. 12, 1984, 98 Stat. 2138.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 98-473, title II, §§ 223(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subsection (a) of this section is amended by deleting ", and shall become eligible for parole as the Board of Parole shall determine".

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-473, § 1005(a), amended subsec. (c) generally, substituting provisions setting forth mandatory, determinate sentence for persons who use or carry firearms during and in relation to any Federal crime of violence for provisions setting out a minimum sentencing scheme for the use or carrying, unlawfully, of a firearm during a Federal felony.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3142 of this title.

§ 925. Exceptions: Relief from disabilities

[See main edition for text of (a) to (d)]

(e) Notwithstanding any other provision of this title, the Secretary shall authorize the importation of, by any licensed importer, the following:

(1) All rifles and shotguns listed as curios or relics by the Secretary pursuant to section 921(a)(13), and

(2) All handguns, listed as curios or relics by the Secretary pursuant to section 921(a)(13), provided that such handguns are generally recognized as particularly suitable for or readily adaptable to sporting purposes.

(As amended Pub. L. 98-573, title II, § 233, Oct. 30, 1984, 98 Stat. 2991.)

Amendments

1984—Subsec. (e). Pub. L. 98-573 added subsec. (e).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 to take effect the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of Title 19, Customs Duties.

§ 929. Use of restricted ammunition

(a) Whoever, during and in relation to the commission of a crime of violence including a crime of violence which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device for which he may be prosecuted in a court of the United States, uses or carries any handgun loaded with armor-piercing ammunition as defined in subsection (b), shall, in addition to the punishment provided for the commission of such crime of violence be sentenced to a term of imprisonment for not less than five nor more than ten years. Notwithstanding any other provision of law, the court shall not suspend the sentence of any person convicted of a violation of this subsection, nor place him on probation, nor shall the term of imprisonment run concurrently with any other terms of imprisonment including that imposed for the felony in which the armor-piercing handgun ammunition was used or carried. No person sentenced under this subsection shall be eligible for parole during the term of imprisonment imposed herein.

(b) For purposes of this section—

(1) "armor-piercing ammunition" means ammunition which, when or if fired from any handgun used or carrried in violation of subsection (a) under the test procedure of the National Institute of Law Enforcement and Criminal Justice Standard for the Ballistics Resistance of Police Body Armor promulgated December 1978, is determined to be capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States Department of Justice and published in December of 1978; and

(2) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand.

(Added Pub. L. 98-473, title II, § 1006(a), Oct. 12, 1984, 98 Stat. 2139.)

CHAPTER 45—FOREIGN RELATIONS

§ 951. Agents of foreign governments

(a) Whoever, other than a diplomatic or consular officer or attaché, acts in the United States as an agent of a foreign government without prior notification to the Attorney General if required in subsection (b), shall be fined not more than $75,000 or imprisoned not more than ten years, or both.

(b) The Attorney General shall promulgate rules and regulations establishing requirements for notification.

(c) The Attorney General shall, upon receipt, promptly transmit one copy of each notification statement filed under this section to the Secretary of State for such comment and use as the Secretary of State may determine to be appropriate from the point of view of the foreign relations of the United States. Failure of the Attorney General to do so shall not be a bar to prosecution under this section.

(d) For purposes of this section, the term "agent of a foreign government" means an individual who agrees to operate within the United States subject to the direction or control of a foreign government or official, except that such term does not include—

(1) a duly accredited diplomatic or consular officer of a foreign government, who is so recognized by the Department of State;

(2) any officially and publicly acknowledged and sponsored official or representative of a foreign government;

(3) any officially and publicly acknowledged and sponsored member of the staff of, or employee of, an officer, official, or representative described in paragraph (1) or (2), who is not a United States citizen; or

(4) any person engaged in a legal commercial transaction.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1209, 98 Stat. 2164.)

Amendments

1984—Pub. L. 98-473 designated existing provisions as subsec. (a), in subsec. (a), as so designated, substituted "Attorney General if required in subsection (b)" for "Secretary of State" and added subsecs. (b) to (d).

§ 965. Verified statements as prerequisite to vessel's departure

References in Text

Sections 91 and 94 of Title 46, referred to in text, have been transferred to Title 46, Appendix, Shipping.

Section 92 of Title 46, referred to in subsec. (a), was repealed by Pub. L. 87-826, § 3, Oct. 15, 1962, 76 Stat. 953.

CHAPTER 47—FRAUD AND FALSE STATEMENTS

Sec.
1029. Fraud and related activity in connection with access devices.
1030. Fraud and related activity in connection with computers.

Amendments

1984—Pub. L. 98-473, title II, §§ 1602(b), 2102(b), Oct. 12, 1984, 98 Stat. 2184, 2192, added items 1029 and 1030.

§ 1001. Statements or entries generally

Short Title of 1984 Amendment

Pub. L. 98-473, title II, ch. XVI (§§ 1601-1603), § 1601, Oct. 12, 1984, 98 Stat. 2183, provided that: "This chapter [enacting section 1029 of this title and provisions set out as a note under section 1029 of this title] may be cited as the 'Credit Card Fraud Act of 1984'."

Pub. L. 98-473, title II, ch. XXI (§§ 2101-2103), § 2101, Oct. 12, 1984, 98 Stat. 2190, provided that: "This chapter [enacting section 1030 of this title and provisions set out as a note under section 1030 of this title] may be cited as the 'Counterfeit Access Device and Computer Fraud and Abuse Act of 1984'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 14 of this title; title 7 sections 136h, 511r; title 12 section 1457; title 15 section 3413; title 19 section 2515; title 22 sections 1623, 3622; title 35 section 25; title 40 section 276c; title 42 sections 1874, 2000b-3, 2000c-6, 3426, 3795a; title 43 sections 1212, 1812; title 49 App. section 1607a.

§ 1028. Fraud and related activity in connection with identification documents

REFERENCES IN TEXT

Title V of the Organized Crime Control Act of 1970, referred to in subsec. (e), is title V of Pub. L. 91-452, Oct. 15, 1970, 84 Stat. 933, which was set out as a note preceding section 3481 of this title, and was repealed by Pub. L. 98-473, title II, § 1209(b), Oct. 12, 1984, 98 Stat. 2163. See section 3521 et seq. of this title.

FRAUD AND RELATED ACTIVITY IN CONNECTION WITH IDENTIFICATION DOCUMENTS

Pub. L. 98-473, title II, § 609L, Oct. 12, 1984, 98 Stat. 2103, provided that:

"(a) For purposes of section 1028 of title 18, United States Code, to the maximum extent feasible, personal descriptors or identifiers utilized in identification documents, as defined in such section, shall utilize common descriptive terms and formats designed to—

"(1) reduce the redundancy and duplication of identification systems by providing information which can be utilized by the maximum number of authorities, and

"(2) facilitate positive identification of bona fide holders of identification documents.

"(b) The President shall, no later than 3 years after the date of enactment of this Act [Oct. 12, 1984], and after consultation with Federal, State, local, and international issuing authorities, and concerned groups make recommnedations [recommendations] to the Congress for the enactment of comprehensive legislation on Federal identification systems. Such legislation shall—

"(1) give due consideration to protecting the privacy of persons who are the subject of any identification system,

"(2) recommend appropriate civil and criminal sanctions for the misuse or unauthorized disclosure of personal identification information, and

"(3) make recommendations providing for the exchange of personal identification information as authorized by Federal or State law or Executive order of the President or the chief executive officer of any of the several States."

§ 1029. Fraud and related activity in connection with access devices

(a) Whoever—

(1) knowingly and with intent to defraud produces, uses, or traffics in one or more counterfeit access devices;

(2) knowingly and with intent to defraud traffics in or uses one or more unauthorized access devices during any one-year period, and by such conduct obtains anything of value aggregating $1,000 or more during that period;

(3) knowingly and with intent to defraud possesses fifteen or more devices which are counterfeit or unauthorized access devices; or

(4) knowingly, and with intent to defraud, produces, traffics in, has control or custody of, or possesses device-making equipment;

shall, if the offense affects interstate or foreign commerce, be punished as provided in subsection (c) of this section.

(b)(1) Whoever attempts to commit an offense under subsection (a) of this section shall be punished as provided in subsection (c) of this section.

(2) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties engages in any conduct in furtherance of such offense, shall be fined an amount not greater than the amount provided as the maximum fine for such offense under subsection (c) of this section or imprisoned not longer than one-half the period provided as the maximum imprisonment for such offense under subsection (c) of this section, or both.

(c) The punishment for an offense under subsection (a) or (b)(1) of this section is—

(1) a fine of not more than the greater of $10,000 or twice the value obtained by the offense or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(2) or (a)(3) of this section which does not occur after a conviction for another offense under either such subsection, or an attempt to commit an offense punishable under this paragraph;

(2) a fine of not more than the greater of $50,000 or twice the value obtained by the offense or imprisonment for not more than fifteen years, or both, in the case of an offense under subsection (a)(1) or (a)(4) of this section which does not occur after a conviction for another offense under either such subsection, or an attempt to commit an offense punishable under this paragraph; and

(3) a fine of not more than the greater of $100,000 or twice the value obtained by the offense or imprisonment for not more than twenty years, or both, in the case of an offense under subsection (a) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this paragraph.

(d) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section. Such authority of the United States Secret Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(e) As used in this section—

(1) the term "access device" means any card, plate, code, account number, or other means of account access that can be used, alone or in conjunction with another access device, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds (other than a transfer originated solely by paper instrument);

(2) the term "counterfeit access device" means any access device that is counterfeit, fictitious, altered, or forged, or an identifiable component of an access device or a counterfeit access device;

(3) the term "unauthorized access device" means any access device that is lost, stolen,

expired, revoked, canceled, or obtained with intent to defraud;

(4) the term "produce" includes design, alter, authenticate, duplicate, or assemble;

(5) the term "traffic" means transfer, or otherwise dispose of, to another, or obtain control of with intent to transfer or dispose of; and

(6) the term "device-making equipment" means any equipment, mechanism, or impression designed or primarily used for making an access device or a counterfeit access device.

(f) This section does not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970)[1] 18 U.S.C. note prec. 3481).

(Added Pub. L. 98-473, title II, § 1602(a), Oct. 12, 1984, 98 Stat. 2183.)

References in Text

Title V of the Organized Crime Control Act of 1970, referred to in subsec. (f), is title V of Pub. L. 91-452, Oct. 15, 1970, 84 Stat. 933, which was set out as a note preceding section 3481 of this title, and was repealed by Pub. L. 98-473, title II, § 1209(b), Oct. 12, 1984, 98 Stat. 2163. See section 3521 et seq. of this title.

Report to Congress

Section 1603 of chapter XVI (§§ 1601-1603) of title II of Pub. L. 98-473 provided that: "The Attorney General shall report to the Congress annually, during the first three years following the date of the enactment of this joint resolution [Oct. 12, 1984], concerning prosecutions under the section of title 18 of the United States Code added by this chapter [this section]."

§ 1030. Fraud and related activity in connection with computers

(a) Whoever—

(1) knowingly accesses a computer without authorization, or having accessed a computer with authorization, uses the opportunity such access provides for purposes to which such authorization does not extend, and by means of such conduct obtains information that has been determined by the United States Government pursuant to an Executive order or statute to require protection against unauthorized disclosure for reasons of national defense or foreign relations, or any restricted data, as defined in paragraph r.[2] of section 11 of the Atomic Energy Act of 1954, with the intent or reason to believe that such information so obtained is to be used to the injury of the United States, or to the advantage of any foreign nation;

(2) knowingly accesses a computer without authorization, or having accessed a computer with authorization, uses the opportunity such access provides for purposes to which such authorization does not extend, and thereby obtains information contained in a financial record of a financial institution, as such terms are defined in the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.), or contained in a file of a consumer reporting agency on a consumer, as such terms are defined in the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(3) knowingly accesses a computer without authorization, or having accessed a computer with authorization, uses the opportunity such access provides for purposes to which such authorization does not extend, and by means of such conduct knowingly uses, modifies, destroys, or discloses information in, or prevents authorized use of, such computer, if such computer is operated for or on behalf of the Government of the United States and such conduct affects such operation;

shall be punished as provided in subsection (c) of this section. It is not an offense under paragraph (2) or (3) of this subsection in the case of a person having accessed a computer with authorization and using the opportunity such access provides for purposes to which such access does not extend, if the using of such opportunity consists only of the use of the computer.

(b)(1) Whoever attempts to commit an offense under subsection (a) of this section shall be punished as provided in subsection (c) of this section.

(2) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties engages in any conduct in furtherance of such offense, shall be fined an amount not greater than the amount provided as the maximum fine for such offense under subsection (c) of this section or imprisoned not longer than one-half the period provided as the maximum imprisonment for such offense under subsection (c) of this section, or both.

(c) The punishment for an offense under subsection (a) or (b)(1) of this section is—

(1)(A) a fine of not more than the greater of $10,000 or twice the value obtained by the offense or imprisonment for not more than ten years, or both, in the case of an offense under subsection (a)(1) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

(B) a fine of not more than the greater of $100,000 or twice the value obtained by the offense or imprisonment for not more than twenty years, or both, in the case of an offense under subsection (a)(1) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

(2)(A) a fine of not more than the greater of $5,000 or twice the value obtained or loss created by the offense or imprisonment for not more than one year, or both, in the case of an offense under subsection (a)(2) or (a)(3) of this section which does not occur after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph; and

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[1] So in original. Probably should be an opening parenthesis.

[2] So in original. Probably should be "paragraph y.".

(B) a fine of not more than the greater of $10,000 or twice the value obtained or loss created by the offense or imprisonment for not [3] than ten years, or both, in the case of an offense under subsection (a)(2) or (a)(3) of this section which occurs after a conviction for another offense under such subsection, or an attempt to commit an offense punishable under this subparagraph.

(d) The United States Secret Service shall, in addition to any other agency having such authority, have the authority to investigate offenses under this section. Such authority of the United States Secret Service shall be exercised in accordance with an agreement which shall be entered into by the Secretary of the Treasury and the Attorney General.

(e) As used in this section, the term "computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.

(Added Pub. L. 98-473, title II, § 2102(a), Oct. 12, 1984, 98 Stat. 2190.)

References in Text

Section 11 of the Atomic Energy Act of 1954, referred to in subsec. (a)(1), is classified to section 2014 of Title 42, The Public Health and Welfare.

The Right to Financial Privacy Act of 1978, referred to in subsec. (a)(2), is title XI of Pub. L. 95-630, Nov. 10, 1978, 92 Stat. 3697, as amended, which is classified generally to chapter 35 (§ 3401 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 3401 of Title 12 and Tables.

The Fair Credit Reporting Act, referred to in subsec. (a)(2), is title VI of Pub. L. 90-321, as added by Pub. L. 91-508, title VI, § 601, Oct. 26, 1970, 84 Stat. 1127, as amended, which is classified generally to subchapter III (§ 1681 et seq.) of chapter 41 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title of 1970 Amendment note set out under section 1601 of Title 15 and Tables.

Reports to Congress

Section 2103 of chapter XXI (§§ 2101-2103) of title II of Pub. L. 98-473 provided that: "The Attorney General shall report to the Congress annually, during the first three years following the date of the enactment of this joint resolution [Oct. 12, 1984], concerning prosecutions under the sections [section 1030] of title 18 of the United States Code added by this chapter."

CHAPTER 51—HOMICIDE

§ 1111. Murder

(a) Murder is the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson [1] escape, murder, kidnapping, treason, espionage, sabotage,,[2] rape, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

Any other murder is murder in the second degree.

[See main edition for text of (b)]

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1004, 98 Stat. 2138.)

Amendments

1984—Subsec. (a). Pub. L. 98-473 added "escape, murder, kidnapping, treason, espionage, sabotage," after "arson".

Section Referred to in Other Sections

This section is referred to in sections 115, 351, 1114, 1116, 1117, 1751 of this title; title 7 section 2146; title 15 section 1825; title 21 sections 461, 675, 1041; title 42 section 2283; title 49 App. section 1472.

§ 1113. Attempt to commit murder or manslaughter

Section Referred to in Other Sections

This section is referred to in sections 115, 1116 of this title; title 49 App. section 1472.

§ 1114. Protection of officers and employees of the United States

Whoever kills or attempts to kill any judge of the United States, any United States Attorney, any Assistant United States Attorney, or any United States marshal or deputy marshal or person employed to assist such marshal or deputy marshal, any officer or employee of the Federal Bureau of Investigation of the Department of Justice, any officer or employee of the Postal Service, any officer or employee of the secret service [3] or of the Drug Enforcement Administration, any officer or member of the United States Capitol Police, any member of the Coast Guard, any employee of the Coast Guard assigned to perform investigative, inspection or law enforcement functions, any officer or employee of any United States penal or correctional institution, any officer, employee or agent of the customs or of the internal revenue or any person assisting him in the execution of his duties, any immigration officer, any officer or employee of the Department of Agriculture or of the Department of the Interior designated by the Secretary of Agriculture or the Secretary of the Interior to enforce any Act of Congress for the protection, preservation, or restoration of game and other wild birds and animals, any employee of the Department of Agriculture designated by the Secretary of Agriculture to carry out any law or regulation, or to perform any function in connection with any Federal or State program or any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases, any officer or employee of the National Park Service, any civilian official or employee of the Army Corps of Engineers assigned to perform investigations, inspections, law or regulatory enforcement functions, or field-level real estate functions, any officer or employee of, or assigned to duty in, the field service of the Bureau of Land Management, or any officer or employee of the Indian field service of the United States, or any officer or employee of the National Aeronautics and Space Administration directed to guard and protect property of the United States under the administration and control of the National Aeronautics and Space Administration, any security officer of the Department of State or the Foreign Service, or any officer or employee of the Department of Health, Education, and Welfare, the Consumer Product Safety Commission, Interstate Commerce Commission, the Department of Commerce, or of the Department of Labor or of the Department of the Interior or of the Department of Agriculture assigned to perform investigative, inspection, or law enforcement functions, or any officer or employee of the Federal Communications Commission performing investigative, inspection, or law enforcement functions, or any officer or employee of the Veterans' Administration assigned to perform investigative or law enforcement functions, or any United States probation or pretrial services officer, or any United States magistrate, or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section,,[4] any attorney, liquidator, examiner, claim agent, or other employee of the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Board of Governors of the Federal Reserve System, any Federal Reserve bank, or the National Credit Union Administration, or any other officer, agency, or employee of the United States designated for coverage under this section in regulations issued by the Attorney General engaged in or on account of the performance of his official duties, or any officer or employee of the United States or any agency thereof designated to collect or compromise a Federal claim in accordance with sections 3711 and 3716-3718 of title 31 or other statutory authority shall be punished as provided under sections 1111 and 1112 of this title, except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years.

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[3] So in original. Probably should be "not more".

[1] So in original. Probably should be followed by a comma.

[2] So in original.

[3] So in original. Probably should be "Secret Service".

(As amended July 30, 1983, Pub. L. 98-63, title I, § 101, 97 Stat. 313; Oct. 12, 1984, Pub. L. 98-473, title II, § 1012, 98 Stat. 2142; Oct. 30, 1984, Pub. L. 98-557, § 17(c), 98 Stat. 2868.)

References in Text

Executive Order 12333, referred to in text, is set out under section 401 of Title 50, War and National Defense.

Amendments

1984—Pub. L. 98-557 substituted reference to Coast Guard member, and Coast Guard employee assigned to perform investigative, inspection or law enforcement functions, for reference to any officer or enlisted man of the Coast Guard.

Pub. L. 98-473 added "or attempts to kill" after "Whoever kills", substituted "or any United States probation or pretrial services officer, or any United States magistrate, or any officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(F) of Executive Order 12333, December 8, 1981, or successor orders) not already covered under the terms of this section," for "while engaged in the performance of his official duties or on account of the performance of his official duties", added ", or any other officer, agency, or employee of the United States designated for coverage under this section in regulations issued by the Attorney General", and added ", except that any such person who is found guilty of attempted murder shall be imprisoned for not more than twenty years".

1983—Pub. L. 98-63 inserted "any civilian official or employee of the Army Corps of Engineers assigned to perform investigations, inspections, law or regulatory enforcement functions, or field-level real estate functions," after "National Park Service,".

Section Referred to in Other Sections

This section is referred to in sections 111, 115, 1117, 1201 of this title; title 7 sections 84, 87c, 2146; title 16 section 742*l*; title 21 sections 461, 675; title 42 section 2000e-13.

CHAPTER 53—INDIANS

§ 1151. Indian country defined

Section Referred to in Other Sections

This section is referred to in section 1164 of this title; title 15 sections 1175, 1243; title 16 sections 3371, 3377; title 25 section 1903; title 42 section 10101.

§ 1153. Offenses committed within Indian country

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnaping, maiming, rape, involuntary sodomy, carnal knowledge of any female, not his wife, who has not attained the age of sixteen years, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

As used in this section, the offenses of burglary, involuntary sodomy, and incest shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

In addition to the offenses of burglary, involuntary sodomy, and incest, any other of the above offenses which are not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

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[4] So in original.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1009, 98 Stat. 2141.)

AMENDMENTS

1984—Pub. L. 98-473 amended section generally, thereby adding the offenses of maiming, involuntary sodomy and a felony committed under section 661 of this title and deleting the reference to larceny in first par., and adding ", involuntary sodomy," after "burglary" in third par.

§ 1161. Application of Indian liquor laws

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 223(b), 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended by substituting "3669" for "3618".

§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 sections 711e, 713f, 714e, 1300b-15, 1300f, 1323, 1747, 1918.

CHAPTER 55—KIDNAPING

Sec.	
1203.	Hostage taking.

AMENDMENTS

1984—Pub. L. 98-473, title II, § 2002(b), Oct. 12, 1984, 98 Stat. 2186, added item 1203.

§ 1201. Kidnaping

(a) Whoever unlawfully seizes, confines, inveigles, decoys, kidnaps, abducts, or carries away and holds for ransom or reward or otherwise any person, except in the case of a minor by the parent thereof, when:

[*See main edition for text of (1) and (2)*]

(3) any such act against the person is done within the special aircraft jurisdiction of the United States as defined in section 101(36) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301(36));

(4) the person is a foreign official, an internationally protected person, or an official guest as those terms are defined in section 1116(b) of this title; or

(5) The [1] person is among those officers and employees designated in section 1114 of this title and any such act against the person is done while the person is engaged in, or on account of, the performance of his official duties,

shall be punished by imprisonment for any term of years or for life.

[*See main edition for text of (b) to (f)*]

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1007, 98 Stat. 2139.)

AMENDMENTS

1984—Subsec. (a)(5). Pub. L. 98-473 added par. (5).

SHORT TITLE OF 1984 AMENDMENT

Section 2001 of part A (§§ 2001-2003) of chapter XX of title II provided that: "This part [enacting section 1203 of this title and provisions set out as a note under section 1203 of this title] may be cited as the 'Act for the Prevention and Punishment of the Crime of Hostage-Taking'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 115, 878, 1202 of this title.

§ 1203. Hostage taking

(a) Except as provided in subsection (b) of this section, whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act as an explicit or implicit condition for the release of the person detained, or attempts to do so, shall be punished by imprisonment for any term of years or for life.

(b)(1) It is not an offense under this section if the conduct required for the offense occurred outside the United States unless—

(A) the offender or the person seized or detained is a national of the United States;

(B) the offender is found in the United States; or

(C) the governmental organization sought to be compelled is the Government of the United States.

(2) It is not an offense under this section if the conduct required for the offense occurred inside the United States, each alleged offender and each person seized or detained are nationals of the United States, and each alleged offender is found in the United States, unless the governmental organization sought to be compelled is the Government of the United States.

(C) [2] As used in this section, the term "national of the United States" has the meaning given such term in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)).

(Added Pub. L. 98-473, title II, § 2002(a), Oct. 12, 1984, 98 Stat. 2186.)

EFFECTIVE DATE

Section 2003 of part A (§§ 2001-2003) of chapter XX of title II of Pub. L. 98-473 provided that: "This part and the amendments made by this part [enacting this section and provisions set out as a note under section 1201 of this title] shall take effect on the later of—

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[1] So in original.

[2] So in original. Should be "(c)".

"(1) the date of the enactment of this joint resolution [Oct. 12, 1984]; or

"(2) the date the International Convention Against the Taking of Hostages has come into force and the United States has become a party to that convention [the convention entered into force June 6, 1983; and entered into force for the United States Jan. 6, 1985]."

CHAPTER 63—MAIL FRAUD

Sec.
1344. Bank fraud.
1345. Injunctions against fraud.

Amendments

1984—Pub. L. 98-473, title II, §§ 1108(b), 1205(b), Oct. 12, 1984, 98 Stat. 2147, 2153, added items 1344 and 1345.

§ 1343. Fraud by wire, radio, or television

Section Referred to in Other Sections

This section is referred to in sections 1961, 2516 of this title; title 7 section 12a; title 15 sections 78o, 80b-3; title 47 sections 312, 503.

§ 1344. Bank fraud

(a) Whoever knowingly executes, or attempts to execute, a scheme or artifice—

(1) to defraud a federally chartered or insured financial institution; or

(2) to obtain any of the moneys, funds, credits, assets, securities or other property owned by or under the custody or control of a federally chartered or insured financial institution by means of false or fraudulent pretenses, representations, or promises, shall be fined not more than $10,000, or imprisoned not more than five years, or both.

(b) As used in this section, the term "federally chartered or insured financial institution" means—

(1) a bank with deposits insured by the Federal Deposit Insurance Corporation;

(2) an institution with accounts insured by the Federal Savings and Loan Insurance Corporation;

(3) a credit union with accounts insured by the National Credit Union Administration Board;

(4) a Federal home loan bank or a member, as defined in section 2 of the Federal Home Loan Bank Act (12 U.S.C. 1422), of the Federal home loan bank system; or

(5) a bank, banking association, land bank, intermediate credit bank, bank for cooperatives, production credit association, land bank association, mortgage association, trust company, savings bank, or other banking or financial institution organized or operating under the laws of the United States.

(Added Pub. L. 98-473, title II, § 1108(a), Oct. 12, 1984, 98 Stat. 2147.)

§ 1345. Injunctions against fraud

Whenever it shall appear that any person is engaged or is about to engage in any act which constitutes or will constitute a violation of this chapter, the Attorney General may initiate a civil proceeding in a district court of the United States to enjoin such violation. The court shall proceed as soon as practicable to the hearing and determination of such an action, and may, at any time before final determination, enter such a restraining order or prohibition, or take such other action, as is warranted to prevent a continuing and substantial injury to the United States or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Federal Rules of Civil Procedure, except that, if an indictment has been returned against the respondent, discovery is governed by the Federal Rules of Criminal Procedure.

(Added Pub. L. 98-473, title II, § 1205(a), Oct. 12, 1984, 98 Stat. 2152.)

References in Text

The Federal Rules of Civil Procedure, referred to in text, are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CHAPTER 65—MALICIOUS MISCHIEF

Sec.
1365. Tampering with consumer products.
1365 [1] Destruction of an energy facility.

Amendments

1984—Section 1365(d) of this title as added by Pub. L. 98-473, title II, § 1011(a), Oct. 12, 1984, 98 Stat. 2141, added item 1365, relating to destruction of an energy facility.

1983—Pub. L. 98-127, § 3, Oct. 13, 1983, 97 Stat. 832, added item 1365, relating to tampering with consumer products.

§ 1365.[2] Tampering with consumer products

(a) Whoever, with reckless disregard for the risk that another person will be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk, tampers with any consumer product that affects interstate or foreign commerce, or the labeling of, or container for, any such product, or attempts to do so, shall—

(1) in the case of an attempt, be fined not more than $25,000 or imprisoned not more than ten years, or both;

(2) if death of an individual results, be fined not more than $100,000 or imprisoned for any term of years or for life, or both;

(3) if serious bodily injury to any individual results, be fined not more than $100,000 or imprisoned not more than twenty years, or both; and

(4) in any other case, be fined not more than $50,000 or imprisoned not more than ten years, or both.

(b) Whoever, with intent to cause serious injury to the business of any person, taints any consumer product or renders materially false or misleading the labeling of, or container for, a consumer product, if such consumer product affects interstate or foreign commerce, shall be fined not more than $10,000 or imprisoned not more than three years, or both.

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[1] So in original. Should be followed by a period.

[2] So in original. There are two sections designated 1365.

(c)(1) Whoever knowingly communicates false information that a consumer product has been tainted, if such product or the results of such communication affect interstate or foreign commerce, and if such tainting, had it occurred, would create a risk of death or bodily injury to another person, shall be fined not more than $25,000 or imprisoned not more than five years, or both.

(2) As used in paragraph (1) of this subsection, the term "communicates false information" means communicates information that is false and that the communicator knows is false, under circumstances in which the information may reasonably be expected to be believed.

(d) Whoever knowingly threatens, under circumstances in which the threat may reasonably be expected to be believed, that conduct that, if it occurred, would violate subsection (a) of this section will occur, shall be fined not more than $25,000 or imprisoned not more than five years, or both.

(e) Whoever is a party to a conspiracy of two or more persons to commit an offense under subsection (a) of this section, if any of the parties intentionally engages in any conduct in furtherance of such offense, shall be fined not more than $25,000 or imprisoned not more than ten years, or both.

(f) In addition to any other agency which has authority to investigate violations of this section, the Food and Drug Administration and the Department of Agriculture, respectively, have authority to investigate violations of this section involving a consumer product that is regulated by a provision of law such Administration or Department, as the case may be, administers.

(g) As used in this section—

(1) the term "consumer product" means—

(A) any "food", "drug", device",[3] or "cosmetic", as those terms are respectively defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); or

(B) any article, product, or commodity which is customarily produced or distributed for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which is designed to be consumed or expended in the course of such consumption or use;

(2) the term "labeling" has the meaning given such term in section 201(m) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(m));

(3) the term "serious bodily injury" means bodily injury which involves—

(A) a substantial risk of death;

(B) extreme physical pain;

(C) protracted and obvious disfigurement; or

(D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and

(4) the term "bodily injury" means—

(A) a cut, abrasion, bruise, burn, or disfigurement;

(B) physical pain;

(C) illness;

(D) impairment of the function of a bodily member, organ, or mental faculty; or

(E) any other injury to the body, no matter how temporary.

(Added Pub. L. 98-127, § 2, Oct. 13, 1983, 97 Stat. 831.)

SHORT TITLE

Section 1 of Pub. L. 98-127 provided: "That this Act [enacting this section and section 155A of Title 35, Patents] may be cited as the 'Federal Anti-Tampering Act'."

§ 1365.[4] Destruction of an energy facility

(a) Whoever knowingly and willfully damages the property of an energy facility in an amount that in fact exceeds $100,000, or damages the property of an energy facility in any amount and causes a significant interruption or impairment of a function of an energy facility, shall be punishable by a fine of not more than $50,000 or imprisonment for not more than ten years, or both.

(b) Whoever knowingly and willfully damages the property of an energy facility in an amount that in fact exceeds $5,000 shall be punishable by a fine of not more than $25,000, or imprisonment for not more than five years, or both.

(c) For purposes of this section, the term "energy facility" means a facility that is involved in the production, storage, transmission, or distribution of electricity, fuel, or another form or source of energy, or research, development, or demonstration facilities relating thereto, regardless of whether such facility is still under construction or is otherwise not functioning, except a facility subject to the jurisdiction, administration, or in the custody of the Nuclear Regulatory Commission or interstate transmission facilities, as defined in 49 U.S.C. 1671.[5]

(d) The table of contents for chapter 65 of title 18, United States Code, is amended by adding at the end thereof the following new item:

"1365 Destruction of an energy facility."

(Added Pub. L. 98-473, title II, § 1011(a), Oct. 12, 1984, 98 Stat. 2141.)

CHAPTER 71—OBSCENITY

§ 1461. Mailing obscene or crime-inciting matter

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title; title 39 sections 3001, 3011.

§ 1462. Importation or transportation of obscene matters

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title.

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[3] So in original. Enacted without an opening quotation mark.

[4] So in original. There are two sections designated 1365.

[5] So in original. Probably should be "49 App. U.S.C. 1671".

§ 1463. Mailing indecent matter on wrappers or envelopes

Section Referred to in Other Sections

This section is referred to in section 1961 of this title; title 39 sections 3001, 3011.

§ 1464. Broadcasting obscene language

Section Referred to in Other Sections

This section is referred to in section 1961 of this title; title 47 sections 312, 503.

§ 1465. Transportation of obscene matters for sale or distribution

Section Referred to in Other Sections

This section is referred to in section 1961 of this title.

CHAPTER 73—OBSTRUCTION OF JUSTICE

Chapter Referred to in Other Sections

This chapter is referred to in section 3521 of this title.

§ 1503. Influencing or injuring officer or juror generally

Section Referred to in Other Sections

This section is referred to in sections 201, 1961, 2516, 3142 of this title; title 29 section 1111.

§ 1510. Obstruction of criminal investigations

Section Referred to in Other Sections

This section is referred to in sections 1961, 2516, 3142 of this title; title 29 section 1111.

§ 1512. Tampering with a witness, victim, or an informant

Federal Guidelines for Treatment of Crime Victims and Witnesses in the Criminal Justice System

Section 6 of Pub. L. 97-291, as amended by Pub. L. 98-473, title II, § 1408(b), Oct. 12, 1984, 98 Stat. 2177, provided that:

"(a) Within two hundred and seventy days after the date of enactment of this Act [Oct. 12, 1982], the Attorney General shall develop and implement guidelines for the Department of Justice consistent with the purposes of this Act [see Short Title of 1982 Amendment note set out under section 1501 of this title]. In preparing the guidelines the Attorney General shall consider the following objectives:

[*See main edition for text of* (*1*) *to* (*3*)]

"(4) Prompt notification to victims of serious crimes.—Victims, witnesses, relatives of those victims and witnesses who are minors, and relatives of homicide victims should, if such persons provide the appropriate official with a current address and telephone number, receive prompt advance notification, if possible, of—

"(A) the arrest of an accused;

"(B) the initial appearance of an accused before a judicial officer;

"(C) the release of the accused pending judicial proceedings; and

"(D) proceedings in the prosecution and punishment of the accused (including entry of a plea of guilty, trial, sentencing, and, where a term of imprisonment is imposed, a hearing to determine a parole release date and the release of the accused from such imprisonment).

[*See main edition for text of* (*5*) *to* (*10*); (*b*) *and* (*c*)]

[Amendment of this note by Pub. L. 98-473, effective 30 days after Oct. 12, 1984, see section 1409(a) of Pub. L. 98-473, set out as an Effective Date note under section 10601 of Title 42, The Public Health and Welfare.]

Section Referred to in Other Sections

This section is referred to in sections 1514, 1515, 2516, 3142 of this title.

§ 1513. Retaliating against a witness, victim, or an informant

Section Referred to in Other Sections

This section is referred to in sections 1514, 1515, 2516, 3142 of this title.

CHAPTER 84—PRESIDENTIAL AND PRESIDENTIAL STAFF ASSASSINATION, KIDNAPING, AND ASSAULT

§ 1752. Temporary residences and offices of the President and others

[*See main edition for text of* (*a*) *to* (*e*)]

(f) As used in this section, the term "other person protected by the Secret Service" means any person whom the United States Secret Service is authorized to protect under section 3056 of this title when such person has not declined such protection.

(As amended Pub. L. 98-587, § 3(b), Oct. 30, 1984, 98 Stat. 3112.)

Amendments

1984—Subsec. (f). Pub. L. 98-587 amended subsec. (f) generally, thereby substituting "any person whom the United States Secret Service is authorized to protect under section 3056 of this title when such person has not declined such protection" for "any person authorized by section 3056 of this title or by Public Law 90-331, as amended, to receive the protection of the United States Secret Service when such person has not declined such protection pursuant to section 3056 of this title or pursuant to Public Law 90-331, as amended".

CHAPTER 85—PRISON-MADE GOODS

§ 1761. Transportation or importation

[*See main edition for text of* (*a*) *and* (*b*)]

(c) In addition to the exceptions set forth in subsection (b) of this section, this chapter shall also not apply to goods, wares, or merchandise manufactured, produced, or mined by convicts or prisoners participating in a program of not more than twenty pilot projects designated by the Director of the Bureau of Justice Assistance and who—

[*See main edition for text of* (*1*) *to* (*3*)]

(d) Notwithstanding any law to the contrary, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code.

(June 25, 1948, ch. 645, 62 Stat. 785; June 19, 1968, Pub. L. 90-351, title I, § 819(a), formerly

§ 827(a), as added Dec. 27, 1979, Pub. L. 96-157, § 2, 93 Stat. 1215, and renumbered Oct. 12, 1984, Pub. L. 98-473, title II, § 609B(f), 98 Stat. 2093; Oct. 12, 1984, Pub. L. 98-473, title II, § 609K, 98 Stat. 2102.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 98-473, title II, §§ 223(c), 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subsection (a) of this section is amended by adding ", supervised release," after "parole".

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-473, § 609K(a), substituted "twenty" for "seven" and "Director of the Bureau of Justice Assistance" for "Administrator of the Law Enforcement Assistance Administration".

Subsec. (d). Pub. L. 98-473, § 609K(b), added subsec. (d).

EXEMPTIONS TO FEDERAL RESTRICTIONS ON MARKETABILITY OF PRISON-MADE GOODS

Pub. L. 90-351, title I, § 819(c), formerly § 827(c), as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1215, renumbered and amended Pub. L. 98-473, title II, § 609B(f), (o), Oct. 12, 1984, 98 Stat. 2093, 2096, provided that: "The provisions of section 1761 of title 18, United States Code, and of the first section of the Act of June 30, 1936 (49 Stat. 2036; 41 U.S.C. 35), commonly known as the Walsh-Healey Act, creating exemptions to Federal restrictions on marketability of prison-made goods, as amended from time to time, shall not apply unless—

[See main edition for text of (1) and (2)]

CHAPTER 87—PRISONS

Sec.
1791. Providing or possessing contraband in prison.
1792. Mutiny and riot prohibited.

AMENDMENTS

1984—Pub. L. 98-473, title II, § 1109(c), Oct. 12, 1984, 98 Stat. 2148, amended the analysis generally by revising items 1791 and 1792, and by inserting a second chapter heading which was not executed to text as redundant.

§ 1791. Providing or possessing contraband in prison

(a) Offense

A person commits an offense if, in violation of a statute, or a regulation, rule, or order issued pursuant thereto—

(1) he provides, or attempts to provide, to an inmate of a Federal penal or correctional facility—

(A) a firearm or destructive device;

(B) any other weapon or object that may be used as a weapon or as a means of facilitating escape;

(C) a narcotic drug as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802);

(D) a controlled substance, other than a narcotic drug, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), or an alcoholic beverage;

(E) United States currency; or

(F) any other object; or

(2) being an inmate of a Federal penal or correctional facility, he makes, possesses, procures, or otherwise provides himself with, or attempts to make, possess, procure, or otherwise provide himself with, anything described in paragraph (1).

(b) Grading

An offense described in this section is punishable by—

(1) imprisonment for not more than ten years, a fine of not more than $25,000, or both, if the object is anything set forth in paragraph (1)(A);

(2) imprisonment for not more than five years, a fine of not more than $10,000, or both, if the object is anything set forth in paragraph (1)(B) or (1)(C);

(3) imprisonment for not more than one year, a fine of not more than $5,000, or both, if the object is anything set forth in paragraph (1)(D) or (1)(E); and

(4) imprisonment for not more than six months, a fine of not more than $1,000, or both, if the object is any other object.

(c) Definitions

As used in this section, "firearm" and "destructive device" have the meaning given those terms, respectively, in 18 U.S.C. 921(a)(3) and (4).

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1109(a), 98 Stat. 2147.)

AMENDMENTS

1984—Pub. L. 98-473 substituted provisions relating to providing or possessing contraband in prison, grading of offenses and definitions of "firearm" and "destructive device" for former provisions relating to traffic in contraband articles.

§ 1792. Mutiny and riot prohibited

Whoever instigates, connives, willfully attempts to cause, assists, or conspires to cause any mutiny or riot, at any Federal penal or correctional facility, shall be imprisoned not more than ten years or fined not more than $25,000, or both.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1109(b), 98 Stat. 2148.)

AMENDMENTS

1984—Pub. L. 98-473 substituted provisions deleting prohibition on bringing dangerous instrumentalities into prison and added provision setting forth a maximum $25,000 fine.

CHAPTER 93—PUBLIC OFFICERS AND EMPLOYEES

§ 1905. Disclosure of confidential information generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 3374; title 7 section 136h; title 15 sections 330b, 771, 773, 796, 1193, 1335a, 1401, 1418, 1914, 1944, 1990d, 2008, 2029, 2055, 2217, 2613; title 26 section 7213; title 29 section 664; title 30 section 1423; title 33 sections 1318, 1320, 1322, 1369, 1513; title 42 sections 263g, 263i, 300j-4, 2210b, 4912, 5916, 5919, 6274, 6921, 6927, 6991d, 7135, 7413, 7542, 7607, 7621, 8717, 9208, 9310, 9604; title 46 section 4309; title 49 section 11161; title 49 App. sections 1681, 1905, 2010.

§ 1912. Unauthorized fees for inspection of vessels

Cross References

Inspection of steam vessels, see section 3301 et seq. of Title 46, Shipping.

CHAPTER 95—RACKETEERING

Sec.	
1952A.	Use of interstate commerce facilities in the commission of murder-for-hire.
1952B.	Violent crimes in aid of racketeering activity.

Amendments

1984—Pub. L. 98-473, title II, § 1002(b), Oct. 12, 1984, 98 Stat. 2137, added items 1952A and 1952B.

Chapter Referred to in Other Sections

This chapter is referred to in section 3582 of this title; title 7 section 12a.

§ 1952A. Use of interstate commerce facilities in the commission of murder-for-hire

(a) Whoever travels in or causes another (including the intended victim) to travel in interstate or foreign commerce, or uses or causes another (including the intended victim) to use the mail or any facility in interstate or foreign commerce, with intent that a murder be committed in violation of the laws of any State or the United States as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value, shall be fined not more than $10,000 or imprisoned for not more than five years, or both; and if personal injury results, shall be fined not more than $20,000 and imprisoned for not more than twenty years, or both; and if death results, shall be subject to imprisonment for any term of years or for life, or shall be fined not more than $50,000, or both.

(b) As used in this section and section 1952B—

(1) "anything of pecuniary value" means anything of value in the form of money, a negotiable instrument, a commercial interest, or anything else the primary significance of which is economic advantage; and

(2) "facility of interstate commerce" includes means of transportation and communication.

(Added Pub. L. 98-473, title II, § 1002(a), Oct. 12, 1984, 98 Stat. 2136.)

§ 1952B. Violent crimes in aid of racketeering activity

(a) Whoever, as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity, murders, kidnaps, maims, assaults with a dangerous weapon, commits assault resulting in serious bodily injury upon, or threatens to commit a crime of violence against any individual in violation of the laws of any State or the United States, or attempts or conspires so to do, shall be punished—

(1) for murder or kidnaping, by imprisonment for any term of years or for life or a fine of not more than $50,000, or both;

(2) for maiming, by imprisonment for not more than thirty years or a fine of not more than $30,000, or both;

(3) for assault with a dangerous weapon or assault resulting in serious bodily injury, by imprisonment for not more than twenty years or a fine of not more than $20,000, or both;

(4) for threatening to commit a crime of violence, by imprisonment for not more than five years or a fine of not more than $5,000, or both;

(5) for attempting or conspiring to commit murder or kidnaping, by imprisonment for not more than ten years or a fine of not more than $10,000, or both; and

(6) for attempting or conspiring to commit a crime involving maiming, assault with a dangerous weapon, or assault resulting in serious bodily injury, by imprisonment for not more than three years or a fine of not more than $3,000, or both.

(b) As used in this section—

(1) "racketeering activity" has the meaning set forth in section 1961 of this title; and

(2) "enterprise" includes any partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, which is engaged in, or the activities of which affect, interstate or foreign commerce.

(Added Pub. L. 98-473, title II, § 1002(a), Oct. 12, 1984, 98 Stat. 2137.)

Section Referred to in Other Sections

This section is referred to in section 1952A of this title.

CHAPTER 96—RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS

Chapter Referred to in Other Sections

This chapter is referred to in section 3582 of this title; title 7 section 12a; title 28 section 524.

§ 1961. Definitions

As used in this chapter—

(1) "racketeering activity" means (A) any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, or dealing in narcotic or other dangerous drugs, which is chargeable under State law and punishable by imprisonment for more than one year; (B) any act which is indictable under any of the following provisions of title 18, United States Code: Section 201 (relating to bribery), section 224 (relating to sports bribery), sections 471, 472, and 473 (relating to counterfeiting), section 659 (relating to theft from interstate shipment) if the act indictable under section 659 is felonious, section 664 (relating to embezzlement from pension and welfare funds), sections 891-894 (relating to extortionate credit transactions), section 1084 (relating to the transmission of gambling information), section 1341 (relating to mail fraud), section 1343 (relating to wire fraud), sections 1461-1465 (relating to obscene matter), section 1503 (relating to obstruction of justice), section 1510 (relating to obstruction of crimi-

nal investigations), section 1511 (relating to the obstruction of State or local law enforcement), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering), section 1953 (relating to interstate transportation of wagering paraphernalia), section 1954 (relating to unlawful welfare fund payments), section 1955 (relating to the prohibition of illegal gambling businesses), sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles), sections 2314 and 2315 (relating to interstate transportation of stolen property), section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts), sections 2341-2346 (relating to trafficking in contraband cigarettes), sections 2421-24 (relating to white slave traffic), (C) any act which is indictable under title 29, United States Code, section 186 (dealing with restrictions on payments and loans to labor organizations) or section 501(c) (relating to embezzlement from union funds), (D) any offense involving fraud connected with a case under title 11, fraud in the sale of securities, or the felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in narcotic or other dangerous drugs, punishable under any law of the United States, or (E) any act which is indictable under the Currency and Foreign Transactions Reporting Act.

[*See main edition for text of* (2) *to* (10)]

(As amended Pub. L. 98-473, title II, §§ 901(g), 1020, Oct. 12, 1984, 98 Stat. 2136, 2143; Pub. L. 98-547, title II, § 205, Oct. 25, 1984, 98 Stat. 2770.)

References in Text

Section 2320 of this title, referred to in par. (1), probably means the section 2320 of this title relating to trafficking in certain motor vehicles or motor vehicle parts which was enacted by Pub. L. 98-547, title II, § 204(a), Oct. 25, 1984, 98 Stat. 2770.

The Currency and Foreign Transaction Reporting Act, referred to in par. (1)(E), is title II of Pub. L. 91-508, Oct. 26, 1970, 84 Stat. 1118, which was repealed and reenacted as subchapter II of chapter 53 of Title 31, Money and Finance, by Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31.

Amendments

1984—Par. (1)(A). Pub. L. 98-473, § 1020(1), added "dealing in obscene matter," after "extortion,".

Par. (1)(B). Pub. L. 98-547 inserted "sections 2312 and 2313 (relating to interstate transportation of stolen motor vehicles)," and "section 2320 (relating to trafficking in certain motor vehicles or motor vehicle parts),".

Pub. L. 98-473, § 1020(2), added "sections 1461-1465 (relating to obscene matter),".

Par. (1)(E). Pub. L. 98-473, § 901(g), added cl. (E).

Short Title of 1984 Amendment

Section 301 of chapter III (§§ 301-322) of title II of Pub. L. 98-473 provided that: "This title [probably means this chapter, which enacted sections 1589, 1600, 1613a, and 1616 of Title 19, Customs Duties and sections 853, 854, and 970 of Title 21, Food and Drugs, amended section 1963 of this title and sections 1602, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1618, 1619, and 1644 of Title 19, sections 824, 848, and 881 of Title 21, and section 524 of Title 28, Judiciary and Judicial Procedure, and repealed section 7607 of Title 26, Internal Revenue Code] may be cited as the 'Comprehensive Forfeiture Act of 1984'."

Savings Provision

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

President's Commission on Organized Crime; Taking of Testimony and Receipt of Evidence

Pub. L. 98-368, July 17, 1984, 98 Stat. 490, provided that:

"TAKING OF TESTIMONY AND RECEIPT OF EVIDENCE

"Section 1. The Commission established by the President by Executive Order 12435 [set out below], dated July 28, 1983 (hereinafter in this joint resolution referred to as the 'Commission'), may hold hearings. The powers authorized by this resolution shall be limited to the purposes set forth in section 2 of that Executive order. The Commission, or a member of the Commission or member of the staff of the Commission designated by the Commission for such purpose, may administer oaths and affirmations, examine witnesses, and receive evidence.

"SUBPENA POWER

"Sec. 2. (a) The Commission, or any member of the Commission when so authorized by the Commission, shall have the power to issue subpenas requiring the attendance and testimony of witnesses and the production of information relating to a matter under investigation by the Commission. A subpena may require the person to whom it is directed to produce such information at any time before such person is to testify. Such attendance of witnesses and the production of such evidence may be required from any place within the jurisdiction of the United States at any designated place of interview or hearing. A person to whom a subpena issued under this subsection is directed may for cause shown move to enlarge or shorten the time of attendance and testimony, or may move to quash or modify a subpena for the production of information if it is unreasonable or oppressive. In the case of a subpena issued for the purpose of taking a deposition upon oral examination, the person to be deposed may make any motion permitted under rule 26(c) of the Federal Rules of Civil Procedure [28 App. U.S.C.].

"(b)(1) In case of contumacy or refusal to obey a subpena issued to a person under this section, a court of the United States within the jurisdiction of which the person is directed to appear or produce information, or within the jurisdiction of which the person is found, resides, or transacts business, may upon application by the Attorney General, issue to such person an order requiring such person to appear before the Commission, or before a member of the Commission or a member of the staff of the Commission designated by the Commission for such purpose, there to give testimony or produce information relating to the matter under investigation, as required by the subpena. Any failure to obey such order of the court may be punished by the court as a contempt thereof.

"(2) The Commission is an agency of the United States for the purpose of rule 81(a)(3) of the Federal Rules of Civil Procedure [28 App. U.S.C.].

"(c) Process of a court to which application may be made under this section may be served in a judicial district wherein the person required to be served is found, resides, or transacts business.

"TESTIMONY OF PERSONS IN CUSTODY

"Sec. 3. A court of the United States within the jurisdiction in which testimony of a person held in custody is sought by the Commission or within the jurisdiction of which such person is held in custody, may, upon application by the Attorney General, issue a writ of habeas corpus ad testificandum requiring the custodian to produce such person before the Commission, or before a member of the Commission or a member of the staff of the Commission designated by the Commission for such purpose.

"IMMUNITY

"Sec. 4. The Commission is an agency of the United States for the purpose of part V of title 18 of the United States Code.

"SERVICE OF PROCESS; WITNESS FEES

"Sec. 5. (a) Process and papers issued pursuant to this resolution may be served in person, by registered or certified mail, by telegraph, or by leaving a copy thereof at the residence or principal office or place of business of the person required to be served. When service is by registered or certified mail or by telegraph, the return post office receipt or telegraph receipt therefor shall be proof of service. Otherwise, the verified return by the individual making service, setting forth the manner of such service, shall be proof of service.

"(b) A witness summoned pursuant to this resolution shall be paid the same fees and mileage as are paid witnesses in the courts of the United States, and a witness whose deposition is taken and the person taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

"ACCESS TO OTHER RECORDS AND INFORMATION

"Sec. 6. (a)(1) The investigative activities of the Commission are civil or criminal law enforcement activities for the purposes of section 552a(b)(7) of title 5, United States Code, except that section 552a(c)(3) shall apply after the termination of the Commission.

"(2) The Commission is a Government authority, and an investigation conducted by the Commission is a law enforcement inquiry, for the purposes of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.). Any delay authorized by court order in the notice required under that Act shall not exceed the life of the Commission, including any extension thereof. Notwithstanding a delay authorized by court order, if the Commission elects to publicly disclose the information in hearings or otherwise, it shall give notice required under the Right to Financial Privacy Act a reasonable time in advance of such disclosure.

"(b) For the purposes of section 2517 of title 18, United States Code, and as limited by subsection (c), the members and members of the staff of the Commission are investigative or law enforcement officers, except that in the case of a disclosure to or by any member or member of the staff of the Commission of any of the contents of a communication intercepted under section 2516(1) of such title, such disclosure may be made only after the Attorney General or the Attorney General's designee has had an opportunity to determine that such disclosure may jeopardize Federal law enforcement interests and has not made that determination, and in the case of a disclosure to or by any member or member of the staff of the Commission of any of the contents of a communication intercepted under section 2516(2) of such title, such disclosure may be made only after the appropriate State official has had an opportunity to make a determination that such disclosure may jeopardize State law enforcement interests and has not made that determination.

"(c)(1) A person to whom disclosure of information is made under this section shall use such information solely in the performance of such person's duties for the Commission and shall make no disclosure of such information except as provided for by this joint resolution, or as otherwise authorized by law.

"(2) A disclosure or use by a member or a member of the staff of the Commission of the contents of a communication intercepted under chapter 119 of title 18 of the United States Code may be made solely in the course of carrying out the functions of the Commission as such functions were established by Executive Order 12435, dated July 28, 1983 [set out below].

"FEDERAL PROTECTION FOR MEMBERS AND STAFF OF THE COMMISSION

"Sec. 7. Conduct, which if directed against a United States attorney would violate section 111 or 1114 of title 18, United States Code, shall, if directed against a member of the Commission or a member of the staff of the Commission, be subject to the same punishments as are provided by such sections for such conduct.

"CLOSURE OF MEETINGS

"Sec. 8. The functions of the President under section 10(d) of the Federal Advisory Committee Act (5 U.S.C. App. 10(d)) shall be performed by the Chairman of the Commission.

"RULES AND PROCEDURES OF THE COMMISSION

"Sec. 9. (a) The Commission shall adopt rules and procedures (1) to govern its proceedings; (2) to provide for the security of records, documents, information, and other materials in its custody and of its proceedings; (3) to prevent unauthorized disclosure of information and materials disclosed to it in the course of its inquiry; (4) to provide the right to counsel to all witnesses examined pursuant to subpena; and (5) to accord the full protection of all rights secured and guaranteed by the Constitution of the United States.

"(b) No information in the possession of the Commission shall be disclosed by any member or employee of the Commission to any person who is not a member or employee of the Commission, except as authorized by the Commission and by law.

"(c) The term 'employee of the Commission' means a person (1) whose services have been retained by the Commission, (2) who has been specifically designated by the Commission as authorized to have access to information in the possession of the Commission, and (3) who has agreed in writing and under oath to be bound by the rules of the Commission, the provisions of this resolution, and other provisions of law relating to the nondisclosure of information.

"EFFECTIVE DATES OF RESOLUTION

"Sec. 10. This joint resolution shall take effect on the date of enactment [July 17, 1984] and shall remain in effect until the expiration of the Commission, including any extensions thereof, or two years, whichever event occurs earlier."

Ex. Ord. No. 12435. President's Commission on Organized Crime

Ex. Ord. No. 12435, July 28, 1983, 48 F.R. 34723, as amended Ex. Ord. No. 12507, Mar. 22, 1985, 50 F.R. 11835, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), an advisory committee on organized crime, it is hereby ordered as follows:

Section 1. (a) There is established the President's Commission on Organized Crime. The Commission shall be composed of not more than twenty members appointed or designated by the President.

(b) The President shall designate a Chairman from among the members of the Commission.

SEC. 2. (a) The Commission shall make a full and complete national and region-by-region analysis of organized crime; define the nature of traditional organized crime as well as emerging organized crime groups, the sources and amounts of organized crime's income, and the uses to which organized crime puts its income; develop in-depth information on the participants in organized crime networks; and evaluate Federal laws pertinent to the effort to combat organized crime. The Commission shall advise the President and the Attorney General with respect to its findings and actions which can be undertaken to improve law enforcement efforts directed against organized crime, and make recommendations concerning appropriate administrative and legislative improvements and improvements in the administration of justice.

(b) The Commission shall report to the President from time to time as requested and shall submit its final report by March 1, 1986.

SEC. 3. *Administration*. (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States or who are Members of Congress or Federal Judges may, subject to the availability of funds, be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) The Attorney General shall, to the extent permitted by law, provide the Commission with such administrative services, funds, facilities, staff and other support services as may be necessary for the performance of its functions.

SEC. 4. *General*. (a) Notwithstanding any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Attorney General, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall terminate on April 1, 1986, or thirty days after it submits its final report, whichever occurs first.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1952B of this title.

§ 1962. Prohibited activities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1963, 1964, 3554 of this title.

§ 1963. Criminal penalties

(a) Whoever violates any provision of section 1962 of this chapter shall be fined not more than $25,000 or imprisoned not more than twenty years, or both, and shall forfeit to the United States, irrespective of any provision of State law—

(1) any interest the person has acquired or maintained in violation of section 1962;

(2) any—

(A) interest in;

(B) security of;

(C) claim against; or

(D) property or contractual right of any kind affording a source of influence over;

any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of section 1962; and

(3) any property constituting, or derived from, any proceeds which the person obtained, directly or indirectly, from racketeering activity or unlawful debt collection in violation of section 1962.

The court, in imposing sentence on such person shall order, in addition to any other sentence imposed pursuant to this section, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) All right, title, and interest in property described in subsection (a) vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

[(d) Repealed. Pub. L. 98-473, title II, § 2301(b), Oct. 12, 1984, 98 Stat. 2192.]

(e)(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of section 1962 of this chapter and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time, and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(f) Upon conviction of a person under this section, the court shall enter a judgment of forfeiture of the property to the United States and shall also authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following the entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to, or derived from, an enterprise or an interest in an enterprise which has been ordered forfeited under this section may be used to offset ordinary and necessary expenses to the enterprise which are required by law, or which are necessary to protect the interests of the United States or third parties.

(g) Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with or on behalf of the defendant be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with or on behalf of the defendant, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm or loss to him. Notwithstanding 31 U.S.C. 3302(b), the proceeds of any sale or other disposition of property forfeited under this section and any moneys forfeited shall be used to pay all proper expenses for the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs. The Attorney General shall deposit in the Treasury any amounts of such proceeds or moneys remaining after the payment of such expenses.

(h) With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(i) The Attorney General may promulgate regulations with respect to—

(1) making reasonable efforts to provide notice to persons who may have an interest in property ordered forfeited under this section;

(2) granting petitions for remission or mitigation of forfeiture;

(3) the restitution of property to victims of an offense petitioning for remission or mitigation of forfeiture under this chapter;

(4) the disposition by the United States of forfeited property by public sale or other commercially feasible means;

(5) the maintenance and safekeeping of any property forfeited under this section pending its disposition; and

(6) the compromise of claims arising under this chapter.

Pending the promulgation of such regulations, all provisions of law relating to the disposition of property, or the proceeds from the sale thereof, or the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informers in respect of such forfeitures shall apply to forfeitures incurred, or alleged to have been incurred, under the provisions of this section, insofar as applicable and not inconsistent with the provisions hereof. Such duties as are imposed upon the Customs Service or any person with respect to the disposition of property under the customs law shall be performed under this chapter by the Attorney General.

(j) Except as provided in subsection (m), no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(k) The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(*l*) In order to facilitate the identification or location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(m)(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(As amended Pub. L. 98-473, title II, §§ 302, 2301(a)-(c), Oct. 12, 1984, 98 Stat. 2040, 2192.)

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (e)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, § 2301(a), added following par. (3) "In lieu of a fine otherwise authorized by this section, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds."

Pub. L. 98-473, § 302, amended subsec. (a) generally designated existing provisions as pars. (1) and (2), adding par. (3), and provisions following par. (3) relating to power of the court to order forfeiture to the United States.

Subsec. (b). Pub. L. 98-473, § 302, amended subsec. (b) generally substituting provisions relating to property subject to forfeiture, for provisions relating to jurisdiction of the district courts of the United States.

Subsec. (c). Pub. L. 98-473, § 302, amended subsec. (c) generally substituting provisions relating to transfer of rights, etc., in property to the United States, or to other transferees, for provisions relating to seizure and transfer of property to the United States and procedures related thereto.

Subsec. (d). Pub. L. 98-473, § 2301(b), struck out subsec. (d) which provided: "If any of the property described in subsection (a): (1) cannot be located; (2) has been transferred to, sold to, or deposited with, a third party; (3) has been placed beyond the jurisdiction of the court; (4) has been substantially diminished in value by any act or omission of the defendant; or (5) has been commingled with other property which cannot be divided without difficulty; the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5)."

Pub. L. 98-473, § 302, added subsec. (d).

Subsecs. (e) to (m). Pub. L. 98-473, § 302, added subsecs. (d) to (m).

Subsec. (m)(1). Pub. L. 98-473, § 2301(c), struck out "for at least seven successive court days" after "dispose of the property".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2516, 3554 of this title.

§ 1964. Civil remedies

[*See main edition for text of* (a)]

(b) The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

[*See main edition for text of* (c) *and* (d)]

(As amended Pub. L. 98-620, title IV, § 402(24)(A), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-620 struck out provision that in any action brought by the United States under this section, the court had to proceed as soon as practicable to the hearing and determination thereof.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 1966. Expedition of actions

In any civil action instituted under this chapter by the United States in any district court of the United States, the Attorney General may file with the clerk of such court a certificate stating that in his opinion the case is of general public importance. A copy of that certificate shall be furnished immediately by such clerk to the chief judge or in his absence to the presiding district judge of the district in which such action is pending. Upon receipt of such copy, such judge shall designate immediately a judge of that district to hear and determine action.

(As amended Pub. L. 98-620, title IV, § 402(24)(B), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Pub. L. 98-620 struck out provision that the judge so designated had to assign such action for hearing as soon as practicable, participate in the hearings and determination thereof, and cause such action to be expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 103—ROBBERY AND BURGLARY

Sec.	
2118.	Robberies and burglaries involving controlled substances.

AMENDMENTS

1984—Pub. L. 98-305, § 3, May 31, 1984, 98 Stat. 222, added item 2118.

§ 2113. Bank robbery and incidental crimes

[*See main edition for text of* (a) *and* (b)]

(c) Whoever receives, possesses, conceals, stores, barters, sells, or disposes of, any property or money or other thing of value which has been taken or stolen from a bank, credit union, or savings and loan association in violation of subsection (b), knowing the same to be property which has been stolen shall be subject to the punishment provided in subsection (b) for the taker.

[*See main edition for text of* (d) *to* (h)]

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1106, 98 Stat. 2145.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-473 amended subsec. (c) generally, thereby substituting "which has been taken or stolen from a bank, credit union, or savings and loan association in violation of subsection (b), knowing the same to be property which has been stolen" for "knowing the same to have been taken from a bank, credit union, or a savings and loan association, in violation of subsection (b) of this section".

§ 2114. Mail, money or other property of United States

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 223(d), 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended by adding "not more than" after "imprisoned". This amendment probably should have provided that this phrase be added after "imprisoned", the second time it appears.

§ 2118. Robberies and burglaries involving controlled substances

(a) Whoever takes or attempts to take from the person or presence of another by force or violence or by intimidation any material or compound containing any quantity of a controlled substance belonging to or in the care, custody, control, or possession of a person registered with the Drug Enforcement Administration under section 302 of the Controlled Substances Act (21 U.S.C. 822) shall, except as provided in subsection (c), be fined not more than $25,000 or imprisoned not more than twenty years, or both, if (1) the replacement cost of the material or compound to the registrant was not less than $500, (2) the person who engaged in such taking or attempted such taking traveled in interstate or foreign commerce or used any facility in interstate or foreign commerce to facilitate such taking or attempt, or (3) another person was killed or suffered significant bodily injury as a result of such taking or attempt.

(b) Whoever, without authority, enters or attempts to enter, or remains in, the business premises or property of a person registered with the Drug Enforcement Administration under section 302 of the Controlled Substances Act (21 U.S.C. 822) with the intent to steal any material or compound containing any quantity of a controlled substance shall, except as provided in subsection (c), be fined not more than $25,000 or imprisoned not more than twenty years, or both, if (1) the replacement cost of the controlled substance to the registrant was not less than $500, (2) the person who engaged in such entry or attempted such entry or who remained in such premises or property traveled in interstate or foreign commerce or used any facility in interstate or foreign commerce to facilitate such entry or attempt or to facilitate remaining in such premises or property, or (3) another person was killed or suffered significant bodily injury as a result of such entry or attempt.

(c)(1) Whoever in committing any offense under subsection (a) or (b) assaults any person, or puts in jeopardy the life of any person, by the use of a dangerous weapon or device shall be fined not more than $35,000 and imprisoned for not more than twenty-five years.

(2) Whoever in committing any offense under subsection (a) or (b) kills any person shall be fined not more than $50,000 or imprisoned for any term of years or life, or both.

(d) If two or more persons conspire to violate subsection (a) or (b) of this section and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be fined not more than $25,000 or imprisoned not more than ten years or both.

(e) For purposes of this section—

(1) the term "controlled substance" has the meaning prescribed for that term by section 102 of the Controlled Substances Act;

(2) the term "business premises or property" includes conveyances and storage facilities; and

(3) the term "significant bodily injury" means bodily injury which involves a risk of death, significant physical pain, protracted and obvious disfigurement, or a protracted loss or impairment of the function of a bodily member, organ, or mental or sensory faculty.

(Added Pub. L. 98-305, § 2, May 31, 1984, 98 Stat. 221.)

References in Text

Section 102 of the Controlled Substances Act, referred to in subsec. (e)(1), is classified to section 802 of Title 21, Food and Drugs.

Short Title

Section 1 of Pub. L. 98-305 provided: "That this Act [enacting this section and provisions set out as a note under section 522 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Controlled Substance Registrant Protection Act of 1984'."

Report to Congress

Attorney General, for first three years after May 31, 1984, to submit to Congress an annual report with respect to enforcement activities relating to offenses under this section, see section 4 of Pub. L. 98-305, set out as a note under section 522 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 107—SEAMEN AND STOWAWAYS

§ 2191. Cruelty to seamen

Cross References

Complaint as to provisions or water, see sections 10902, 10907 of Title 46, Shipping.

Corporal punishment prohibited; duty to surrender guilty officer; civil liability, see section 11507 of Title 46.

Neglect to provide sufficient stores, penalty for, see sections 10321, 11106 of Title 46.

Penalty for failure to keep medicines, see section 11102 of Title 46.

Recovery for injury to or death of seaman, see section 688 of Title 46, Appendix.

Scale of provisions to be allowed and served out to the crew during the voyage, see section 10303 of Title 46.

Surrendering officer inflicting corporal punishment, liability of master, see section 11507 of Title 46.

Wages on justifiable complaint of seaman, see section 11106 of Title 46.

Section Referred to in Other Sections

This section is referred to in title 46 section 11507.

§ 2193. Revolt or mutiny of seamen

Cross References

Willful disobedience to lawful command at sea and assault upon master or mate, see section 11501 of Title 46, Shipping.

§ 2195. Abandonment of sailors

Cross References

Penalty for neglect of consular officer to collect wages, see section 10318 of Title 46, Shipping.

Wages on—

- Discharge by consular officer, see section 10318 of Title 46.
- Justifiable complaint of seaman, see section 11106 of Title 46.

§ 2197. Misuse of Federal certificate, license or document

Cross References

Enforcement and regulations, see section 2103 of Title 46, Shipping.

CHAPTER 109—SEARCHES AND SEIZURES

§ 2232. Destruction or removal of property to prevent seizure

Whoever, before, during, or after seizure of any property by any person authorized to make searches and seizures, in order to prevent the seizure or securing of any goods, wares, or merchandise by such person, staves, breaks, throws overboard, destroys, or removes the same, shall be fined not more than $10,000 or imprisoned more [1] than five years, or both.

Whoever, having knowledge that any person authorized to make searches and seizures has been authorized or is otherwise likely to make a search or seizure, in order to prevent the authorized seizing or securing of any person, goods, wares, merchandise or other property, gives notice or attempts to give notice of the possible search or seizure to any person shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1103, 98 Stat. 2143.)

Amendments

1984—Pub. L. 98-473, § 1103(a), substituted provisions raising the maximum fine from $2,000 to $10,000 and raising the maximum term of imprisonment from two years to five years.

Pub. L. 98-473, § 1103(b), added the paragraph relating to the penalties for warning the subject of a search.

CHAPTER 110—SEXUAL EXPLOITATION OF CHILDREN

Sec.
2253. Criminal forfeiture.
2254. Civil forfeiture.
2255. Definitions for chapter.

Amendments

1984—Pub. L. 98-292, § 7, May 21, 1984, 98 Stat. 206, added items 2253 and 2254 and redesignated former item 2253 as 2255.

§ 2251. Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (c), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection (c) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

(c) Any individual who violates this section shall be fined not more than $100,000, or imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this section, such individual shall be fined not more than $200,000, or imprisoned not less than two years nor more than 15 years, or both. Any organization which violates this section shall be fined not more than $250,000.

(As amended Pub. L. 98-292, § 3, May 21, 1984, 98 Stat. 204.)

Amendments

1984—Subsecs. (a), (b). Pub. L. 98-292, § 3(1), (2), substituted "visual depiction" for "visual or print medium" in three places and substituted "of" for "depicting" before "such conduct".

Subsec. (c). Pub. L. 98-292, § 3(3)-(6), substituted "individual" for "person" in three places, "$100,000" for "$10,000", and "$200,000" for "$15,000", and added "Any organization which violates this section shall be fined not more than $250,000."

Short Title of 1984 Amendment

Section 1 of Pub. L. 98-292 provided: "That this Act [enacting sections 2253 and 2254 of this title, amending sections 2251, 2252, 2255, and 2516 of this title, and enacting provisions set out as notes under this section and section 522 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Child Protection Act of 1984'."

Congressional Findings

Section 2 of Pub. L. 98-292 provided that: "The Congress finds that—

"(1) child pornography has developed into a highly organized, multi-million-dollar industry which operates on a nationwide scale;

"(2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and

"(3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the individual child and to society."

Annual Report to Congress

Attorney General to report annually to Congress on prosecutions, convictions, and forfeitures under this chapter, see section 9 of Pub. L. 98-292, set out as a note under section 522 of Title 28, Judiciary and Judicial Procedure.

Section Referred to in Other Sections

This section is referred to in sections 2253, 2516 of this title.

§ 2252. Certain activities relating to material involving the sexual exploitation of minors

(a) Any person who—

(1) knowingly transports or ships in interstate or foreign commerce or mails, any visual depiction, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct; or

(2) knowingly receives, or distributes, any visual depiction that has been transported or shipped in interstate or foreign commerce or mailed or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

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[1] So in original. Probably should be "not more".

shall be punished as provided in subsection (b) of this section.

(b) Any individual who violates this section shall be fined not more than $100,000, or imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this section, such individual shall be fined not more than $200,000, or imprisoned not less than two years nor more than 15 years, or both. Any organization which violates this section shall be fined not more than $250,000.

(As amended Pub. L. 98-292, § 4, May 21, 1984, 98 Stat. 204.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-292, § 4(1), (3), (4), substituted "any visual depiction" for "for the purpose of sale or distribution for sale, any obscene visual or print medium" in provisions preceding subpar. (A).

Subsec. (a)(1)(A). Pub. L. 98-292, § 4(4), substituted "visual depiction" for "visual or print medium".

Subsec. (a)(1)(B). Pub. L. 98-292, § 4(4), (5), substituted "visual depiction is of" for "visual or print medium depicts".

Subsec. (a)(2). Pub. L. 98-292, § 4(2)-(4), (6), (7), substituted ", or distributes, any visual depiction" for "for the purpose of sale or distribution for sale, or knowingly sells or distributes for sale, any obscene visual or print medium" and inserted "or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails" in provisions preceding subpar. (A).

Subsec. (a)(2)(A). Pub. L. 98-292, § 4(4), substituted "visual depiction" for "visual or print medium".

Subsec. (a)(2)(B). Pub. L. 98-292, § 4(4), (5), substituted "visual depiction is of" for "visual or print medium depicts".

Subsec. (b). Pub. L. 98-292, § 4(8)-(11), substituted "individual" for "person" in three places, "$100,000" for "$10,000", and "$200,000" for "$15,000", and added "Any organization which violates this section shall be fined not more than $250,000."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2253, 2516 of this title.

§ 2253. Criminal forfeiture

(a) A person who is convicted of an offense under section 2251 or 2252 of this title shall forfeit to the United States such person's interest in—

(1) any property constituting or derived from gross profits or other proceeds obtained from such offense; and

(2) any property used, or intended to be used, to commit such offense.

(b) In any action under this section, the court may enter such restraining orders or take other appropriate action (including acceptance of performance bonds) in connection with any interest that is subject to forfeiture.

(c) The court shall order forfeiture of property referred to in subsection (a) if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(d)(1) Except as provided in paragraph (3) of this subsection, the customs laws relating to disposition of seized or forfeited property shall apply to property under this section, if such laws are not inconsistent with this section.

(2) In any disposition of property under this section, a convicted person shall not be permitted to acquire property forfeited by such person.

(3) The duties of the Secretary of the Treasury with respect to dispositions of property shall be performed under paragraph (1) of this subsection by the Attorney General, unless such duties arise from forfeitures effected under the customs laws.

(Added Pub. L. 98-292, § 6, May 21, 1984, 98 Stat. 205.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (d)(3), are classified generally to Title 19, Customs Duties.

PRIOR PROVISIONS

A prior section 2253 was redesignated section 2255 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2516 of this title.

§ 2254. Civil forfeiture

(a) The following property shall be subject to forfeiture by the United States:

(1) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual depiction in violation of this chapter.

(2) Any visual depiction produced, transported, shipped, or received in violation of this chapter, or any material containing such depiction.

(3) Any property constituting or derived from gross profits or other proceeds obtained from a violation of this chapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(b) All provisions of the customs law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, the remission or mitigation of such forfeitures, and the compromise of claims, shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section, except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(Added Pub. L. 98-292, § 6, May 21, 1984, 98 Stat. 205.)

References in Text

The customs laws, referred to in subsec. (b), are classified generally to Title 19, Customs Duties.

§ 2255. Definitions for chapter

For the purposes of this chapter, the term—

(1) "minor" means any person under the age of eighteen years;

(2) "sexually explicit conduct" means actual or simulated—

(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) bestiality;

(C) masturbation;

(D) sadistic or masochistic abuse; or

(E) lascivious exhibition of the genitals or pubic area of any person;

(3) "producing" means producing, directing, manufacturing, issuing, publishing, or advertising; and

(4) "organization" means a person other than an individual.

(Added Pub. L. 95-225, § 2(a), Feb. 6, 1978, 92 Stat. 8, § 2253, renumbered § 2255 and amended Pub. L. 98-292, § 5, May 21, 1984, 98 Stat. 205.)

Amendments

1984—Par. (1). Pub. L. 98-292, § 5(1), substituted "eighteen" for "sixteen".

Par. (2)(D). Pub. L. 98-292, § 5(2), (3), substituted "sadistic or masochistic" for "sado-masochistic" and struck out "(for the purpose of sexual stimulation)" after "abuse".

Par. (2)(E). Pub. L. 98-292, § 5(4), substituted "lascivious" for "lewd".

Par. (3). Pub. L. 98-292, § 5(5), struck out ", for pecuniary profit" after "advertising".

Par. (4). Pub. L. 98-292, § 5(6), substituted "'organization' means a person other than an individual" for "'visual or print medium' means any film, photograph, negative, slide, book, magazine, or other visual or print medium".

CHAPTER 111—SHIPPING

§ 2275. Firing or tampering with vessels

Section Referred to in Other Sections

This section is referred to in sections 14, 5032 of this title.

§ 2277. Explosives or dangerous weapons aboard vessels

Cross References

Transportation of explosives by vessels, see section 3306 of Title 46, Shipping.

§ 2278. Explosives on vessels carrying steerage passengers

References in Text

Section 151 of Title 46, referred to in text, which was based on section 1 of act Aug. 2, 1882, ch. 374, 22 Stat. 186, as amended, was repealed by Pub. L. 98-89, Aug. 26, 1983, § 4(b), 97 Stat. 599.

Cross References

Regulations for carriage of explosives, see section 3306 of Title 46, Shipping.

§ 2279. Boarding vessels before arrival

Cross References

Violation of regulations governing boarding of vessels before inspection, see section 163 of Title 46, Appendix, Shipping.

Section Referred to in Other Sections

This section is referred to in title 46 App. section 163.

CHAPTER 113—STOLEN PROPERTY

Sec.
2320. Trafficking in counterfeit goods or services.
2320. Trafficking in certain motor vehicles or motor vehicle parts.

Amendments

1984—Pub. L. 98-547, title II, § 204(b), Oct. 25, 1984, 98 Stat. 2770, added the item 2320 relating to trafficking in certain motor vehicles or motor vehicle parts.

Pub. L. 98-473, title II, §§ 1115, 1502(b), Oct. 12, 1984, 98 Stat. 2149, 2179, substituted "livestock" for "cattle" in items 2316 and 2317 and added the item 2320 relating to trafficking in counterfeit goods or services.

§ 2311. Definitions

As used in this chapter:

[See main edition for text of first to fourth pars.]

"Securities" includes any note, stock certificate, bond, debenture, check, draft, warrant, traveler's check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate; valid or blank motor vehicle title; certificate of interest in property, tangible or intangible; instrument or document or writing evidencing ownership of goods, wares, and merchandise, or transferring or assigning any right, title, or interest in or to goods, wares, and merchandise; or, in general, any instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, warrant, or right to subscribe to or purchase any of the foregoing, or any forged, counterfeited, or spurious representation of any of the foregoing;

[See main edition for text of sixth and seventh pars.]

(As amended Oct. 25, 1984, Pub. L. 98-547, title II, § 202, 98 Stat. 2770.)

Amendments

1984—Pub. L. 98-547 inserted "valid or blank motor vehicle title;".

Short Title of 1984 Amendment

Section 1501 of chapter XV (§§ 1501-1503) of title II of Pub. L. 98-473 provided that: "This chapter [enacting section 2320 of this title and amending sections 1116, 1117, and 1118 of Title 15, Commerce and Trade] may be cited as the 'Trademark Counterfeiting Act of 1984'."

§ 2312. Transportation of stolen vehicles

Section Referred to in Other Sections

This section is referred to in section 1961 of this title.

§ 2313. Sale or receipt of stolen vehicles

Whoever receives, possesses, conceals, stores, barters, sells, or disposes of any motor vehicle or aircraft, which has crossed a State or United States boundary after being stolen, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(As amended Oct. 25, 1984, Pub. L. 98-547, title II, § 203, 98 Stat. 2770.)

Amendments

1984—Pub. L. 98-547 inserted "possesses," after "receives," and substituted "which has crossed a State or United States boundary after being stolen," for "moving as, or which is a part of, or which constitutes interstate or foreign commerce,".

Section Referred to in Other Sections

This section is referred to in section 1961 of this title.

§ 2316. Transportation of livestock

Whoever transports in interstate or foreign commerce any livestock, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1113, 98 Stat. 2149.)

Amendments

1984—Pub. L. 98-473 substituted "livestock" for "cattle" in catchline and text.

§ 2317. Sale or receipt of livestock

Whoever receives, conceals, stores, barters, buys, sells, or disposes of any livestock, moving in or constituting a part of interstate or foreign commerce, knowing the same to have been stolen, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1114, 98 Stat. 2149.)

Amendments

1984—Pub. L. 98-473 substituted "livestock" for "cattle" in catchline and text.

§ 2319. Criminal infringement of a copyright

Section Referred to in Other Sections

This section is referred to in title 17 sections 109, 506.

§ 2320.[1] Trafficking in counterfeit goods or services

(a) Whoever intentionally traffics or attempts to traffic in goods or services and knowingly uses a counterfeit mark on or in connection with such goods or services shall, if an individual, be fined not more than $250,000 or imprisoned not more than five years, or both, and, if a person other than an individual, be fined not more than $1,000,000. In the case of an offense by a person under this section that occurs after that person is convicted of another offense under this section, the person convicted, if an individual, shall be fined not more than $1,000,000 or imprisoned not more than fifteen years, or both, and if other than an individual, shall be fined not more than $5,000,000.

(b) Upon a determination by a preponderance of the evidence that any articles in the possession of a defendant in a prosecution under this section bear counterfeit marks, the United States may obtain an order for the destruction of such articles.

(c) All defenses, affirmative defenses, and limitations on remedies that would be applicable in an action under the Lanham Act shall be applicable in a prosecution under this section. In a prosecution under this section, the defendant shall have the burden of proof, by a preponderance of the evidence, of any such affirmative defense.

(d) For the purposes of this section—

(1) the term "counterfeit mark" means—

(A) a spurious mark—

(i) that is used in connection with trafficking in goods or services;

(ii) that is identical with, or substantially indistinguishable from, a mark registered for those goods or services on the principal register in the United States Patent and Trademark Office and in use, whether or not the defendant knew such mark was so registered; and

(iii) the use of which is likely to cause confusion, to cause mistake, or to deceive; or

(B) a spurious designation that is identical with, or substantially indistinguishable from, a designation as to which the remedies of the Lanham Act are made available by reason of section 110 of the Olympic Charter Act;

but such term does not include any mark or designation used in connection with goods or services of which the manufacturer or producer was, at the time of the manufacture or production in question authorized to use the mark or designation for the type of goods or services so manufactured or produced, by the holder of the right to use such mark or designation;

(2) the term "traffic" means transport, transfer, or otherwise dispose of, to another, as consideration for anything of value, or make or obtain control of with intent so to transport, transfer, or dispose of;

(3) the term "Lanham Act" means the Act entitled "An Act to provide for the registration and protection of trademarks used in commerce, to carry out the provisions of certain international conventions, and for other purposes", approved July 5, 1946 (15 U.S.C. 1051 et seq.); and

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[1] So in original. There are two sections designated 2320.

(4) the term "Olympic Charter Act" means the Act entitled "An Act to incorporate the United States Olympic Association", approved September 21, 1950 (36 U.S.C. 371 et seq.).

(Added Pub. L. 98-473, title II, § 1502(a), Oct. 12, 1984, 98 Stat. 2178.)

References in Text

The Lanham Act, referred to in subsecs. (c) and (d)(1)(B), (3), also known as the Trademark Act of 1946, is act July 5, 1946, ch. 540, 60 Stat. 427, as amended, which is classified generally to chapter 22 (§ 1051 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1051 of Title 15 and Tables.

The Olympic Charter Act, referred to in subsec. (d)(4), is act Sept. 21, 1950, ch. 975, 64 Stat. 899, as amended, which is classified generally to chapter 17 (§ 371 et seq.) of Title 36, Patriotic Societies and Observances. Section 110 of the Olympic Charter Act is classified to section 380 of Title 36. For complete classification of this Act to the Code, see Tables.

§ 2320.[3] Trafficking in certain motor vehicles or motor vehicle parts

(a) Whoever buys, receives, possesses, or obtains control of, with intent to sell or otherwise dispose of, a motor vehicle or motor vehicle part, knowing that an identification number for such motor vehicle or part has been removed, obliterated, tampered with, or altered, shall be fined not more than $20,000 or imprisoned not more than ten years, or both.

(b) Subsection (a) does not apply if the removal, obliteration, tampering, or alteration—

(1) is caused by collision or fire; or

(2) is not a violation of section 511 of this title.

(c) As used in this section, the terms "identification number" and "motor vehicle" have the meaning given those terms in section 511 of this title.

(Added Pub. L. 98-547, title II, § 204(a), Oct. 25, 1984, 98 Stat. 2770.)

References in Text

Section 511 of this title, referred to in subsecs. (b)(2) and (c), probably means the section 511 of this title, relating to altering or removing motor vehicle identification numbers which was enacted by Pub. L. 98-547, title II, § 201(a), Oct. 25, 1984, 98 Stat. 2768.

Section Referred to in Other Sections

This section is referred to in section 1961 of this title; title 15 section 2034.

CHAPTER 119—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

§ 2511. Interception and disclosure of wire or oral communications prohibited

[*See main edition for text of* (*1*)]

(2) [*See main edition for text of* (*a*) *to* (*d*)]

(e) Notwithstanding any other provision of this title or section 705 or 706 of the Communications Act of 1934, it shall not be unlawful for an officer, employee, or agent of the United States in the normal course of his official duty to conduct electronic surveillance, as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, as authorized by that Act.

(f) Nothing contained in this chapter, or section 705 of the Communications Act of 1934, shall be deemed to affect the acquisition by the United States Government of foreign intelligence information from international or foreign communications by a means other than electronic surveillance as defined in section 101 of the Foreign Intelligence Surveillance Act of 1978, and procedures in this chapter and the Foreign Intelligence Surveillance Act of 1978 shall be the exclusive means by which electronic surveillance, as defined in section 101 of such Act, and the interception of domestic wire and oral communications may be conducted.

(As amended Pub. L. 98-549, § 6(b)(2), Oct. 30, 1984, 98 Stat. 2804.)

References in Text

Sections 705 and 706 of the Communications Act of 1934, referred to in par. (2)(e) and (f), are classified to sections 605 and 606 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, respectively.

Amendments

1984—Par. (2)(e). Pub. L. 98-549, § 6(b)(2)(A), substituted "section 705 or 706" for "section 605 or 606".

Par. (2)(f). Pub. L. 98-549, § 6(b)(2)(B), substituted "section 705" for "section 605".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-549 effective 60 days after Oct. 30, 1984, see section 9(a) of Pub. L. 98-549, set out as an Effective Date note under section 521 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

§ 2516. Authorization for interception of wire or oral communications

(1) The Attorney General, Deputy Attorney General, Associate Attorney General,[1] or any Assistant Attorney General specially designated by the Attorney General, may authorize an application to a Federal judge of competent jurisdiction for, and such judge may grant in conformity with section 2518 of this chapter an order authorizing or approving the interception of wire or oral communications by the Federal Bureau of Investigation, or a Federal agency having responsibility for the investigation of the offense as to which the application is made, when such interception may provide or has provided evidence of—

[*See main edition for text of* (*a*) *and* (*b*)]

(c) any offense which is punishable under the following sections of this title: section 201 (bribery of public officials and witnesses), section 224 (bribery in sporting contests), subsection (d), (e), (f), (g), (h), or (i) of section 844 (unlawful use of explosives), section 1084 (transmission of wagering information), sections 1503, 1512, and 1513 (influencing or injuring an officer, juror, or witness generally), section 1510 (obstruction of criminal investigations), section 1511 (obstruction of State or local law enforcement), section 1751 (Presidential and Presidential staff assassination, kidnaping, and assault), section 1951 (interference with commerce by threats or violence), section 1952 (interstate and foreign travel or transportation in aid of racketeering enterprises), section 1954 (offer, acceptance, or solicitation to influence operations of employee benefit plan), section 1955 (prohibition of business enterprises of gambling), section 659 (theft from interstate shipment), section 664 (embezzlement from pension and welfare funds), section 1343 (fraud by wire, radio, or television), section 2252 or 2253 (sexual exploitation of children), sections 2251 and 2252 (sexual exploitation of children),[1] sections 2314 and 2315 (interstate transportation of stolen property), section 1963 (violations with respect to racketeer influenced and corrupt organizations) or section 351 (violations with respect to congressional, Cabinet, or Supreme Court assassinations, kidnaping, and assault);

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[3] So in original. There are two sections designated 2320.

[1] See 1984 Amendment note below.

[*See main edition for text of* (*d*) *and* (*e*)]

(f) any offense including extortionate credit transactions under sections 892, 893, or 894 of this title;

(g) a violation of section 5322 of title 31, United States Code (dealing with the reporting of currency transactions); or

(h) any conspiracy to commit any of the foregoing offenses.

[*See main edition for text of* (*2*)]

(As amended Pub. L. 98-292, § 8, May 21, 1984, 98 Stat. 206; Pub. L. 98-473, title II, § 1203(c), Oct. 12, 1984, 98 Stat. 2152.)

AMENDMENTS

1984—Par. (1). Pub. L. 98-473, § 1203(c)(4), which directed the amendment of the first par. of par. (1) by inserting "Deputy Attorney General, Associate Attorney General," after "Attorney General." was executed by inserting this phrase after "Attorney General," the first time this term appeared in the provisions preceding subpar. (a).

Par. (1)(c). Pub. L. 98-473, § 1203(c)(2), added references to sections 1512 and 1513 after "1503".

Pub. L. 98-473, § 1203(c)(1), added "section 1343 (fraud by wire, radio, or television), section 2252 or 2253 (sexual exploitation of children)," after "section 664 (embezzlement from pension and welfare funds),".

Pub. L. 98-292 added "sections 2251 and 2252 (sexual exploitation of children)," after "section 664 (embezzlement from pension and welfare funds),".

Par. (1)(g), (h). Pub. L. 98-473, § 1203(c)(3), added par. (g) and redesignated former par. (g) as (h).

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2518 of this title; title 28 section 594.

§ 2518. Procedure for interception of wire or oral communications

[*See main edition for text of* (*1*) *to* (*6*)]

(7) Notwithstanding any other provision of this chapter, any investigative or law enforcement officer, specially designated by the Attorney General, the Deputy Attorney General, the Associate Attorney General, or by the principal prosecuting attorney of any State or subdivision thereof acting pursuant to a statute of that State, who reasonably determines that—

(a) an emergency situation exists that involves—

(i) immediate danger of death or serious physical injury to any person,

(ii) conspiratorial activities threatening the national security interest, or

(iii) conspiratorial activities characteristic of organized crime,

that requires a wire or oral communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained, and

(b) there are grounds upon which an order could be entered under this chapter to authorize such interception,

may intercept such wire or oral communication if an application for an order approving the interception is made in accordance with this section within forty-eight hours after the interception has occurred, or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire or oral communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (d) of this section on the person named in the application.

[*See main edition for text of* (*8*) *to* (*10*)]

(As amended Pub. L. 98-473, title II, § 1203(a), (b), Oct. 12, 1984, 98 Stat. 2152.)

AMENDMENTS

1984—Par. (7). Pub. L. 98-473, § 1203(a), added ", the Deputy Attorney General, the Associate Attorney General," after "Attorney General" in provisions preceding subpar. (a).

Par. (7)(a). Pub. L. 98-473, § 1203(b), amended subpar. (a) generally, thereby adding cl. (i) and designated existing provisions as cls. (ii) and (iii).

PART II—CRIMINAL PROCEDURE

Chap. Sec.
204. **Rewards for information concerning terrorists acts** [1] 3071

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[1] So in original. See 1984 Amendment note below.

[1] So in original. Does not conform to chapter heading.

Chap.		Sec.
207.	Release and detention pending judicial proceedings	3141
224.	Protection of witnesses	3521
232.	Special forfeiture of collateral profits of crime	3671[1]

AMENDMENT OF ANALYSIS

Pub. L. 98-473, title II, §§ 212(b), 235(a)(1), Oct. 12, 1984, 98 Stat. 2011, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), the analysis is amended by striking out the items relating to chapters 227, 229, and 231, and inserting in lieu thereof the following:

"227. Sentences 3551
"229. Post-Sentence Administration[2] 3601
"231. Repealed ....
"232. Miscellaneous Sentencing Provisions .... 3661".

AMENDMENTS

1984—Pub. L. 98-533, title I, § 101(b), Oct. 19, 1984, 98 Stat. 2708, added item 204.

Pub. L. 98-473, title II, §§ 203(d), 1209(a), 1406(b), Oct. 12, 1984, 98 Stat. 1985, 2163, 2176, inserted "and detention pending judicial proceedings" in item 207 and added items 224 and 232.

CHAPTER 201—GENERAL PROVISIONS

Sec.	
3013.	Special assessment on convicted persons.

AMENDMENT OF ANALYSIS

Pub. L. 98-473, title II, §§ 218(c), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), item 3012 of the analysis is amended to read "3012. Repealed.".

AMENDMENTS

1984—Pub. L. 98-473, title II, § 1405(b), Oct. 12, 1984, 98 Stat. 2175, added item 3013.

§ 3006A. Adequate representation of defendants

(a) Choice of plan

Each United States district court, with the approval of the judicial council of the circuit, shall place in operation throughout the district a plan for furnishing representation for any person financially unable to obtain adequate representation (1) who is charged with a felony or misdemeanor (other than a petty offense as defined in section 1 of this title) or with juvenile delinquency by the commission of an act which, if committed by an adult, would be such a felony or misdemeanor or with a violation of probation, (2) who is under arrest, when such representation is required by law, (3) who is subject to revocation of parole, in custody as a material witness, or seeking collateral relief, as provided in subsection (g), (4) whose mental condition is the subject of a hearing pursuant to chapter 313 of this title, or (5) for whom the Sixth Amendment to the Constitution requires the appointment of counsel or for whom, in a case in which he faces loss of liberty, any Federal law requires the appointment of counsel. Representation under each plan shall include counsel and investigative, expert, and other services necessary for an adequate defense. Each plan shall include a provision for private attorneys. The plan may include, in addition to a provision for private attorneys in a substantial proportion of cases, either of the following or both:

[See main edition for text of (1) and (2)]

Prior to approving the plan for a district, the judicial council of the circuit shall supplement the plan with provisions for representation on appeal. The district court may modify the plan at any time with the approval of the judicial council of the circuit. It shall modify the plan when directed by the judicial council of the circuit. The district court shall notify the Administrative Office of the United States Courts of any modification of its plan.

[See main edition for text of (b) and (c)]

(d) Payment for representation

(1) Hourly rate

Any attorney appointed pursuant to this section or a bar association or legal aid agency or community defender organization which has provided the appointed attorney shall, at the conclusion of the representation or any segment thereof, be compensated at a rate not exceeding $60 per hour for time expended in court or before a United States magistrate and $40 per hour for time reasonably expended out of court. Such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the United States magistrate or the court.

(2) Maximum amounts

For representation of a defendant before the United States magistrate or the district court, or both, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $2,000 for each attorney in a case in which one or more felonies are charged, and $800 for each attorney in a case in which only misdemeanors are charged. For representation of a defendant in an appellate court, the compensation to be paid to an attorney or to a bar association or legal aid agency or community defender organization shall not exceed $2,000 for each attorney in each court. For representation in connection with a post-trial motion made after the entry of judgment or in a probation revocation proceeding or for representation provided under subsection (g) the compensation shall not exceed $500 for each attorney in each proceeding in each court.

[See main edition for text of (3) to (6); (e) and (f)]

(g) Discretionary appointments

Any person subject to revocation of parole, in custody as a material witness, or seeking relief under section 2241, 2254, or 2255 of title 28 may be furnished representation pursuant to the plan whenever the United States magistrate or the court determines that the interests of justice so require and such person is financially unable to obtain representation. Payment for such representation may be as provided in subsection (d) and (e).

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[1] So in original. Code section editorially supplied.

[2] So in original. Does not conform to chapter heading.

[*See main edition for text of* (*h*) *to* (*l*)]

(As amended Pub. L. 98-473, title II, §§ 405, 1901(1), (6), Oct. 12, 1984, 98 Stat. 2067, 2185, 2186.)

Amendment of Section

Pub. L. 98-473, title II, §§ 223(e), 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended:

(1) in subsecs. (a)(1) and (b), by deleting "misdemeanor (other than a petty offense as defined in section 1 of this title)" each place it appears and substituting "Class A misdemeanor"; and

(2) in subsecs. (a)(3) and (g), by deleting "subject to revocation of parole," each place it appears.

Amendments

1984—Subsec. (a). Pub. L. 98-473, § 405(a), added cl. (4) and redesignated former cl. (4) as (5).

Subsec. (d)(1). Pub. L. 98-473, § 1901(1)-(3), substituted "$60" for "$30" and "$40" for "$20", and struck out ", or such other hourly rate, fixed by the Judicial Council of the Circuit, not to exceed the minimum hourly scale established by a bar association for similar services rendered in the district" at the end of first sentence.

Subsec. (d)(2). Pub. L. 98-473, § 1901(4)-(6), substituted "$2,000" for "$1,000" in two places, "$800" for "$400", and "$500" for "$250".

Subsec. (g). Pub. L. 98-473, § 405(b), struck out reference to section 4245 of title 18.

Short Title of 1984 Amendment

Section 1901 of chapter XIX (§ 1901) of title II of Pub. L. 98-473 provided in part that: "This chapter [amending this section] may be cited as the 'Criminal Justice Act Revision of 1984'."

Section Referred to in Other Sections

This section is referred to in sections 3162, 4109, 4214, 4247 of this title; title 28 sections 753, 1875; title 48 section 1694c.

§ 3012. Orders respecting persons in custody

Repeal of Section

Pub. L. 98-473, title II, §§ 218(a)(2), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is repealed.

§ 3013. Special assessment on convicted persons

(a) The court shall assess on any person convicted of an offense against the United States—

(1) in the case of a misdemeanor—

(A) the amount of $25 if the defendant is an individual; and

(B) the amount of $100 if the defendant is a person other than an individual; and

(2) in the case of a felony—

(A) the amount of $50 if the defendant is an individual; and

(B) the amount of $200 if the defendant is a person other than an individual.

(b) Such amount so assessed shall be collected in the manner that fines are collected in criminal cases.

(Added Pub. L. 98-473, title II, § 1405(a), Oct. 12, 1984, 98 Stat. 2174.)

Effective Date

Section effective 30 days after Oct. 12, 1984, see section 1409(a) of Pub. L. 98-473, set out as a note under section 10601 of Title 42, The Public Health and Welfare.

Section Referred to in Other Sections

This section is referred to in title 42 section 10601.

CHAPTER 203—ARREST AND COMMITMENT

Sec.
3043. Repealed.
3056. Powers, authorities, and duties of United States Secret Service.
3062. General arrest authority for violation of release conditions.

Amendments

1984—Pub. L. 98-587, § 1(b), Oct. 30, 1984, 98 Stat. 3111, substituted "Powers, authorities, and duties of United States Secret Service" for "Secret Service powers" in item 3056.

Pub. L. 98-473, title II, § 204(e), Oct. 12, 1984, 98 Stat. 1986, substituted "Repealed" for "Security of the peace and good behavior" in item 3043 and added item 3062.

§ 3041. Power of courts and magistrates

[*See main edition for text of first par.*]

A United States judge or magistrate shall proceed under this section according to rules promulgated by the Supreme Court of the United States. Any state judge or magistrate acting hereunder may proceed according to the usual mode of procedure of his state but his acts and orders shall have no effect beyond determining, pursuant to the provisions of section 3142 of this title, whether to detain or conditionally release the prisoner prior to trial or to discharge him from arrest.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 204(a), 98 Stat. 1985.)

Amendments

1984—Pub. L. 98-473 substituted "determining, pursuant to the provisions of section 3142 of this title, whether to detain or conditionally release the prisoner prior to trial" for "determining to hold the prisoner for trial".

Section Referred to in Other Sections

This section is referred to in sections 3042, 3141, 3152, 3156 of this title; title 16 section 916g; title 26 section 5557.

§ 3042. Extraterritorial jurisdiction

[*See main edition for text of first par.*]

Such fugitive first mentioned may, by any officer or representative of the United States vested with judicial authority in any country in which the United States exercises extraterritorial jurisdiction and agreeably to the usual mode of process against offenders subject to such jurisdiction, be arrested and detained or conditionally released pursuant to section 3142 of this title, as the case may be, pending the issuance of a warrant for his removal, which warrant the principal officer or representative of the United States vested with judicial authority in the country where the fugitive shall be found shall seasonably issue, and the United States marshal or corresponding officer shall execute.

[*See main edition for text of third par.*]

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 204(b), 98 Stat. 1985.)

AMENDMENTS

1984—Pub. L. 98-473 substituted "detained or conditionally released pursuant to section 3142 of this title" for "imprisoned or admitted to bail".

[§ 3043. Repealed. Pub. L. 98-473, title II, § 204(c), Oct. 12, 1984, 98 Stat. 1986]

Section, acts June 25, 1948, ch. 645, 62 Stat. 816; Oct. 17, 1968, Pub. L. 90-578, title III, § 301(a)(2), 82 Stat. 1115, related to the authority of justices, judges, and magistrates to hold to security of the peace and for good behavior. See section 3142 of this title.

§ 3056. Powers, authorities, and duties of United States Secret Service

(a) Under the direction of the Secretary of the Treasury, the United States Secret Service is authorized to protect the following persons:

(1) The President, the Vice President (or other officer next in the order of succession to the Office of President), the President-elect, and the Vice President-elect.

(2) The immediate families of those individuals listed in paragraph (1).

(3) Former Presidents and their spouses for their lifetimes, except that protection of a spouse shall terminate in the event of remarriage.

(4) Children of a former President who are under 16 years of age.

(5) Visiting heads of foreign states or foreign governments.

(6) Other distinguished foreign visitors to the United States and official representatives of the United States performing special missions abroad when the President directs that such protection be provided.

(7) Major Presidential and Vice Presidential candidates and, within 120 days of the general Presidential election, the spouses of such candidates. As used in this paragraph, the term "major Presidential and Vice Presidential candidates" means those individuals identified as such by the Secretary of the Treasury after consultation with an advisory committee consisting of the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority and minority leaders of the Senate, and one additional member selected by the other members of the committee.

The protection authorized in paragraphs (2) through (7) may be declined.

(b) Under the direction of the Secretary of the Treasury, the Secret Service is authorized to detect and arrest any person who violates—

(1) section 508, 509, 510, 871, or 879 of this title or, with respect to the Federal Deposit Insurance Corporation, Federal land banks, and Federal land bank associations, section 213, 216, 433, 493, 657, 709, 1006, 1007, 1011, 1013, 1014, 1907, or 1909 of this title;

(2) any of the laws of the United States relating to coins, obligations, and securities of the United States and of foreign governments; or

(3) any of the laws of the United States relating to electronic fund transfer frauds, credit and debit card frauds, and false identification documents or devices; except that the authority conferred by this paragraph shall be exercised subject to the agreement of the Attorney General and the Secretary of the Treasury and shall not affect the authority of any other Federal law enforcement agency with respect to those laws.

(c)(1) Under the direction of the Secretary of the Treasury, officers and agents of the Secret Service are authorized to—

(A) execute warrants issued under the laws of the United States;

(B) carry firearms;

(C) make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony;

(D) offer and pay rewards for services and information leading to the apprehension of persons involved in the violation or potential violation of those provisions of law which the Secret Service is authorized to enforce;

(E) pay expenses for unforeseen emergencies of a confidential nature under the direction of the Secretary of the Treasury and accounted for solely on the Secretary's certificate; and

(F) perform such other functions and duties as are authorized by law.

(2) Funds expended from appropriations available to the Secret Service for the purchase of counterfeits and subsequently recovered shall be reimbursed to the appropriations available to the Secret Service at the time of the reimbursement.

(d) Whoever knowingly and willfully obstructs, resists, or interferes with a Federal law enforcement agent engaged in the performance of the protective functions authorized by this section or by section 1752 of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(As amended Nov. 14, 1983, Pub. L. 98-151, § 115(b), 97 Stat. 977; Oct. 30, 1984, Pub. L. 98-587, § 1(a), 98 Stat. 3110.)

References in Text

Section 216 of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 98-473, title II, § 1107(b), Oct. 12, 1984, 98 Stat. 2146.

Amendments

1984—Pub. L. 98-587 amended section generally, thereby providing authority for the Secret Service to conduct criminal investigations of, make arrests in, and present for prosecutorial consideration, cases relating to electronic fund transfer frauds, and providing the Secret Service with authority to conduct investigations and make arrests relating to credit and debit card frauds, and false identification documents and devices, to be exercised subject to the agreement of the Attorney General and the Secretary of the Treasury.

1983—Subsec. (a). Pub. L. 98-151 added in the fifth clause "510" following "509".

Major Presidential or Vice Presidential Candidates and Spouses; Personal Protection

Pub. L. 90-331, June 6, 1968, 82 Stat. 170, as amended by Pub. L. 94-408, § 1, Sept. 11, 1976, 90 Stat. 1239; Pub. L. 94-524, § 11, Oct. 17, 1976, 90 Stat. 2477; Pub. L. 96-329, Aug. 11, 1980, 94 Stat. 1029, which had provided for personal protection of major presidential or vice presidential candidates and had authorized protection of spouses commencing not more than 120 days before the general Presidential election, and appropriated for fiscal year ending June 30, 1968, $400,000 for execution of such provisions, was repealed by Pub. L. 98-587, § 2, Oct. 30, 1984, 98 Stat. 3111. See subsec. (a)(7) of this section.

Section Referred to in Other Sections

This section is referred to in sections 879, 1752 of this title; title 5 section 552a; title 12 section 3414; title 22 section 4304; title 31 section 1537.

§ 3057. Bankruptcy investigations

Savings Provision

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 3062. General arrest authority for violation of release conditions

A law enforcement officer, who is authorized to arrest for an offense committed in his presence, may arrest a person who is released pursuant to chapter 207 if the officer has reasonable grounds to believe that the person is violating, in his presence, a condition imposed on the person pursuant to section 3142(c)(2)(D), (c)(2)(E), (c)(2)(H), (c)(2)(I), or (c)(2)(M), or, if the violation involves a failure to remain in a specified institution as required, a condition imposed pursuant to section 3142(c)(2)(J).

(Added Pub. L. 98-473, title II, § 204(d), Oct. 12, 1984, 98 Stat. 1986.)

CHAPTER 204—REWARDS FOR INFORMATION CONCERNING TERRORIST ACTS

Sec.

3071. Information for which rewards authorized.
3072. Determination of entitlement; maximum amount; Presidential approval; conclusiveness.
3073. Protection of identity.
3074. Exception of governmental officials.
3075. Authorization for appropriations.
3076. Eligibility for witness security program.
3077. Definitions.

§ 3071. Information for which rewards authorized

With respect to acts of terrorism primarily within the territorial jurisdiction of the United States, the Attorney General may reward any individual who furnishes information—

(1) leading to the arrest or conviction, in any country, of any individual or individuals for the commission of an act of terrorism against a United States person or United States property; or

(2) leading to the arrest or conviction, in any country, of any individual or individuals for conspiring or attempting to commit an act of terrorism against a United States person or property; or

(3) leading to the prevention, frustration, or favorable resolution of an act of terrorism against a United States person or property.

(Added Pub. L. 98-533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2706.)

Short Title

Section 1 of Pub. L. 98-533 provided that: "This Act [enacting this chapter and section 2708 of Title 22, Foreign Relations and Intercourse, amending sections 2669, 2678 and 2704 of Title 22, enacting provisions set out as a note under section 5928 of Title 5, Government Organization and Employees and amending provisions set out as a note under section 2651 of Title 22] may be cited as the '1984 Act to Combat International Terrorism'."

Section Referred to in Other Sections

This section is referred to in sections 3072, 3074 of this title.

§ 3072. Determination of entitlement; maximum amount; Presidential approval; conclusiveness

The Attorney General shall determine whether an individual furnishing information described in section 3071 is entitled to a reward and the amount to be paid. A reward under this section may be in an amount not to exceed $500,000. A reward of $100,000 or more may not be made without the approval of the President or the Attorney General personally. A determination made by the Attorney General or the President under this chapter shall be final and conclusive, and no court shall have power or jurisdiction to review it.

(Added Pub. L. 98-533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707.)

§ 3073. Protection of identity

Any reward granted under this chapter shall be certified for payment by the Attorney General. If it is determined that the identity of the recipient of a reward or of the members of the recipient's immediate family must be protected, the Attorney General may take such measures in connection with the payment of the reward as deemed necessary to effect such protection.

(Added Pub. L. 98-533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3077 of this title.

§ 3074. Exception of governmental officials

No officer or employee of any governmental entity who, while in the performance of his or her official duties, furnishes the information described in section 3071 shall be eligible for any monetary reward under this chapter.

(Added Pub. L. 98-533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707.)

§ 3075. Authorization for appropriations

There are authorized to be appropriated, without fiscal year limitation, $5,000,000 for the purpose of this chapter.

(Added Pub. L. 98-533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707.)

§ 3076. Eligibility for witness security program

Any individual (and the immediate family of such individual) who furnishes information which would justify a reward by the Attorney General under this chapter or by the Secretary of State under section 36 of the State Department Basic Authorities Act of 1956 may, in the discretion of the Attorney General, participate in the Attorney General's witness security program authorized under title V of the Organized Crime Control Act of 1970.

(Added Pub. L. 98-533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707.)

REFERENCES IN TEXT

Section 36 of the State Department Basic Authorities Act of 1956, referred to in text, is classified to section 2708 of Title 22, Foreign Relations and Intercourse.

Title V of the Organized Crime Control Act of 1970, referred to in text, is title V of Pub. L. 91-452, Oct. 15, 1970, 84 Stat. 933, which was set out as a note preceding section 3481 of this title, and was repealed by Pub. L. 98-473, title II, § 1209(b), Oct. 12, 1984, 98 Stat. 2163. See section 3521 et seq. of this title.

§ 3077. Definitions

As used in this chapter, the term—

(1) "act of terrorism" means an activity that—

(A) involves a violent act or an act dangerous to human life that is a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or of any State; and

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by assassination or kidnaping.

(2) "United States person" means—

(A) a national of the United States as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));

(B) an alien lawfully admitted for permanent residence in the United States as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20));

(C) any person within the United States;

(D) any employee or contractor of the United States Government, regardless of nationality, who is the victim or intended victim of an act of terrorism by virtue of that employment;

(E) a sole proprietorship, partnership, company, or association composed principally of nationals or permanent resident aliens of the United States; and

(F) a corporation organized under the laws of the United States, any State, the District of Columbia, or any territory or possession of the United States, and a foreign subsidiary of such corporation.

(3) "United States property" means any real or personal property which is within the United States or, if outside the United States, the actual or beneficial ownership of which rests in a United States person or any Federal or State governmental entity of the United States.

(4) "United States"—

(A) when used in a geographical sense, includes Puerto Rico and all territories and possessions of the United States; and

(B) when used in the context of section 3073 shall have the meaning given to it in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(5) "State" includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other possession or territory of the United States.

(6) "government entity" includes the Government of the United States, any State or political subdivision thereof, any foreign country, and any state, provincial, municipal, or other political subdivision of a foreign country.

(7) "Attorney General" means the Attorney General of the United States or that official designated by the Attorney General to perform the Attorney General's responsibilities under this chapter.

(Added Pub. L. 98-533, title I, § 101(a), Oct. 19, 1984, 98 Stat. 2707.)

REFERENCES IN TEXT

The Immigration and Nationality Act, referred to in par. (4)(B), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

CHAPTER 207—RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS

Sec.
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3149. Surrender of an offender by a surety.
3150. Applicability to a case removed from a State court.
[3150a, 3151. Repealed.]

AMENDMENTS

1984—Pub. L. 98-473, title II, § 203(e), Oct. 12, 1984, 98 Stat. 1985, inserted "AND DETENTION PENDING JUDICIAL PROCEEDING" in the chapter heading, added new items 3141 to 3150, and struck out former items 3141 to 3151 as follows: item 3141 "Power of courts and magistrates", item 3142 "Surrender by bail", item 3143 "Additional bail", item 3144 "Cases removed from State courts", item 3145 "Parties and witnesses—Rule", item 3146 "Release in noncapital cases prior to trial", item 3147 "Appeal from conditions of release", item 3148 "Release in capital cases or after conviction", item 3149 "Release of material witnesses", item 3150 "Penalties for failure to appear", item 3150a "Refund of forfeited bail", item 3151 "Contempt".

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3041, 3062, 3731, 4241, 4282, 4285, 5037 of this title.

§ 3141. Release and detention authority generally

(a) Pending trial

A judicial officer who is authorized to order the arrest of a person pursuant to section 3041 of this title shall order that an arrested person who is brought before him be released or detained, pending judicial proceedings, pursuant to the provisions of this chapter.

(b) Pending sentence or appeal

A judicial officer of a court of original jurisdiction over an offense, or a judicial officer of a Federal appellate court, shall order that, pending imposition or execution of sentence, or pending appeal of conviction or sentence, a person be released or detained pursuant to the provisions of this chapter.

(Added Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1976.)

PRIOR PROVISIONS

A prior section 3141, acts June 25, 1948, ch. 645, 62 Stat. 821; June 22, 1966, Pub. L. 89-465, § 5(b), 80 Stat. 217, which related to powers of courts and magistrates with respect to release on bail or otherwise, was repealed in the revision of this chapter by section 203(a) of Pub. L. 98-473.

SHORT TITLE OF 1984 AMENDMENT

Section 202 of chapter I (§§ 202-210) of title II of Pub. L. 98-473 provided that: "This chapter [enacting sections 3062 and 3141 to 3150 of this title, amending sections 3041, 3042, 3154, 3156, 3731, 3772, and 4282 of this title and section 636 of Title 28, Judiciary and Judicial Procedure, repealing sections 3043 and 3141 to 3151 of this title, and amending rules 5, 15, 40, 46, and 54 of the Federal Rules of Criminal Procedure, set out in the Appendix to this title, and rule 9 of the Federal Rules of Appellate Procedure, set out in the Appendix to Title 28] may be cited as the 'Bail Reform Act of 1984'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title.

§ 3142. Release or detention of a defendant pending trial

(a) In general

Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be—

(1) released on his personal recognizance or upon execution of an unsecured appearance bond, pursuant to the provisions of subsection (b);

(2) released on a condition or combination of conditions pursuant to the provisions of subsection (c);

(3) temporarily detained to permit revocation of conditional release, deportation, or exclusion pursuant to the provisions of subsection (d); or

(4) detained pursuant to the provisions of subsection (e).

(b) Release on personal recognizance or unsecured appearance bond

The judicial officer shall order the pretrial release of the person on his personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of his release, unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) Release on conditions

If the judicial officer determines that the release described in subsection (b) will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, he shall order the pretrial release of the person—

(1) subject to the condition that the person not commit a Federal, State, or local crime during the period of release; and

(2) subject to the least restrictive further condition, or combination of conditions, that he determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person—

(A) remain in the custody of a designated person, who agrees to supervise him and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(B) maintain employment, or, if unemployed, actively seek employment;

(C) maintain or commence an educational program;

(D) abide by specified restrictions on his personal associations, place of abode, or travel;

(E) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(F) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(G) comply with a specified curfew;

(H) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(I) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(J) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(K) execute an agreement to forfeit upon failing to appear as required, such designated property, including money, as is reasonably necessary to assure the appearance of the person as required, and post with the court such indicia of ownership of the property or such percentage of the money as the judicial officer may specify;

(L) execute a bail bond with solvent sureties in such amount as is reasonably necessary to assure the appearance of the person as required;

(M) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(N) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

The judicial officer may not impose a financial condition that results in the pretrial detention of the person. The judicial officer may at any time amend his order to impose additional or different conditions of release.

(d) Temporary detention to permit revocation of conditional release, deportation, or exclusion

If the judicial officer determines that—

(1) the person—

(A) is, and was at the time the offense was committed, on—

(i) release pending trial for a felony under Federal, State, or local law;

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

(2) the person may flee or pose a danger to any other person or the community;

he shall order the detention of the person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take the person into custody during that period, the person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B), the person has the burden of proving to the court that he is a citizen of the United States or is lawfully admitted for permanent residence.

(e) Detention

If, after a hearing pursuant to the provisions of subsection (f), the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, he shall order the detention of the person prior to trial. In a case described in [1] (f)(1), a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if the judge finds that—

(1) the person has been convicted of a Federal offense that is described in subsection (f)(1), or of a State or local offense that would have been an offense described in subsection (f)(1) if a circumstance giving rise to Federal jurisdiction had existed;

(2) the offense described in paragraph (1) was committed while the person was on release pending trial for a Federal, State, or local offense; and

(3) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in paragraph (1), whichever is later.

Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), section 1 of the Act of September 15, 1980

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[1] So in original. Probably should be followed by "subsection".

(21 U.S.C. 955a), or an offense under section 924(c) of title 18 of the United States Code.

(f) Detention hearing

The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) will reasonably assure the appearance of the person as required and the safety of any other person and the community in a case—

(1) upon motion of the attorney for the Government, that involves—

(A) a crime of violence;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or section 1 of the Act of September 15, 1980 (21 U.S.C. 955a); or

(D) any felony committed after the person had been convicted of two or more prior offenses described in subparagraphs (A) through (C), or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) if a circumstance giving rise to Federal jurisdiction had existed; or

(2) Upon motion of the attorney for the Government or upon the judicial officer's own motion, that involves—

(A) a serious risk that the person will flee;

(B) a serious risk that the person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of the person may not exceed five days, and a continuance on motion of the attorney for the Government may not exceed three days. During a continuance, the person shall be detained, and the judicial officer, on motion of the attorney for the Government or on his own motion, may order that, while in custody, a person who appears to be a narcotics addict receive a medical examination to determine whether he is an addict. At the hearing, the person has the right to be represented by counsel, and, if he is financially unable to obtain adequate representation, to have counsel appointed for him. The person shall be afforded an opportunity to testify, to present witnesses on his own behalf, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing.

(g) Factors to be considered

The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning—

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a narcotic drug;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including—

(A) his character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, he was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(2)(K) or (c)(2)(L), the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

(h) Contents of release order

In a release order issued pursuant to the provisions of subsection (b) or (c), the judicial officer shall—

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of—

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) the provisions of sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(i) Contents of detention order

In a detention order issued pursuant to the provisions of subsection (e), the judicial officer shall—

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with his counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

(j) Presumption of innocence

Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

(Added Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1976.)

REFERENCES IN TEXT

The Controlled Substances Act, referred to in subsecs. (e) and (f)(1)(C), is title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Controlled Substances Import and Export Act, referred to in subsecs. (e) and (f)(1)(C), is title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285, as amended, which is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under section 951 of Title 21 and Tables.

PRIOR PROVISIONS

A prior section 3142, acts June 25, 1948, ch. 645, 62 Stat. 821; June 22, 1966, Pub. L. 89-465, § 5(c), 80 Stat. 217, which set forth provisions relating to surrender by bail, was repealed in the revision of this chapter by section 203(a) of Pub. L. 98-473.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3041, 3042, 3062, 3143, 3144, 3146, 3148, 3156 of this title; title 28 section 636.

§ 3143. Release or detention of a defendant pending sentence or appeal

(a) Release or detention pending sentence

The judicial officer shall order that a person who has been found guilty of an offense and who is waiting imposition or execution of sentence, be detained, unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released pursuant to section 3142(b) or (c). If the judicial officer makes such a finding, he shall order the release of the person in accordance with the provisions of section 3142(b) or (c).

(b) Release or detention pending appeal by the defendant

The judicial officer shall order that a person who has been found guilty of an offense and sentenced to a term of imprisonment, and who has filed an appeal or a petition for a writ of certiorari, be detained, unless the judicial officer finds—

(1) by clear and convincing evidence that the person is not likely to flee or pose a danger to the safety of any other person or the community if released pursuant to section 3142(b) or (c); and

(2) that the appeal is not for purpose of delay and raises a substantial question of law or fact likely to result in reversal or an order for a new trial.

If the judicial officer makes such findings, he shall order the release of the person in accordance with the provisions of section 3142(b) or (c).

(c) Release or detention pending appeal by the Government

The judicial officer shall treat a defendant in a case in which an appeal has been taken by the United States pursuant to the provisions of section 3731 of this title, in accordance with the provisions of section 3142, unless the defendant is otherwise subject to a release or detention order.

(Added Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1981.)

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 223(f), 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984, this section is amended:

(1) in subsection (a), by adding "other than a person for whom the applicable guideline promulgated pursuant to 28 U.S.C. 994 does not recommend a term of imprisonment," after "sentence,"; and

(2) in subsection (c), by adding the following at the end thereof: "The judge shall treat a defendant in a case in which an appeal has been taken by the United States pursuant to the provisions of section 3742 in accordance with the provisions of—

"(1) subsection (a) if the person has been sentenced to a term of imprisonment; or

"(2) section 3142 if the person has not been sentenced to a term of imprisonment.".

PRIOR PROVISIONS

A prior section 3143, acts June 25, 1948, ch. 645, 62 Stat. 821; June 22, 1966, Pub. L. 89-465, § 5(d), 80 Stat. 217, which related to additional bail, was repealed in the revision of this chapter by section 203(a) of Pub. L. 98-473.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title.

§ 3144. Release or detention of a material witness

If it appears from an affidavit filed by a party that the testimony of a person is material in a criminal proceeding, and if it is shown that it may become impracticable to secure the presence of the person by subpena, a judicial officer may order the arrest of the person and treat the person in accordance with the provisions of section 3142. No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and if further detention is not necessary to prevent a failure of justice. Release of a material witness may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure.

(Added Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1982.)

PRIOR PROVISIONS

A prior section 3144, act June 25, 1948, ch. 645, 62 Stat. 821, which related to cases removed from State courts, was repealed in the revision of this chapter by section 203(a) of Pub. L. 98-473.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title; title 28 section 1821.

§ 3145. Review and appeal of a release or detention order

(a) Review of a release order

If a person is ordered released by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court—

(1) the attorney for the Government may file, with the court having original jurisdiction over the offense, a motion for revocation of the order or amendment of the conditions of release; and

(2) the person may file, with the court having original jurisdiction over the offense, a motion for amendment of the conditions of release.

The motion shall be determined promptly.

(b) Review of a detention order

If a person is ordered detained by a magistrate, or by a person other than a judge of a court having original jurisdiction over the offense and other than a Federal appellate court, the person may file, with the court having original jurisdiction over the offense, a motion for revocation or amendment of the order. The motion shall be determined promptly.

(c) Appeal from a release or detention order

An appeal from a release or detention order, or from a decision denying revocation or amendment of such an order, is governed by the provisions of section 1291 of title 28 and section 3731 of this title. The appeal shall be determined promptly.

(Added Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1982.)

PRIOR PROVISIONS

A prior section 3145, act June 25, 1948, ch. 645, 62 Stat. 821, which provided cross references to the Federal Rules of Criminal Procedure for rules covering parties and witnesses, was repealed in the revision of this chapter by section 203(a) of Pub. L. 98-473.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3154, 3156 of this title.

§ 3146. Penalty for failure to appear

(a) Offense

A person commits an offense if, after having been released pursuant to this chapter—

(1) he knowingly fails to appear before a court as required by the conditions of his release; or

(2) he knowingly fails to surrender for service of sentence pursuant to a court order.

(b) Grading

If the person was released—

(1) in connection with a charge of, or while awaiting sentence, surrender for service of sentence, or appeal or certiorari after conviction, for—

(A) an offense punishable by death, life imprisonment, or imprisonment for a term of fifteen years or more, he shall be fined not more than $25,000 or imprisoned for not more than ten years, or both;

(B) an offense punishable by imprisonment for a term of five or more years, but less than fifteen years, he shall be fined not more than $10,000 or imprisoned for not more than five years, or both;

(C) any other felony, he shall be fined not more than $5,000 or imprisoned for not more than two years, or both; or

(D) a misdemeanor, he shall be fined not more than $2,000 or imprisoned for not more than one year, or both; or

(2) for appearance as a material witness, he shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

A term of imprisonment imposed pursuant to this section shall be consecutive to the sentence of imprisonment for any other offense.

(c) Affirmative defense

It is an affirmative defense to a prosecution under this section that uncontrollable circumstances prevented the person from appearing or surrendering, and that the person did not contribute to the creation of such circumstances in reckless disregard of the requirement that he appear or surrender, and that he appeared or surrendered as soon as such circumstances ceased to exist.

(d) Declaration of forfeiture

If a person fails to appear before a court as required, and the person executed an appearance bond pursuant to section 3142(b) or is subject to the release condition set forth in section 3142(c)(2)(K) or (c)(2)(L), the judicial officer may, regardless of whether the person has been charged with an offense under this section, declare any property designated pursuant to that section to be forfeited to the United States.

(Added Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1982.)

PRIOR PROVISIONS

A prior section 3146, added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 214, and amended Pub. L. 97-291, § 8, Oct. 12, 1982, 96 Stat. 1257, which related to release in noncapital cases prior to trial, was repealed in the revision of this chapter by section 203(a) of Pub. L. 98-473.

Another prior section 3146, act Aug. 20, 1954, ch. 772, § 1, 68 Stat. 747, which prescribed penalties for jumping bail, was eliminated by Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 214, and covered by former sections 3150 and 3151 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title; title 28 section 994; title 42 section 10601.

§ 3147. Penalty for an offense committed while on release

A person convicted of an offense committed while released pursuant to this chapter shall be sentenced, in addition to the sentence prescribed for the offense to—

(1) a term of imprisonment of not less than two years and not more than ten years if the offense is a felony; or

(2) a term of imprisonment of not less than ninety days and not more than one year if the offense is a misdemeanor.

A term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

(Added Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984. 98 Stat. 1983.)

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 223(g), 235(a)(1), Oct. 12, 1984, 98 Stat. 2028, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended:

(1) in paragraph (1), by deleting "not less than two years and"; and

(2) in paragraph (2), by deleting "not less than ninety days and".

PRIOR PROVISIONS

A prior section 3147, added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 215, which related to appeals from conditions of release, was repealed in the revision of this chapter by section 203(a) of Pub. L. 98-473.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3156 of this title; title 28 section 994.

§ 3148. Sanctions for violation of a release condition

(a) Available sanctions

A person who has been released pursuant to the provisions of section 3142, and who has violated a condition of his release, is subject to a revocation of release, an order of detention, and a prosecution for contempt of court.

(b) Revocation of release

The attorney for the Government may initiate a proceeding for revocation of an order of release by filing a motion with the district court. A judicial officer may issue a warrant for the arrest of a person charged with violating a condition of release, and the person shall be brought before a judicial officer in the district in which his arrest was ordered for a proceeding in accordance with this section. To the extent practicable, a person charged with violating the condition of his release that he not commit a Federal, State, or local crime during the period of release shall be brought before the judicial officer who ordered the release and whose order is alleged to have been violated. The judicial officer shall enter an order of revocation and detention if, after a hearing, the judicial officer—

(1) finds that there is—

(A) probable cause to believe that the person has committed a Federal, State, or local crime while on release; or

(B) clear and convincing evidence that the person has violated any other condition of his release; and

(2) finds that—

(A) based on the factors set forth in section 3142(g), there is no condition or combination of conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community; or

(B) the person is unlikely to abide by any condition or combination of conditions of release.

If there is probable cause to believe that, while on release, the person committed a Federal, State, or local felony, a rebuttable presumption arises that no condition or combination of conditions will assure that the person will not pose a danger to the safety of any other person or the community. If the judicial officer finds that there are conditions of release that will assure that the person will not flee or pose a danger to the safety of any other person or the community, and that the person will abide by such conditions, he shall treat the person in accordance with the provisions of section 3142 and may amend the conditions of release accordingly.

(c) Prosecution for contempt

The judge may commence a prosecution for contempt, pursuant to the provisions of section 401, if the person has violated a condition of his release.

(Added Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1983.)

Prior Provisions

A prior section 3148, added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 215, and amended Pub. L. 91-452, title X, § 1002, Oct. 12, 1970, 84 Stat. 952, which related to release in capital cases or after conviction, was repealed in the revision of this chapter by section 203(a) of Pub. L. 98-473.

Section Referred to in Other Sections

This section is referred to in sections 3149, 3156 of this title.

§ 3149. Surrender of an offender by a surety

A person charged with an offense, who is released upon the execution of an appearance bond with a surety, may be arrested by the surety, and if so arrested, shall be delivered promptly to a United States marshal and brought before a judicial officer. The judicial officer shall determine in accordance with the provisions of section 3148(b) whether to revoke the release of the person, and may absolve the surety of responsibility to pay all or part of the bond in accordance with the provisions of Rule 46 of the Federal Rules of Criminal Procedure. The person so committed shall be held in official detention until released pursuant to this chapter or another provision of law.

(Added Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1984.)

Prior Provisions

A prior section 3149, added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 216, which related to release of material witnesses, and repealed in the revision of this chapter by section 203(a) of Pub. L. 98-473.

Section Referred to in Other Sections

This section is referred to in section 3156 of this title; title 28 section 1821.

§ 3150. Applicability to a case removed from a State court

The provisions of this chapter apply to a criminal case removed to a Federal court from a State court.

(Added Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1984.)

Prior Provisions

A prior section 3150, added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 216, which related to penalties for failure to appear, was repealed in the revision of this chapter by section 203(a) of Pub. L. 98-473.

Section Referred to in Other Sections

This section is referred to in section 3156 of this title.

[§§ 3150a, 3151. Repealed. Pub. L. 98-473, title II, § 203(a), Oct. 12, 1984, 98 Stat. 1976]

Section 3150a, added Pub. L. 97-258, § 2(d)(3)(B), Sept. 13, 1982, 96 Stat. 1059, and amended Pub. L. 98-473, title II, § 1410, Oct. 12, 1984, 98 Stat. 2178, related to refund of forfeited bail.

Section 3151, added Pub. L. 89-465, § 3(a), June 22, 1966, 80 Stat. 216, related to contempt power of courts.

§ 3154. Functions and powers relating to pretrial services

Pretrial services functions shall include the following:

(1) Collect, verify, and report to the judicial officer, prior to the pretrial release hearing, information pertaining to the pretrial release of each individual charged with an offense, including information relating to any danger that the release of such person may pose to any other person or the community, and, where appropriate, include a recommendation as to whether such individual should be released or detained and, if release is recommended, recommend appropriate conditions of release.[2]

(2) Review and modify the reports and recommendations specified in paragraph (1) of this section for persons seeking release pursuant to section 3145 of this chapter.

[*See main edition for text of (3) to (12)*]

(As amended Pub. L. 98-473, title II, § 203(b), Oct. 12, 1984, 98 Stat. 1984.)

Amendments

1984—Par. (1). Pub. L. 98-473, § 203(b)(1), which directed the amendment of par. (1), by striking out "and recommend appropriate release conditions for each such person" and inserting in lieu thereof "and, where appropriate, include a recommendation as to whether such individual should be released or detained and, if release is recommended, recommend appropriate conditions of release" was executed by substituting the quoted phrase for "and recommend appropriate release conditions for such individual" as the probable intent of Congress.

Par. (2). Pub. L. 98-473, § 203(b)(2), substituted "section 3145" for "section 3146(e) or section 3147".

§ 3156. Definitions

(a) As used in sections 3141-3150 of this chapter—

(1) The term "judicial officer" means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to detain or release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court of the District of Columbia;

(2) The term "offense" means any criminal offense, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress and is triable in any court established by Act of Congress; and [3]

(3) The term "felony" means an offense punishable by a maximum term of imprisonment of more than one year; and

(4) The term "crime of violence" means—

(A) an offense that has as an element of the offense the use, attempted use, or threatened use of physical force against the person or property of another; or

(B) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

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[2] See 1984 Amendment note below.

[3] So in original. Word "and" probably should not appear.

(b) As used in sections 3152-3155 of this chapter—

(1) the term "judicial officer" means, unless otherwise indicated, any person or court authorized pursuant to section 3041 of this title, or the Federal Rules of Criminal Procedure, to detain or release a person before trial or sentencing or pending appeal in a court of the United States, and

[*See main edition for text of* (2)]

(As amended Pub. L. 98-473, title II, § 203(c), Oct. 12, 1984, 98 Stat. 1985.)

AMENDMENT OF SUBSECTION (b)(2)

Pub. L. 98-473, title II, §§ 223(h), 235(a)(1), Oct. 12, 1984, 98 Stat. 2029, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subsection (b)(2) of this section is amended by deleting "petty offense as defined in section 1(3) of this title" and substituting "Class B or C misdemeanor or an infraction".

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, § 203(c)(1), substituted "3141" for "3146" in the provision preceding par. (1).

Subsec. (a)(1). Pub. L. 98-473, § 203(c)(2), substituted "to detain or release" for "to bail or otherwise release" and struck out "and" after "District of Columbia;".

Subsec. (a)(3), (4). Pub. L. 98-473, § 203(c)(3), (4), added pars. (3) and (4).

Subsec. (b)(1). Pub. L. 98-473, § 203(c)(5), substituted "to detain or release" for "to bail or otherwise release".

CHAPTER 208—SPEEDY TRIAL

§ 3161. Time limits and exclusions

[*See main edition for text of* (a) *to* (g)]

(h) The following periods of delay shall be excluded in computing the time within which an information or an indictment must be filed, or in computing the time within which the trial of any such offense must commence:

[*See main edition for text of* (1) *to* (7)]

(8) [*See main edition for text of* (A) *and* (B)]

(C) No continuance under subparagraph (A) of this paragraph shall be granted because of general congestion of the court's calendar, or lack of diligent preparation or failure to obtain available witnesses on the part of the attorney for the Government.

(9) Any period of delay, not to exceed one year, ordered by a district court upon an application of a party and a finding by a preponderance of the evidence that an official request, as defined in section 3292 of this title, has been made for evidence of any such offense and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

[*See main edition for text of* (i) *and* (j)]

(As amended Pub. L. 98-473, title II, § 1219, Oct. 12, 1984, 98 Stat. 2167.)

AMENDMENTS

1984—Subsec. (h)(8)(C). Pub. L. 98-473, § 1219(1), substituted "subparagraph (A) of this paragraph" for "paragraph (8)(A) of this subsection".

Subsec. (h)(9). Pub. L. 98-473, § 1219(2), added par. (9).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective 30 days after Oct. 12, 1984, see section 1220 of Pub. L. 98-473, set out as an Effective Date note under section 3505 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3162, 3163, 3164, 3165, 3166, 3167, 3174 of this title.

§ 3172. Definitions

AMENDMENT OF PARAGRAPH (2)

Pub. L. 98-473, title II, §§ 223(i), 235(a)(1), Oct. 12, 1984, 98 Stat. 2029, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), paragraph (2) of this section is amended by deleting "petty offense as defined in section 1(3) of this title" and substituting "Class B or C misdemeanor or an infraction".

CHAPTER 209—EXTRADITION

§ 3181. Scope and limitation of chapter

TREATIES OF EXTRADITION

The United States has entered into the following bilateral treaties of extradition with the following countries:

Country	Date signed	Entered into force	Citation
Albania	Mar. 1, 1933	Nov. 14, 1935	49 Stat. 3313.
Antigua and Barbuda.	June 8, 1972	Jan. 21, 1977	28 UST 227.
Argentina	Jan. 21, 1972	Sept. 15, 1972	23 UST 3501.
Australia	May 14, 1974	May 8, 1976	27 UST 957.
Austria	Jan. 31, 1930	Sept. 11, 1930	46 Stat. 2779.
	May 19, 1934	Sept. 5, 1934	49 Stat. 2710.
Bahamas	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
		Aug. 17, 1978	30 UST 187.
Barbados	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Belgium	Oct. 26, 1901	July 14, 1902	32 Stat. 1894.
	June 20, 1935	Nov. 7, 1935	49 Stat. 3276.
	Nov. 14, 1963	Dec. 25, 1964	15 UST 2252.
Belize	June 8, 1972	Jan. 21, 1977	28 UST 227.
Bolivia	Apr. 21, 1900	Jan. 22, 1902	32 Stat. 1857.
Brazil	Jan. 13, 1961	Dec. 17, 1964	15 UST 2093.
	June 18, 1962	Dec. 17, 1964	15 UST 2112.
Bulgaria	Mar. 19, 1924	June 24, 1924	43 Stat. 1886.
	June 8, 1934	Aug. 15, 1935	49 Stat. 3250.
Burma	Dec. 22, 1931	Nov. 1, 1941	47 Stat. 2122.
Canada	Dec. 3, 1971	Mar. 22, 1976	27 UST 983.
	June 28, July 9, 1974.	Mar. 22, 1976	27 UST 1017.
Chile	Apr. 17, 1900	June 26, 1902	32 Stat. 1850.
Colombia	Sept. 14, 1979	Mar. 4, 1982	
Congo	Jan. 6, 1909	July 27, 1911	37 Stat. 1526.
	Jan. 15, 1929	May 19, 1929	46 Stat. 2276.
	Apr. 23, 1936	Sept. 24, 1936	50 Stat. 1117.
		Aug. 5, 1961	13 UST 2065.
Costa Rica	Nov. 10, 1922	Apr. 27, 1923	43 Stat. 1621.
Cuba	Apr. 6, 1904	Mar. 2, 1905	33 Stat. 2265.
	Dec. 6, 1904	Mar. 2, 1905	33 Stat. 2273.
	Jan. 14, 1926	June 18, 1926	44 Stat. 2392.
Cyprus	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Czechoslovakia.	July 2, 1925	Mar. 29, 1926	44 Stat. 2367.
	Apr. 29, 1935	Aug. 28, 1935	49 Stat. 3253.
Denmark	June 22, 1972	July 31, 1974	25 UST 1293.
Dominica	June 8, 1972	Jan. 21, 1977	28 UST 227.
Dominican Republic.	June 19, 1909	Aug. 2, 1910	36 Stat. 2468.

Country	Date signed	Entered into force	Citation
Ecuador	June 28, 1872	Nov. 12, 1873	18 Stat. 199.
	Sept. 22, 1939	May 29, 1941	55 Stat. 1196.
Egypt	Aug. 11, 1874	Apr. 22, 1875	19 Stat. 572.
El Salvador	Apr. 18, 1911	July 10, 1911	37 Stat. 1516.
Estonia	Nov. 8, 1923	Nov. 15, 1924	43 Stat. 1849.
	Oct. 10, 1934	May 7, 1935	49 Stat. 3190.
Fiji	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	....	Aug. 17, 1973	24 UST 1965.
Finland	June 11, 1976	May 11, 1980	31 UST 944.
France	Jan. 6, 1909	July 27, 1911	37 Stat. 1526.
	Feb. 12, 1970	Apr. 3, 1971	22 UST 407.
Gambia	Dec. 22, 19[illegible]	June 24, 1935	47 Stat. 2122.
Germany, Federal Republic of.	June 20, 1978	Aug. 29, 1980	32 UST 1485.
Ghana	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Greece	May 6, 1931	Nov. 1, 1932	47 Stat. 2185.
	Sept. 2, 1937	Sept. 2, 1937	51 Stat. 357.
Grenada	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Guatemala	Feb. 27, 1903	Aug. 15, 1903	33 Stat. 2147.
	Feb. 20, 1940	Mar. 13, 1941	55 Stat. 1097.
Guyana	Dec 22, 1931	June 24, 1935	47 Stat. 2122.
Haiti	Aug. 9, 1904	June 28, 1905	34 Stat. 2858.
Honduras	Jan. 15, 1909	July 10, 1912	37 Stat. 1616.
	Feb. 21, 1927	June 5, 1928	45 Stat. 2489.
Hungary	July 3, 1856	Dec. 13, 1856	11 Stat. 691.
Iceland	Jan. 6, 1902	....	32 Stat. 1096.
	Nov. 6, 1905	Feb. 19, 1906	34 Stat. 2887.
India	Dec. 22, 1931	Mar. 9, 1942	47 Stat. 2122.
Iraq	June 7, 1934	Apr. 23, 1936	49 Stat. 3380.
Ireland	July 13, 1983	Dec. 15, 1984	....
Israel	Dec. 10, 1962	Dec. 5, 1963	14 UST 1707.
	....	Apr. 11, 1967	18 UST 382.
Italy	Oct. 13, 1983	Sept. 24, 1984	....
Jamaica	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Japan	Mar. 3, 1978	Mar. 26, 1980	31 UST 892.
Kenya	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	....	Aug. 19, 1965	16 UST 1866.
Kiribati	June 8, 1972	Jan. 21, 1977	28 UST 227.
Latvia	Oct. 16, 1923	Mar. 1, 1924	43 Stat. 1738.
	Oct. 10, 1934	Mar. 29, 1935	49 Stat. 3131.
Lesotho	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Liberia	Nov. 1, 1937	Nov. 21, 1939	54 Stat. 1733.
Liechtenstein.	May 20, 1936	June 28, 1937	50 Stat. 1337.
Lithuania	Apr. 9, 1924	Aug. 23, 1924	43 Stat. 1835.
	May 17, 1934	Jan. 8, 1935	49 Stat. 3077.
Luxembourg	Oct. 29, 1883	Aug. 13, 1884	23 Stat. 808.
	Apr. 24, 1935	Mar. 3, 1936	49 Stat. 3355.
Malawi	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	....	Apr. 4, 1967	18 UST 1822.
Malaysia	Dec. 22, 1931	July 31, 1939	47 Stat. 2122.
Malta	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Mauritius	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Mexico	May 4, 1978	Jan. 25, 1980	31 USt 5059.
Monaco	Feb. 15, 1939	Mar. 28, 1940	54 Stat. 1780.
Nauru	Dec. 22, 1931	Aug. 30, 1935	47 Stat. 2122.
Netherlands	June 24, 1980	Sept. 15, 1983	TIAS 10733.
New Zealand.	Jan. 12, 1970	Dec. 8, 1970	22 UST 1.
Nicaragua	Mar. 1, 1905	July 14, 1907	35 Stat. 1869.
Nigeria	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Norway	June 9, 1977	Mar. 7, 1980	31 UST 5619.
Pakistan	Dec. 22, 1931	Mar. 9, 1942	47 Stat. 2122.
Panama	May 25, 1904	May 8, 1905	34 Stat. 2851.
Papua New Guinea.	Dec. 22, 1931	Aug. 30, 1935	47 Stat. 2122.
Paraguay	May 24, 1973	May 7, 1974	25 UST 967.
Peru	Nov. 28, 1899	Feb. 22, 1901	31 Stat. 1921.
Poland	Nov. 22, 1927	July 6, 1929	46 Stat. 2282.
	Apr. 5, 1935	June 5, 1936	49 Stat. 3394.
Portugal	May 7, 1908	Nov. 14, 1908	35 Stat. 2071.
Romania	July 23, 1924	Apr. 7, 1925	44 Stat. 2020.
	Nov. 10, 1936	July 27, 1937	50 Stat. 1349.
Saint Christopher and Nevis.	June 8, 1972	Jan. 21, 1977	28 UST 227.
Saint Lucia	June 8, 1972	Jan. 21, 1977	28 UST 227.
Saint Vincent and the Grenadines.	June 8, 1972	Jan. 21, 1977	28 UST 227.
San Marino	Jan. 10, 1906	July 8, 1908	35 Stat. 1971.
	Oct. 10, 1934	June 28, 1935	49 Stat. 3198.
Seychelles	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Sierra Leone.	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Singapore	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	....	June 10, 1969	20 UST 2764.
Solomon Islands.	June 8, 1972	Jan. 21, 1977	28 UST 277.
South Africa.	Dec. 18, 1947	Apr. 30, 1951	2 UST 884.
Spain	May 29, 1970	June 16, 1971	22 UST 737.
	Jan. 25, 1975	June 2, 1978	29 UST 2283.
Sri Lanka	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Surinam	June 2, 1887	July 11, 1889	26 Stat. 1481.
	Jan. 18, 1904	Aug. 28, 1904	33 Stat. 2257.
Swaziland	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	....	July 28, 1970	21 UST 1930.
Sweden	Oct. 24, 1961	Dec. 3, 1963	14 UST 1845.
	Mar. 14, 1983	Sept. 24, 1984	....
Switzerland	May 14, 1900	Mar. 29, 1901	31 Stat. 1928.
	Jan. 10, 1935	May 16, 1935	49 Stat. 3192.
	Jan. 31, 1940	Apr. 8, 1941	55 Stat. 1140.
Tanzania	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
	....	Dec. 6, 1965	16 UST 2066.
Thailand	Dec. 30, 1922	Mar. 24, 1924	43 Stat. 1749.
Tonga	Dec. 22, 1931	Aug. 1, 1966	47 Stat. 2122.
	....	Apr. 13, 1977	28 UST 5290.
Trinidad and Tobago.	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.
Turkey	June 7, 1979	Jan 1, 1981	TIAS 9891.
Tuvalu	June 8, 1972	Jan. 21, 1977	28 UST 227.
	....	Apr. 25, 1980	32 UST 1310.
United Kingdom.	June 8, 1972	Jan. 21, 1977	28 UST 227.
Uruguay	Apr. 6, 1973	Apr. 11, 1984	....
Venezuela	Jan. 19, 21, 1922.	Apr. 14, 1923	43 Stat. 1698.
Yugoslavia	Oct. 25, 1901	June 12, 1902	32 Stat. 1890.
Zambia	Dec. 22, 1931	June 24, 1935	47 Stat. 2122.

CHAPTER 211—JURISDICTION AND VENUE

Sec.

[3239. Repealed.]

Amendments

1984—Pub. L. 98-473, title II, § 1204(b), Oct. 12, 1984, 98 Stat. 2152, struck out item 3239 "Threatening communications".

§ 3237. Offenses begun in one district and completed in another

(a) Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.

(b) Notwithstanding subsection (a), where an offense is described in section 7203 of the Internal Revenue Code of 1954, or where venue for prosecution of an offense described in section 7201 or 7206(1), (2), or (5) of such Code (whether or not the offense is also described in another provision of law) is based solely on a mailing to the Internal Revenue Service, and prosecution is begun in a judicial district other than the judicial district in which the defendant resides, he may upon motion filed in the district in which the prosecution is begun, elect to be tried in the district in which he was residing at the time the alleged offense was committed: *Provided*, That the motion is filed within twenty days after arraignment of the defendant upon indictment or information.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 162, 98 Stat. 697; Oct. 12, 1984, Pub. L. 98-473, title II, § 1204(a), 98 Stat. 2152.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473 in second par. added "or the importation of an object or person into the United States" and ", or imported object or person".

Subsec. (b). Pub. L. 98-369 substituted "venue for prosecution of an offense" for "an offense involves use of the mails and is an offense" and added "is based solely on a mailing to the Internal Revenue Service".

[§ 3239. Repealed. Pub. L. 98-473, title II, § 1204(b), Oct. 12, 1984, 98 Stat. 2152]

Section, act June 25, 1948, ch. 645, 62 Stat. 827, related to threatening communications.

§ 3244. Jurisdiction of proceedings relating to transferred offenders

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

CHAPTER 213—LIMITATIONS

Sec.
3292. Suspension of limitations to permit United States to obtain foreign evidence.

AMENDMENTS

1984—Pub. L. 98-473, title II, § 1218(b), Oct. 12, 1984, 98 Stat. 2167, added item 3292.

§ 3284. Concealment of bankrupt's assets

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

§ 3292. Suspension of limitations to permit United States to obtain foreign evidence

(a)(1) Upon application of the United States, filed before return of an indictment, indicating that evidence of an offense is in a foreign country, the district court before which a grand jury is impaneled to investigate the offense shall suspend the running of the statute of limitations for the offense if the court finds by a preponderance of the evidence that an official request has been made for such evidence and that it reasonably appears, or reasonably appeared at the time the request was made, that such evidence is, or was, in such foreign country.

(2) The court shall rule upon such application not later than thirty days after the filing of the application.

(b) Except as provided in subsection (c) of this section, a period of suspension under this section shall begin on the date on which the official request is made and end on the date on which the foreign court or authority takes final action on the request.

(c) The total of all periods of suspension under this section with respect to an offense—

(1) shall not exceed three years; and

(2) shall not extend a period within which a criminal case must be initiated for more than six months if all foreign authorities take final action before such period would expire without regard to this section.

(d) As used in this section, the term "official request" means a letter rogatory, a request under a treaty or convention, or any other request for evidence made by a court of the United States or an authority of the United States having criminal law enforcement responsibility, to a court or other authority of a foreign country.

(Added Pub. L. 98-473, title II, § 1218(a), Oct. 12, 1984, 98 Stat. 2167.)

EFFECTIVE DATE

Section effective 30 days after Oct. 12, 1984, see section 1220 of Pub. L. 98-473, set out as a note under section 3505 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3161 of this title.

CHAPTER 219—TRIAL BY UNITED STATES MAGISTRATES

§ 3401. Misdemeanors; application of probation laws

REPEAL OF SUBSECTION (g); AMENDMENT OF SUBSECTION (h)

Pub. L. 98-473, title II, §§ 223(j), 235(a)(1), Oct. 12, 1984, 98 Stat. 2029, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended:

(1) by repealing subsection (g) and redesignating (h) to (g); and

(2) in subsection (h)[1]*, by deleting "petty offense case" and substituting "Class B or C misdemeanor case, or infraction case,".*

REFERENCES IN TEXT

Chapter 402 of this title, referred to in subsec. (g), was repealed by Pub. L. 98-473, title II, § 218(a)(8), Oct. 12, 1984, 98 Stat. 2027.

CHAPTER 223—WITNESSES AND EVIDENCE

Sec.
3505. Foreign records of regularly conducted activity.
3506. Service of papers filed in opposition to official request by United States to foreign government for criminal evidence.
3507. Special master at foreign deposition.

AMENDMENTS

1984—Pub. L. 98-473, title II, § 1217(b), Oct. 12, 1984, 98 Stat. 2166, added items 3505, 3506, and 3507.

PROTECTED FACILITIES FOR HOUSING GOVERNMENT WITNESSES

Pub. L. 91-452, title V, §§ 501-504, Oct. 15, 1970, 84 Stat. 933, which authorized the Attorney General to provide for the security of Government witnesses and the families of Government witnesses in legal proceedings against any person alleged to have participated in an organized criminal activity, was repealed by Pub. L. 98-473, title II, § 1209(b), Oct. 12, 1984, 98 Stat. 2163, effective Oct. 1, 1984.

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[1] So in original. Probably should be "(g)".

§ 3505. Foreign records of regularly conducted activity

(a)(1) In a criminal proceeding in a court of the United States, a foreign record of regularly conducted activity, or a copy of such record, shall not be excluded as evidence by the hearsay rule if a foreign certification attests that—

(A) such record was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters;

(B) such record was kept in the course of a regularly conducted business activity;

(C) the business activity made such a record as a regular practice; and

(D) if such record is not the original, such record is a duplicate of the original;

unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.

(2) A foreign certification under this section shall authenticate such record or duplicate.

(b) At the arraignment or as soon after the arraignment as practicable, a party intending to offer in evidence under this section a foreign record of regularly conducted activity shall provide written notice of that intention to each other party. A motion opposing admission in evidence of such record shall be made by the opposing party and determined by the court before trial. Failure by a party to file such motion before trial shall constitute a waiver of objection to such record or duplicate, but the court for cause shown may grant relief from the waiver.

(c) As used in this section, the term—

(1) "foreign record of regularly conducted activity" means a memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, maintained in a foreign country;

(2) "foreign certification" means a written declaration made and signed in a foreign country by the custodian of a foreign record of regularly conducted activity or another qualified person that, if falsely made, would subject the maker to criminal penalty under the laws of that country; and

(3) "business" includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(Added Pub. L. 98-473, title II, § 1217(a), Oct. 12, 1984, 98 Stat. 2165.)

Effective Date

Section 1220 of part K (§§ 1217-1220) of chapter XII of title II of Pub. L. 98-473 provided that: "This part and the amendments made by this part [enacting sections 3292, 3505, 3506, and 3507 of this title and amending section 3161 of this title] shall take effect thirty days after the date of the enactment of this Act [Oct. 12, 1984]."

§ 3506. Service of papers filed in opposition to official request by United States to foreign government for criminal evidence

(a) Except as provided in subsection (b) of this section, any national or resident of the United States who submits, or causes to be submitted, a pleading or other document to a court or other authority in a foreign country in opposition to an official request for evidence of an offense shall serve such pleading or other document on the Attorney General at the time such pleading or other document is submitted.

(b) Any person who is a party to a criminal proceeding in a court of the United States who submits, or causes to be submitted, a pleading or other document to a court or other authority in a foreign country in opposition to an official request for evidence of an offense that is a subject of such proceeding shall serve such pleading or other document on the appropriate attorney for the Government, pursuant to the Federal Rules of Criminal Procedure, at the time such pleading or other document is submitted.

(c) As used in this section, the term "official request" means a letter rogatory, a request under a treaty or convention, or any other request for evidence made by a court of the United States or an authority of the United States having criminal law enforcement responsibility, to a court or other authority of a foreign country.

(Added Pub. L. 98-473, title II, § 1217(a), Oct. 12, 1984, 98 Stat. 2166.)

Effective Date

Section effective 30 days after Oct. 12, 1984, see section 1220 of Pub. L. 98-473, set out as a note under section 3505 of this title.

§ 3507. Special master at foreign deposition

Upon application of a party to a criminal case, a United States district court before which the case is pending may, to the extent permitted by a foreign country, appoint a special master to carry out at a deposition taken in that country such duties as the court may direct, including presiding at the deposition or serving as an advisor on questions of United States law. Notwithstanding any other provision of law, a special master appointed under this section shall not decide questions of privilege under foreign law. The refusal of a court to appoint a special master under this section, or of the foreign country to permit a special master appointed under this section to carry out a duty at a deposition in that country, shall not affect the admissibility in evidence of a deposition taken under the provisions of the Federal Rules of Criminal Procedure.

(Added Pub. L. 98-473, title II, § 1217(a), Oct. 12, 1984, 98 Stat. 2166.)

Effective Date

Section effective 30 days after Oct. 12, 1984, see section 1220 of Pub. L. 98-473, set out as a note under section 3505 of this title.

CHAPTER 224—PROTECTION OF WITNESSES

Sec.
3521. Witness relocation and protection.
3522. Probationers and parolees.
3523. Civil judgments.
3524. Child custody arrangements.
3525. Victims Compensation Fund.
3526. Cooperation of other Federal agencies and State governments.[1]
3527. Additional authority of Attorney General.
3528. Definition.

§ 3521. Witness relocation and protection

(a)(1) The Attorney General may provide for the relocation and other protection of a witness or a potential witness for the Federal Government or for a State government in an official proceeding concerning an organized criminal activity or other serious offense, if the Attorney General determines that an offense involving a crime of violence directed at the witness with respect to that proceeding, an offense set forth in chapter 73 of this title directed at the witness, or a State offense that is similar in nature to either such offense, is likely to be committed. The Attorney General may also provide for the relocation and other protection of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered on account of the participation of the witness in the judicial proceeding.

(2) The Attorney General shall issue guidelines defining the types of cases for which the exercise of the authority of the Attorney General contained in paragraph (1) would be appropriate.

(3) The United States and its officers and employees shall not be subject to any civil liability on account of any decision to provide or not to provide protection under this chapter.

(b)(1) In connection with the protection under this chapter of a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness, the Attorney General shall take such action as the Attorney General determines to be necessary to protect the person involved from bodily injury and otherwise to assure the health, safety, and welfare of that person, including the psychological well-being and social adjustment of that person, for as long as, in the judgment of the Attorney General, the danger to that person exists. The Attorney General may, by regulation—

(A) provide suitable documents to enable the person to establish a new identity or otherwise protect the person;

(B) provide housing for the person;

(C) provide for the transportation of household furniture and other personal property to a new residence of the person;

(D) provide to the person a payment to meet basic living expenses, in a sum established in accordance with regulations issued by the Attorney General, for such times as the Attorney General determines to be warranted;

(E) assist the person in obtaining employment;

(F) provide other services necessary to assist the person in becoming self-sustaining;

(G) disclose or refuse to disclose the identity or location of the person relocated or protected, or any other matter concerning the person or the program after weighing the danger such a disclosure would pose to the person, the detriment it would cause to the general effectiveness of the program, and the benefit it would afford to the public or to the person seeking the disclosure, except that the Attorney General shall, upon the request of State or local law enforcement officials or pursuant to a court order, without undue delay, disclose to such officials the identity, location, criminal records, and fingerprints relating to the person relocated or protected when the Attorney General knows or the request indicates that the person is under investigation for or has been arrested for or charged with an offense that is punishable by more than one year in prison or that is a crime of violence; and

(H) exempt procurement for services, materials, and supplies, and the renovation and construction of safe sites within existing buildings from other provisions of law as may be required to maintain the security of protective witnesses and the integrity of the Witness Security Program.

The Attorney General shall establish an accurate, efficient, and effective system of records concerning the criminal history of persons provided protection under this chapter in order to provide the information described in subparagraph.[2]

(2) Deductions shall be made from any payment made to a person pursuant to paragraph (1)(D) to satisfy obligations of that person for family support payments pursuant to a State court order.

(3) Any person who, without the authorization of the Attorney General, knowingly discloses any information received from the Attorney General under paragraph (1)(G) shall be fined $5,000 or imprisoned five years, or both.

(c) Before providing protection to any person under this chapter, the Attorney General shall, to the extent practicable, obtain information relating to the suitability of the person for inclusion in the program, including the criminal history, if any, and a psychological evaluation of, the person. The Attorney General shall also make a written assessment in each case of the seriousness of the investigation or case in which the person's information or testimony has been or will be provided and the possible risk of danger to other persons and property in the community where the person is to be relocated and shall determine whether the need for that person's testimony outweighs the risk of danger to the public. In assessing whether a person should be provided protection under this chapter, the Attorney General shall consider the person's criminal record, alternatives to providing protection under this chapter, the possibility of securing similar testimony from other sources, the need for protecting the person, the relative importance of the person's testimony, results of psychological examinations, whether providing such protection will substantially infringe upon the relationship between a child who would be relocated in connection with such protection and that child's parent who would not be so relocated, and such other factors as the Attorney General considers appropriate. The Attorney General shall not provide protection to any person under this chapter if the risk of danger to the public, including the potential harm to innocent victims, outweighs the need for that person's testimony. This subsection shall not be construed to authorize the disclosure of the written assessment made pursuant to this subsection.

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[1] So in original. Does not conform to section catchline.

[2] So in original. Probably should be "subparagraph (G)".

(d)(1) Before providing protection to any person under this chapter, the Attorney General shall enter into a memorandum of understanding with that person. Each such memorandum of understanding shall set forth the responsibilities of that person, including—

(A) the agreement of the person, if a witness or potential witness, to testify in and provide information to all appropriate law enforcement officials concerning all appropriate proceedings;

(B) the agreement of the person not to commit any crime;

(C) the agreement of the person to take all necessary steps to avoid detection by others of the facts concerning the protection provided to that person under this chapter;

(D) the agreement of the person to comply with legal obligations and civil judgments against that person;

(E) the agreement of the person to cooperate with all reasonable requests of officers and employees of the Government who are providing protection under this chapter;

(F) the agreement of the person to designate another person to act as agent for the service of process;

(G) the agreement of the person to make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation;

(H) the agreement of the person to disclose any probation or parole responsibilities, and if the person is on probation or parole under State law, to consent to Federal supervision in accordance with section 3522 of this title; and

(I) the agreement of the person to regularly inform the appropriate program official of the activities and current address of such person.

Each such memorandum of understanding shall also set forth the protection which the Attorney General has determined will be provided to the person under this chapter, and the procedures to be followed in the case of a breach of the memorandum of understanding, as such procedures are established by the Attorney General. Such procedures shall include a procedure for filing and resolution of grievances of persons provided protection under this chapter regarding the administration of the program. This procedure shall include the opportunity for resolution of a grievance by a person who was not involved in the case.

(2) The Attorney General shall enter into a separate memorandum of understanding pursuant to this subsection with each person protected under this chapter who is eighteen years of age or older. The memorandum of understanding shall be signed by the Attorney General and the person protected.

(3) The Attorney General may delegate the responsibility initially to authorize protection under this chapter only to the Deputy Attorney General, to the Associate Attorney General, to the Assistant Attorney General in charge of the Criminal Division of the Department of Justice, to the Assistant Attorney General in charge of [1] Civil Rights Division of the Department of Justice (insofar as the delegation relates to a criminal civil rights case), and to one other officer or employee of the Department of Justice.

(e) If the Attorney General determines that harm to a person for whom protection may be provided under section 3521 of this title is imminent or that failure to provide immediate protection would otherwise seriously jeopardize an ongoing investigation, the Attorney General may provide temporary protection to such person under this chapter before making the written assessment and determination required by subsection (c) of this section or entering into the memorandum of understanding required by subsection (d) of this section. In such a case the Attorney General shall make such assessment and determination and enter into such memorandum of understanding without undue delay after the protection is initiated.

(f) The Attorney General may terminate the protection provided under this chapter to any person who substantially breaches the memorandum of understanding entered into between the Attorney General and that person pursuant to subsection (d), or who provides false information concerning the memorandum of understanding or the circumstances pursuant to which the person was provided protection under this chapter, including information with respect to the nature and circumstances concerning child custody and visitation. Before terminating such protection, the Attorney General shall send notice to the person involved of the termination of the protection provided under this chapter and the reasons for the termination. The decision of the Attorney General to terminate such protection shall not be subject to judicial review.

(Added Pub. L. 98-473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2153.)

EFFECTIVE DATE

Section 1210 of subpart A (§§ 1207-1210) of part F of chapter XII of title II of Pub. L. 98-473 provided that: "This subpart and the amendments made by this subpart [enacting this chapter, repealing provisions set out as a note preceding section 3481 of this title, and enacting provisions set out as a note under this section] shall take effect on October 1, 1984."

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[1] So in original. Probably should be followed by "the".

SHORT TITLE

Section 1207 of subpart A (§§ 1207-1210) of part F of chapter XII of title II of Pub. L. 98-473 provided that: "This subpart [enacting this chapter, repealing provisions set out as a note preceding section 3481 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Witness Security Reform Act of 1984'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3522 of this title.

§ 3522. Probationers and parolees

(a) A probation officer may, upon the request of the Attorney General, supervise any person provided protection under this chapter who is on probation or parole under State law, if the State involved consents to such supervision. Any person so supervised shall be under Federal jurisdiction during the period of supervision and shall, during that period be subject to all laws of the United States which pertain to parolees.

(b) The failure by any person provided protection under this chapter who is supervised under subsection (a) to comply with the memorandum of understanding entered into by that person pursuant to section 3521(d) of this title shall be grounds for the revocation of probation or parole, as the case may be.

(c) The United States Parole Commission and the Chairman of the Commission shall have the same powers and duties with respect to a probationer or parolee transferred from State supervision pursuant to this section as they have with respect to an offender convicted in a court of the United States and paroled under chapter 311 of this title. The provisions of sections 4201 through 4204, 4205(a), (e), and (h), 4206 through 4216, and 4218 of this title shall apply following a revocation of probation or parole under this section.

(d) If a person provided protection under this chapter who is on probation or parole and is supervised under subsection (a) of this section has been ordered by the State court which imposed sentence on the person to pay a sum of money to the victim of the offense involved for damage caused by the offense, that penalty or award of damages may be enforced as though it were a civil judgment rendered by a United States district court. Proceedings to collect the moneys ordered to be paid may be instituted by the Attorney General in any United States district court. Moneys recovered pursuant to such proceedings shall be distributed to the victim.

(Added Pub. L. 98-473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2157.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3521 of this title.

§ 3523. Civil judgments

(a) If a person provided protection under this chapter is named as a defendant in a civil cause of action arising prior to or during the period in which the protection is provided, process in the civil proceeding may be served upon that person or an agent designated by that person for that purpose. The Attorney General shall make reasonable efforts to serve a copy of the process upon the person protected at the person's last known address. The Attorney General shall notify the plaintiff in the action whether such process has been served. If a judgment in such action is entered against that person the Attorney General shall determine whether the person has made reasonable efforts to comply with the judgment. The Attorney General shall take appropriate steps to urge the person to comply with the judgment. If the Attorney General determines that the person has not made reasonable efforts to comply with the judgment, the Attorney General may, after considering the danger to the person and upon the request of the person holding the judgment disclose the identity and location of the person to the plaintiff entitled to recovery pursuant to the judgment. Any such disclosure of the identity and location of the person shall be made upon the express condition that further disclosure by the plaintiff of such identity or location may be made only if essential to the plaintiff's efforts to recover under the judgment, and only to such additional persons as is necessary to effect the recovery. Any such disclosure or nondisclosure by the Attorney General shall not subject the United States and its officers or employees to any civil liability.

(b)(1) Any person who holds a judgment entered by a Federal or State court in his or her favor against a person provided protection under this chapter may, upon a decision by the Attorney General to deny disclosure of the current identity and location of such protected person, bring an action against the protected person in the United States district court in the district where the person holding the judgment (hereinafter in this subsection referred to as the "petitioner") resides. Such action shall be brought within one hundred and twenty days after the petitioner requested the Attorney General to disclose the identity and location of the protected person. The complaint in such action shall contain statements that the petitioner holds a valid judgment of a Federal or State court against a person provided protection under this chapter and that the petitioner sought to enforce the judgment by requesting the Attorney General to disclose the identity and location of the protected person.

(2) The petitioner in an action described in paragraph (1) shall notify the Attorney General of the action at the same time the action is brought. The Attorney General shall appear in the action and shall affirm or deny the statements in the complaint that the person against whom the judgment is allegedly held is provided protection under this chapter and that the petitioner requested the Attorney General to disclose the identity and location of the protected person for the purpose of enforcing the judgment.

(3) Upon a determination (A) that the petitioner holds a judgment entered by a Federal or State court and (B) that the Attorney General has declined to disclose to the petitioner the current identity and location of the protected person against whom the judgment was en-

tered, the court shall appoint a guardian to act on behalf of the petitioner to enforce the judgment. The clerk of the court shall forthwith furnish the guardian with a copy of the order of appointment. The Attorney General shall disclose to the guardian the current identity and location of the protected person and any other information necessary to enable the guardian to carry out his or her duties under this subsection.

(4) It is the duty of the guardian to proceed with all reasonable diligence and dispatch to enforce the rights of the petitioner under the judgment. The guardian shall, however, endeavor to carry out such enforcement duties in a manner that maximizes, to the extent practicable, the safety and security of the protected person. In no event shall the guardian disclose the new identity or location of the protected person without the permission of the Attorney General, except that such disclosure may be made to a Federal or State court in order to enforce the judgment. Any good faith disclosure made by the guardian in the performance of his or her duties under this subsection shall not create any civil liability against the United States or any of its officers or employees.

(5) Upon appointment, the guardian shall have the power to perform any act with respect to the judgment which the petitioner could perform, including the initiation of judicial enforcement actions in any Federal or State court or the assignment of such enforcement actions to a third party under applicable Federal or State law. The Federal Rules of Civil Procedure shall apply in any action brought under this subsection to enforce a Federal or State court judgment.

(6) The costs of any action brought under this subsection with respect to a judgment, including any enforcement action described in paragraph (5), and the compensation to be allowed to a guardian appointed in any such action shall be fixed by the court and shall be apportioned among the parties as follows: the petitioner shall be assessed in the amount the petitioner would have paid to collect on the judgment in an action not arising under the provisions of this subsection; the protected person shall be assessed the costs which are normally charged to debtors in similar actions and any other costs which are incurred as a result of an action brought under this subsection. In the event that the costs and compensation to the guardian are not met by the petitioner or by the protected person, the court may, in its discretion, enter judgment against the United States for costs and fees reasonably incurred as a result of the action brought under this subsection.

(7) No officer or employee of the Department of Justice shall in any way impede the efforts of a guardian appointed under this subsection to enforce the judgment with respect to which the guardian was appointed.

(c) The provisions of this section shall not apply to a court order to which section 3524 of this title applies.

(Added Pub. L. 98-473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2157.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(5), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

§ 3524. Child custody arrangements

(a) The Attorney General may not relocate any child in connection with protection provided to a person under this chapter if it appears that a person other than that protected person has legal custody of that child.

(b) Before protection is provided under this chapter to any person (1) who is a parent of a child of whom that person has custody, and (2) who has obligations to another parent of that child with respect to custody or visitation of that child under a court order, the Attorney General shall obtain and examine a copy of such order for the purpose of assuring that compliance with the order can be achieved. If compliance with a visitation order cannot be achieved, the Attorney General may provide protection under this chapter to the person only if the parent being relocated initiates legal action to modify the existing court order under subsection (e)(1) of this section. The parent being relocated must agree in writing before being provided protection to abide by any ensuing court orders issued as a result of an action to modify.

(c) With respect to any person provided protection under this chapter (1) who is the parent of a child who is relocated in connection with such protection and (2) who has obligations to another parent of that child with respect to custody or visitation of that child under a State court order, the Attorney General shall, as soon as practicable after the person and child are so relocated, notify in writing the child's parent who is not so relocated that the child has been provided protection under this chapter. The notification shall also include statements that the rights of the parent not so relocated to visitation or custody, or both, under the court order shall not be infringed by the relocation of the child and the Department of Justice responsibility with respect thereto. The Department of Justice will pay all reasonable costs of transportation and security incurred in insuring that visitation can occur at a secure location as designated by the United States Marshals Service, but in no event shall it be obligated to pay such costs for visitation in excess of thirty days a year, or twelve in number a year. Additional visitation may be paid for, in the discretion of the Attorney General, by the Department of Justice in extraordinary circumstances. In the event that the unrelocated parent pays visitation costs, the Department of Justice may, in the discretion of the Attorney General, extend security arrangements associated with such visitation.

(d)(1) With respect to any person provided protection under this chapter (A) who is the parent of a child who is relocated in connection with such protection and (B) who has obligations to another parent of that child with respect to custody or visitation of that child under a court order, an action to modify that court order may be brought by any party to the court order in the District Court for the District of Columbia or in the district court for the district in which the child's parent resides who has not been relocated in connection with such protection.

(2) With respect to actions brought under paragraph (1), the district courts shall establish a procedure to provide a reasonable opportunity for the parties to the court order to mediate their dispute with respect to the order. The court shall provide a mediator for this purpose. If the dispute is mediated, the court shall issue an order in accordance with the resolution of the dispute.

(3) If, within sixty days after an action is brought under paragraph (1) to modify a court order, the dispute has not been mediated, any party to the court order may request arbitration of the dispute. In the case of such a request, the court shall appoint a master to act as arbitrator, who shall be experienced in domestic relations matters. Rule 53 of the Federal Rules of Civil Procedure shall apply to masters appointed under this paragraph. The court and the master shall, in determining the dispute, give substantial deference to the need for maintaining parent-child relationships, and any order issued by the court shall be in the best interests of the child. In actions to modify a court order brought under this subsection, the court and the master shall apply the law of the State in which the court order was issued or, in the case of the modification of a court order issued by a district court under this section, the law of the State in which the parent resides who was not relocated in connection with the protection provided under this chapter. The costs to the Government of carrying out a court order may be considered in an action brought under this subsection to modify that court order but shall not outweigh the relative interests of the parties themselves and the child.

(4) Until a court order is modified under this subsection, all parties to that court order shall comply with their obligations under that court order subject to the limitations set forth in subsection (c) of this section.

(5) With respect to any person provided protection under this chapter who is the parent of a child who is relocated in connection with such protection, the parent not relocated in connection with such protection may bring an action, in the District Court for the District of Columbia or in the district court for the district in which that parent resides, for violation by that protected person of a court order with respect to custody or visitation of that child. If the court finds that such a violation has occurred, the court may hold in contempt the protected person. Once held in contempt, the protected person shall have a maximum of sixty days, in the discretion of the Attorney General, to comply with the court order. If the protected person fails to comply with the order within the time specified by the Attorney General, the Attorney General shall disclose the new identity and address of the protected person to the other parent and terminate any financial assistance to the protected person unless otherwise directed by the court.

(6) The United States shall be required by the court to pay litigation costs, including reasonable attorneys' fees, incurred by a parent who prevails in enforcing a custody or visitation order; but shall retain the right to recover such costs from the protected person.

(e)(1) In any case in which the Attorney General determines that, as a result of the relocation of a person and a child of whom that person is a parent in connection with protection provided under this chapter, the implementation of a court order with respect to custody or visitation of that child would be substantially impossible, the Attorney General may bring, on behalf of the person provided protection under this chapter, an action to modify the court order. Such action may be brought in the district court for the district in which the parent resides who would not be or was not relocated in connection with the protection provided under this chapter. In an action brought under this paragraph, if the Attorney General establishes, by clear and convincing evidence, that implementation of the court order involved would be substantially impossible, the court may modify the court order but shall, subject to appropriate security considerations, provide an alternative as substantially equivalent to the original rights of the nonrelocating parent as feasible under the circumstances.

(2) With respect to any State court order in effect to which this section applies, and with respect to any district court order in effect which is issued under this section, if the parent who is not relocated in connection with protection provided under this chapter intentionally violates a reasonable security requirement imposed by the Attorney General with respect to the implementation of that court order, the Attorney General may bring an action in the district court for the district in which that parent resides to modify the court order. The court may modify the court order if the court finds such an intentional violation.

(3) The procedures for mediation and arbitration provided under subsection (d) of this section shall not apply to actions for modification brought under this subsection.

(f) In any case in which a person provided protection under this chapter is the parent of a child of whom that person has custody and has obligations to another parent of that child concerning custody and visitation of that child which are not imposed by court order, that person, or the parent not relocated in connection with such protection, may bring an action in the district court of the district in which that parent not relocated resides to obtain an order providing for custody or visitation, or both, of that child. In any such action, all the provisions of subsection (d) of this section shall apply.

(g) In any case in which an action under this section involves court orders from different States with respect to custody or visitation of the same child, the court shall resolve any conflicts by applying the rules of conflict of laws of the State in which the court is sitting.

(h)(1) Subject to paragraph (2), the costs of any action described in subsection (d), (e), or (f) of this section shall be paid by the United States.

(2) The Attorney General shall insure that any State court order in effect to which this section applies and any district court order in effect which is issued under this section are carried out. The Department of Justice shall pay all costs and fees described in subsections (c) and (d) of this section.

(i) As used in this section, the term "parent" includes any person who stands in the place of a parent by law.

(Added Pub. L. 98-473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2159.)

References in Text

The Federal Rules of Civil Procedure, referred to in subsec. (d)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section Referred to in Other Sections

This section is referred to in section 3523 of this title.

§ 3525. Victims Compensation Fund

(a) The Attorney General may pay restitution to, or in the case of death, compensation for the death of any victim of a crime that causes or threatens death or serious bodily injury and that is committed by any person during a period in which that person is provided protection under this chapter.

(b) Not later than four months after the end of each fiscal year, the Attorney General shall transmit to the Congress a detailed report on payments made under this section for such year.

(c) There are authorized to be appropriated for the fiscal year 1985 and for each fiscal year thereafter, $1,000,000 for payments under this section.

(d) The Attorney General shall establish guidelines and procedures for making payments under this section. The payments to victims under this section shall be made for the types of expenses provided for in section 3579(b) of this title, except that in the case of the death of the victim, an amount not to exceed $50,000 may be paid to the victim's estate. No payment may be made under this section to a victim unless the victim has sought restitution and compensation provided under Federal or State law or by civil action. Such payments may be made only to the extent the victim, or the victim's estate, has not otherwise received restitution and compensation, including insurance payments, for the crime involved. Payments may be made under this section to victims of crimes occurring on or after the date of the enactment of this chapter.[1] In the case of a crime occurring before the date of the enactment of this chapter,[1] a payment may be made under this section only in the case of the death of the victim, and then only in an amount not exceeding $25,000, and such a payment may be made notwithstanding the requirements of the third sentence of this subsection.

(e) Nothing in this section shall be construed to create a cause of action against the United States.

(Added Pub. L. 98-473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2162.)

References in Text

The date of the enactment of this chapter, referred to in subsec. (d), is the date of enactment of Pub. L. 98-473, which was approved Oct. 12, 1984.

§ 3526. Cooperation of other Federal agencies and State governments; reimbursement of expenses

(a) Each Federal agency shall cooperate with the Attorney General in carrying out the provisions of this chapter and may provide, on a reimbursable basis, such personnel and services as the Attorney General may request in carrying out those provisions.

(b) In any case in which a State government requests the Attorney General to provide protection to any person under this chapter—

(1) the Attorney General may enter into an agreement with that State government in which that government agrees to reimburse the United States for expenses incurred in providing protection to that person under this chapter; and

(2) the Attorney General shall enter into an agreement with that State government in which that government agrees to cooperate with the Attorney General in carrying out the provisions of this chapter with respect to all persons.

(Added Pub. L. 98-473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2162.)

§ 3527. Additional authority of Attorney General

The Attorney General may enter into such contracts or other agreements as may be necessary to carry out this chapter. Any such contract or agreement which would result in the United States being obligated to make outlays may be entered into only to the extent and in such amount as may be provided in advance in an appropriation Act.

(Added Pub. L. 98-473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2163.)

§ 3528. Definition

For purposes of this chapter, the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(Added Pub. L. 98-473, title II, § 1208, Oct. 12, 1984, 98 Stat. 2163.)

CHAPTER 227—SENTENCES [1]

Subchapter		Sec.[2]
A.	General Provisions	3551
B.	Probation	3561
C.	Fines	3571
D.	Imprisonment	3581

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[1] See References in Text note below.

[1] Another chapter 227 (§§ 3561 to 3580) is set out after this chapter.

[2] Editorially supplied.

PROSPECTIVE EFFECTIVE DATE

Pub. L. 98-473, title II, §§ 212(a)(1), (2), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2031, enacted this chapter 227 (§§ 3551 to 3586) and repealed existing chapter 227 (except sections 3577 to 3580 which were redesignated), effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986). Existing chapter 227 (§§ 3561 to 3580) is set out following this chapter. Section 235 of Pub. L. 98-473, relating to effective dates, is set out as a note under section 3551 of this chapter.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3673, 3742 of this title.

SUBCHAPTER A—GENERAL PROVISIONS

Sec.	
3551.	Authorized sentences.
3552.	Presentence reports.
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SUBCHAPTER A—GENERAL PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3565 of this title.

§ 3551. Authorized sentences

(a) In general

Except as otherwise specifically provided, a defendant who has been found guilty of an offense described in any Federal statute, other than an Act of Congress applicable exclusively in the District of Columbia or the Uniform Code of Military Justice, shall be sentenced in accordance with the provisions of this chapter so as to achieve the purposes set forth in subparagraphs (A) through (D) of section 3553(a)(2) to the extent that they are applicable in light of all the circumstances of the case.

(b) Individuals

An individual found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to—

(1) a term of probation as authorized by subchapter B;

(2) a fine as authorized by subchapter C; or

(3) a term of imprisonment as authorized by subchapter D.

A sentence to pay a fine may be imposed in addition to any other sentence. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

(c) Organizations

An organization found guilty of an offense shall be sentenced, in accordance with the provisions of section 3553, to—

(1) a term of probation as authorized by subchapter B; or

(2) a fine as authorized by subchapter C.

A sentence to pay a fine may be imposed in addition to a sentence to probation. A sanction authorized by section 3554, 3555, or 3556 may be imposed in addition to the sentence required by this subsection.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1988.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding this section.

REFERENCES IN TEXT

Acts of Congress applicable exclusively in the District of Columbia, referred to in subsec. (a), are classified generally to the District of Columbia Code.

The Uniform Code of Military Justice, referred to in subsec. (a), is classified generally to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

EFFECTIVE DATE; SAVINGS PROVISION

Section 235 of chapter II (§§ 211-239) of title II of Pub. L. 98-473 provided that:

"(a)(1) This chapter [see Tables for classification] shall take effect on the first day of the first calendar month beginning twenty-four months after the date of enactment [Oct. 12, 1984], except that—

"(A) the repeal of chapter 402 of title 18, United States Code, shall take effect on the date of enactment [Oct. 12, 1984];

"(B)(i) chapter 58 of title 28, United States Code, shall take effect on the date of enactment of this Act [Oct. 12, 1984] or October 1, 1983, whichever occurs later, and the United States Sentencing Commission shall submit the initial sentencing guidelines promulgated to section 994(a)(1) of title 28 to the Congress within eighteen months of the effective date of the chapter; and

"(ii) the sentencing guidelines promulgated pursuant to section 994(a)(1), and the provisions of sections 3581, 3583, and 3624 of title 18, United States Code, shall not go into effect until the day after—

"(I) the United States Sentencing Commission has submitted the initial set of sentencing guidelines to the Congress pursuant to subparagraph (B)(i), along with a report stating the reasons for the Commission's recommendations;

"(II) the General Accounting Office has undertaken a study of the guidelines, and their potential impact in comparison with the operation of the existing sentencing and parole release system, and has, within one hundred and fifty days of submission of the guidelines, reported to the Congress the results of its study; and

"(III) the Congress has had six months after the date described in subclause (I) in which to examine the guidelines and consider the reports; and

"(IV) the provisions of sections 227 and 228 [amending section 5871 of Title 26, Internal Revenue Code, and sections 509, 591, and 2901 of Title 28, Judiciary and Judicial Procedure] shall take effect on the date of enactment [Oct. 12, 1984].

"(2) For the purposes of section 992(a) of title 28, the terms of the first members of the United States Sentencing Commission shall not begin to run until the sentencing guidelines go into effect pursuant to paragraph (1)(B)(ii).

"(b)(1) The following provisions of law in effect on the day before the effective date of this Act shall remain in effect for five years after the effective date as to an individual convicted of an offense or adjudicated to be a juvenile delinquent before the effective date and as to a term of imprisonment during the period described in subsection (a)(1)(B):

"(A) Chapter 311 of title 18, United States Code.

"(B) Chapter 309 of title 18, United States Code.

"(C) Sections 4251 through 4255 of title 18, United States Code.

"(D) Sections 5041 and 5042 of title 18, United States Code.

"(E) Sections 5017 through 5020 of title 18, United States Code, as to a sentence imposed before the date of enactment [Oct. 12, 1984].

"(F) The maximum term of imprisonment in effect on the effective date for an offense committed before the effective date.

"(G) Any other law relating to a violation of a condition of release or to arrest authority with regard to a person who violates a condition of release.

"(2) Notwithstanding the provisions of section 4202 of title 18, United States Code, as in effect on the day before the effective date of this Act, the term of office of a Commissioner who is in office on the effective date is extended to the end of the five-year period after the effective date of this Act.

"(3) The United States Parole Commission shall set a release date, for an individual who will be in its jurisdiction the day before the expiration of five years after the effective date of this Act, that is within the range that applies to the prisoner under the applicable parole guideline. A release date set pursuant to this paragraph shall be set early enough to permit consideration of an appeal of the release date, in accordance with Parole Commission procedures, before the expiration of five years following the effective date of this Act.

"(4) Notwithstanding the other provisions of this subsection, all laws in effect on the day before the effective date of this Act pertaining to an individual who is—

"(A) released pursuant to a provision listed in paragraph (1); and

"(B)(i) subject to supervision on the day before the expiration of the five-year period following the effective date of this Act; or

"(ii) released on a date set pursuant to paragraph (3);

including laws pertaining to terms and conditions of release, revocation of release, provision of counsel, and payment of transportation costs, shall remain in effect as to the individual until the expiration of his sentence, except that the district court shall determine, in accord with the Federal Rules of Criminal Procedure, whether release should be revoked or the conditions of release amended for violation of a condition of release.

"(5) Notwithstanding the provisions of section 991 of title 28, United States Code, and sections 4351 and 5002 of title 18, United States Code, the Chairman of the United States Parole Commission or his designee shall be a member of the National Institute of Corrections, and the Chairman of the United States Parole Commission shall be a member of the Advisory Corrections Council and a nonvoting member of the United States Sentencing Commission, ex officio, until the expiration of the five-year period following the effective date of this Act. Notwithstanding the provisions of section 4351 of title 18, during the five-year period the National Institute of Corrections shall have seventeen members, including seven ex officio members. Notwithstanding the provisions of section 991 of title 28, during the five-year period the United States Sentencing Commission shall consist of nine members, including two ex officio, nonvoting members."

SHORT TITLE

Section 211 of chapter II (§§ 211-239) of title II of Pub. L. 98-473 provided that: "This chapter [see Tables for classification] may be cited as the 'Sentencing Reform Act of 1984'."

SENTENCING OF NONVIOLENT AND NONSERIOUS OFFENDERS; SENSE OF CONGRESS

Section 239 of Pub. L. 98-473 provided that:

"Since, due to an impending crisis in prison overcrowding, available Federal prison space must be treated as a scarce resource in the sentencing of criminal defendants;

"Since, sentencing decisions should be designed to ensure that prison resources are, first and foremost, reserved for those violent and serious criminal offenders who pose the most dangerous threat to society;

"Since, in cases of nonviolent and nonserious offenders, the interests of society as a whole as well as individual victims of crime can continue to be served through the imposition of alternative sentences, such as restitution and community service;

"Since, in the two years preceding the enactment of sentencing guidelines, Federal sentencing practice should ensure that scarce prison resources are available to house violent and serious criminal offenders by the increased use of restitution, community service, and other alternative sentences in cases of nonviolent and nonserious offenders: Now, therefore, be it

"Declared, That it is the sense of the Senate that in the two years preceding the enactment of the sentencing guidelines, Federal judges, in determining the particular sentence to be imposed, consider—

"(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

"(2) the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant has not been convicted of a crime of violence or otherwise serious offense; and

"(3) the general appropriateness of imposing a sentence of imprisonment in cases in which the defendant has been convicted of a crime of violence or otherwise serious offense."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3554, 3555, 3556, 3557, 3558 of this title.

§ 3552. Presentence reports

(a) Presentence investigation and report by probation officer

A United States probation officer shall make a presentence investigation of a defendant that is required pursuant to the provisions of Rule 32(c) of the Federal Rules of Criminal Procedure, and shall, before the imposition of sentence, report the results of the investigation to the court.

(b) Presentence study and report by Bureau of Prisons

If the court, before or after its receipt of a report specified in subsection (a) or (c), desires more information than is otherwise available to it as a basis for determining the sentence to be imposed on a defendant found guilty of a misdemeanor or felony, it may order a study of the defendant. The study shall be conducted in the local community by qualified consultants unless the sentencing judge finds that there is a compelling reason for the study to be done by the Bureau of Prisons or there are no adequate professional resources available in the local community to perform the study. The period of the study shall take no more than sixty days. The order shall specify the additional information that the court needs before determining the sentence to be imposed. Such an order shall be treated for administrative purposes as a provisional sentence of imprisonment for the maximum term authorized by section 3581(b) for the offense committed. The study shall inquire into such matters as are specified by the court and any other matters that the Bureau of Prisons or the professional consultants believe are pertinent to the factors set forth in section 3553(a). The period of the study may, in the discretion of the court, be extended for an additional period of not more than sixty days. By the expiration of the period of the study, or by the expiration of any extension granted by the court, the United States marshal shall return the defendant to the court for final sentencing. The Bureau of Prisons or the professional consultants shall provide the court with a written report of the pertinent results of the study and make to the court whatever recommendations the Bureau or the consultants believe will be helpful to a proper resolution of the case. The report shall include recommendations of the Bureau or the consultants concerning the guidelines and policy statements, promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994(a), that they believe are applicable to the defendant's case. After receiving the report and the recommendations, the court shall proceed finally to sentence the defendant in accordance with the sentencing alternatives and procedures available under this chapter.

(c) Presentence examination and report by psychiatric or psychological examiners

If the court, before or after its receipt of a report specified in subsection (a) or (b) desires more information than is otherwise available to it as a basis for determining the mental condition of the defendant, it may order that the defendant undergo a psychiatric or psychological examination and that the court be provided with a written report of the results of the examination pursuant to the provisions of section 4247.

(d) Disclosure of presentence reports

The court shall assure that a report filed pursuant to this section is disclosed to the defendant, the counsel for the defendant, and the attorney for the Government at least ten days prior to the date set for sentencing, unless this minimum period is waived by the defendant.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1988.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

§ 3553. Imposition of a sentence

(a) Factors to be considered in imposing a sentence

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines that are issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and that are in effect on the date the defendant is sentenced;

(5) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2) that is in effect on the date the defendant is sentenced; and

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

(b) Application of guidelines in imposing a sentence

The court shall impose a sentence of the kind, and within the range, referred to in subsection (a)(4) unless the court finds that an aggravating or mitigating circumstance exists that was not adequately taken into consideration by the Sentencing Commission in formulating the guidelines and that should result in a sentence different from that described.

(c) Statement of reasons for imposing a sentence

The court, at the time of sentencing, shall state in open court the reasons for its imposition of the particular sentence, and, if the sentence—

(1) is of the kind, and within the range, described in subsection (a)(4), the reason for imposing a sentence at a particular point within the range; or

(2) is not of the kind, or is outside the range, described in subsection (a)(4), the specific reason for the imposition of a sentence different from that described.

If the sentence does not include an order of restitution, the court shall include in the statement the reason therefor. The clerk of the court shall provide a transcription of the court's statement of reasons to the Probation System, and, if the sentence includes a term of imprisonment, to the Bureau of Prisons.

(d) Presentence procedure for an order of notice or restitution

Prior to imposing an order of notice pursuant to section 3555, or an order of restitution pursuant to section 3556, the court shall give notice to the defendant and the Government that it is considering imposing such an order. Upon motion of the defendant or the Government, or on its own motion, the court shall—

(1) permit the defendant and the Government to submit affidavits and written memoranda addressing matters relevant to the imposition of such an order;

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(2) afford counsel an opportunity in open court to address orally the appropriateness of the imposition of such an order; and

(3) include in its statement of reasons pursuant to subsection (c) specific reasons underlying its determinations regarding the nature of such an order.

Upon motion of the defendant or the Government, or on its own motion, the court may in its discretion employ any additional procedures that it concludes will not unduly complicate or prolong the sentencing process.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1989.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3551, 3552, 3555, 3562, 3563, 3564, 3565, 3572, 3582, 3583, 3584, 3742 of this title; title 28 sections 991, 994, 995.

§ 3554. Order of criminal forfeiture

The court, in imposing a sentence on a defendant who has been found guilty of an offense described in section 1962 of this title or in title II or III of the Comprehensive Drug Abuse Prevention and Control Act of 1970 shall order, in addition to the sentence that is imposed pursuant to the provisions of section 3551, that the defendant forfeit property to the United States in accordance with the provisions of section 1963 of this title or section 413 of the Comprehensive Drug Abuse and Control Act of 1970.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1990.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

REFERENCES IN TEXT

The Comprehensive Drug Abuse Prevention and Control Act of 1970, referred to in text, is Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1236, as amended. Title II of this Act, known as the Controlled Substances Act, is classified principally to subchapter I (§ 801 et seq.) of chapter 13 of Title 21, Food and Drugs. Title III of this Act, known as the Controlled Substances Import and Export Act, is classified principally to subchapter II (§ 951 et seq.) of chapter 13 of Title 21. Section 413 of this Act is classified to section 853 of Title 21. For complete classification of this Act to the Code, see Short Title note set out under sections 801 and 951 of Title 21 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3551 of this title; title 28 section 994.

§ 3555. Order of notice to victims

The court, in imposing a sentence on a defendant who has been found guilty of an offense involving fraud or other intentionally deceptive practices, may order, in addition to the sentence that is imposed pursuant to the provisions of section 3551, that the defendant give reasonable notice and explanation of the conviction, in such form as the court may approve, to the victims of the offense. The notice may be ordered to be given by mail, by advertising in designated areas or through designated media, or by other appropriate means. In determining whether to require the defendant to give such notice, the court shall consider the factors set forth in section 3553(a) to the extent that they are applicable and shall consider the cost involved in giving the notice as it relates to the loss caused by the offense, and shall not require the defendant to bear the costs of notice in excess of $20,000.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3551, 3553, 3563 of this title; title 28 section 994.

§ 3556. Order of restitution

The court, in imposing a sentence on a defendant who has been found guilty of an offense under this title, or an offense under section 902(h), (i), (j), or (n) of the Federal Aviation Act of 1958 (49 [1] U.S.C. 1472), may order, in addition to the sentence that is imposed pursuant to the provisions of section 3551, that the defendant make restitution to any victim of the offense in accordance with the provisions of sections 3663 and 3664.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3551, 3553, 3563, 3612, 5037 of this title; title 28 section 994.

§ 3557. Review of a sentence

The review of a sentence imposed pursuant to section 3551 is governed by the provisions of section 3742.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

§ 3558. Implementation of a sentence

The implementation of a sentence imposed pursuant to section 3551 is governed by the provisions of chapter 229.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

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[1] So in original. Probably should be "49 App.".

REFERENCES IN TEXT

Chapter 229, referred to in text, probably means new chapter 229 (§§ 3601 to 3625) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

§ 3559. Sentencing classification of offenses

(a) Classification

An offense that is not specifically classified by a letter grade in the section defining it, is classified—

(1) [2] if the maximum term of imprisonment authorized is—

(A) life imprisonment, or if the maximum penalty is death, as a Class A felony;

(B) twenty years or more, as a Class B felony;

(C) less than twenty years but ten or more years, as a Class C felony;

(D) less than ten years but five or more years, as a Class D felony;

(E) less than five years but more than one year, as a Class E felony;

(F) one year or less but more than six months, as a Class A misdemeanor;

(G) six months or less but more than thirty days, as a Class B misdemeanor;

(H) thirty days or less but more than five days, as a Class C misdemeanor; or

(I) five days or less, or if no imprisonment is authorized, as an infraction.

(b) Effect of classification

An offense classified under subsection (a) carries all the incidents assigned to the applicable letter designation except that:

(1) the maximum fine that may be imposed is the fine authorized by the statute describing the offense, or by this chapter, whichever is the greater; and

(2) the maximum term of imprisonment is the term authorized by the statute describing the offense.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1991.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

SUBCHAPTER B—PROBATION

Sec.

3561. Sentence of probation.
3562. Imposition of a sentence of probation.
3563. Conditions of probation.
3564. Running of a term of probation.
3565. Revocation of probation.
3566. Implementation of a sentence of probation.

SUBCHAPTER B—PROBATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3551, 3601, 3605 of this title.

§ 3561. Sentence of probation

(a) In general

A defendant who has been found guilty of an offense may be sentenced to a term of probation unless—

(1) the offense is a Class A or Class B felony;

(2) the offense is an offense for which probation has been expressly precluded; or

(3) the defendant is sentenced at the same time to a term of imprisonment for the same or a different offense.

The liability of a defendant for any unexecuted fine or other punishment imposed as to which probation is granted shall be fully discharged by the fulfillment of the terms and conditions of probation.

(b) Authorized terms

The authorized terms of probation are—

(1) for a felony, not less than one nor more than five years;

(2) for a misdemeanor, not more than five years; and

(3) for an infraction, not more than one year.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1992.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

CODIFICATION

Another section 3561, effective through Oct. 31, 1986, is set out in chapter 227 following this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5037 of this title.

§ 3562. Imposition of a sentence of probation

(a) Factors to be considered in imposing a term of probation

The court, in determining whether to impose a term of probation, and, if a term of probation is to be imposed, in determining the length of the term and the conditions of probation, shall consider the factors set forth in section 3553(a) to the extent that they are applicable.

(b) Effect of finality of judgment

Notwithstanding the fact that a sentence of probation can subsequently be—

(1) modified or revoked pursuant to the provisions of section 3564 or 3565;

(2) corrected pursuant to the provisions of rule 35 [1] and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1992.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

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[2] So in original. No par. (2) has been enacted.

[1] See References in Text note below.

References in Text

Rule 35, referred to in subsec. (b)(2), probably means rule 35 of the Federal Rules of Criminal Procedure which is set out in the Appendix to this title.

Codification

Another section 3562, effective through Oct. 31, 1986, is set out in chapter 227 following this chapter.

§ 3563. Conditions of probation

(a) Mandatory conditions

The court shall provide, as an explicit condition of a sentence of probation—

(1) for a felony, a misdemeanor, or an infraction, that the defendant not commit another Federal, State, or local crime during the term of probation; and

(2) for a felony, that the defendant also abide by at least one condition set forth in subsection (b)(2), (b)(3), or (b)(13).

If the court has imposed and ordered execution of a fine and placed the defendent [2] on probation, payment of the fine or adherence to the court-established installment schedule shall be a condition of the probation.

(b) Discretionary conditions

The court may provide, as further conditions of a sentence of probation, to the extent that such conditions are reasonably related to the factors set forth in section 3553(a)(1) and (a)(2) and to the extent that such conditions involve only such deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 3553(a)(2), that the defendant—

(1) support his dependents and meet other family responsibilities;

(2) pay a fine imposed pursuant to the provisions of subchapter C;

(3) make restitution to a victim of the offense pursuant to the provisions of section 3556;

(4) give to the victims of the offense the notice ordered pursuant to the provisions of section 3555;

(5) work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip him for suitable employment;

(6) refrain, in the case of an individual, from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the offense, or engage in such a specified occupation, business, or profession only to a stated degree or under stated circumstances;

(7) refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons;

(8) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(9) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(10) undergo available medical, psychiatric, or psychological treatment, including treatment for drug or alcohol dependency, as specified by the court, and remain in a specified institution if required for that purpose;

(11) remain in the custody of the Bureau of Prisons during nights, weekends, or other intervals of time, totaling no more than the lesser of one year or the term of imprisonment authorized for the offense in section 3581(b), during the first year of the term of probation;

(12) reside at, or participate in the program of, a community corrections facility for all or part of the term of probation;

(13) work in community service as directed by the court;

(14) reside in a specified place or area, or refrain from residing in a specified place or area;

(15) remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;

(16) report to a probation officer as directed by the court or the probation officer;

(17) permit a probation officer to visit him at his home or elsewhere as specified by the court;

(18) answer inquiries by a probation officer and notify the probation officer promptly of any change in address or employment;

(19) notify the probation officer promptly if arrested or questioned by a law enforcement officer; or

(20) satisfy such other conditions as the court may impose.

(c) Modifications of conditions

The court may, after a hearing, modify, reduce, or enlarge the conditions of a sentence of probation at any time prior to the expiration or termination of the term of probation, pursuant to the provisions applicable to the initial setting of the conditions of probation.

(d) Written statement of conditions

The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the sentence is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1993.)

Prospective Effective Date

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

Codification

Another section 3563, effective through Oct. 31, 1986, is set out in chapter 227 following this chapter.

Section Referred to in Other Sections

This section is referred to in sections 3583, 3742, 5037 of this title; title 28 section 994.

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[2] So in original. Probably should be "defendant".

§ 3564. Running of a term of probation

(a) Commencement

A term of probation commences on the day that the sentence of probation is imposed, unless otherwise ordered by the court.

(b) Concurrence with other sentences

Multiple terms of probation, whether imposed at the same time or at different times, run concurrently with each other. A term of probation runs concurrently with any Federal, State, or local term of probation, or supervised release, or parole for another offense to which the defendant is subject or becomes subject during the term of probation, except that it does not run during any period in which the defendant is imprisoned for a period of at least thirty consecutive days in connection with a conviction for a Federal, State, or local crime.

(c) Early termination

The court, after considering the factors set forth in section 3553(a) to the extent that they are applicable, may terminate a term of probation previously ordered and discharge the defendant at any time in the case of a misdemeanor or an infraction or at any time after the expiration of one year of probation in the case of a felony, if it is satisfied that such action is warranted by the conduct of the defendant and the interest of justice.

(d) Extension

The court may, after a hearing, extend a term of probation, if less than the maximum authorized term was previously imposed, at any time prior to the expiration or termination of the term of probation, pursuant to the provisions applicable to the initial setting of the term of probation.

(e) Subject to revocation

A sentence of probation remains conditional and subject to revocation until its expiration or termination.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1994.)

Prospective Effective Date

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

Codification

Another section 3564, effective through Oct. 31, 1986, is set out in chapter 227 following this chapter.

Section Referred to in Other Sections

This section is referred to in sections 3562, 5037 of this title; title 28 section 994.

§ 3565. Revocation of probation

(a) Continuation or revocation

If the defendant violates a condition of probation at any time prior to the expiration or termination of the term of probation, the court may, after a hearing pursuant to Rule 32.1 of the Federal Rules of Criminal Procedure, and after considering the factors set forth in section 3553(a) to the extent that they are applicable—

(1) continue him on probation, with or without extending the term of [3] modifying or enlarging the conditions; or

(2) revoke the sentence of probation and impose any other sentence that was available under subchapter A at the time of the initial sentencing.

(b) Delayed revocation

The power of the court to revoke a sentence of probation for violation of a condition of probation, and to impose another sentence, extends beyond the expiration of the term of probation for any period reasonably necessary for the adjudication of matters arising before its expiration if, prior to its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995.)

Prospective Effective Date

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

Codification

Another section 3565, effective through Oct. 31, 1986, is set out in chapter 227 following this chapter.

Section Referred to in Other Sections

This section is referred to in sections 3562, 3607, 5037 of this title; title 28 section 994.

§ 3566. Implementation of a sentence of probation

The implementation of a sentence of probation is governed by the provisions of subchapter A of chapter 229.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995.)

Prospective Effective Date

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

References in Text

Chapter 229, referred to in text, probably means new chapter 229 (§§ 3601 to 3625) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

Codification

Another section 3566, effective through Oct. 31, 1986, is set out in chapter 227 following this chapter.

SUBCHAPTER C—FINES

Sec.
3571. Sentence of fine.
3572. Imposition of a sentence of fine.
3573. Modification or remission of fine.
3574. Implementation of a sentence of fine.

SUBCHAPTER C—FINES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 3551, 3563, 3611, 3613 of this title.

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[3] So in original. Probably should be "or".

pages tightly bound

§ 3571. Sentence of fine

(a) In general

A defendant who has been found guilty of an offense may be sentenced to pay a fine.

(b) Authorized fines

Except as otherwise provided in this chapter, the authorized fines are—

(1) if the defendant is an individual—

(A) for a felony, or for a misdemeanor resulting in the loss of human life, not more than $250,000;

(B) for any other misdemeanor, not more than $25,000; and

(C) for an infraction, not more than $1,000; and

(2) if the defendant is an organization—

(A) for a felony, or for a misdemeanor resulting in the loss of human life, not more than $500,000;

(B) for any other misdemeanor, not more than $100,000; and

(C) for an infraction, not more than $10,000.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

CODIFICATION

Another section 3571, effective through Oct. 31, 1986, is set out in chapter 227 following this chapter.

§ 3572. Imposition of a sentence of fine

(a) Factors to be considered in imposing fine

The court, in determining whether to impose a fine, and, if a fine is to be imposed, in determining the amount of the fine, the time for payment, and the method of payment, shall consider—

(1) the factors set forth in section 3553(a), to the extent they are applicable, including, with regard to the characteristics of the defendant under section 3553(a), the ability of the defendant to pay the fine in view of the defendant's income, earning capacity, and financial resources and, if the defendant is an organization, the size of the organization;

(2) the nature of the burden that payment of the fine will impose on the defendant, and on any person who is financially dependent upon the defendant, relative to the burden which alternative punishments would impose;

(3) any restitution or reparation made by the defendant to the victim of the offense, and any obligation imposed upon the defendant to make such restitution or reparation to the victim of the offense;

(4) if the defendant is an organization, any measure taken by the organization to discipline its employees or agents responsible for the offense or to insure against a recurrence of such an offense; and

(5) any other pertinent equitable consideration.

(b) Limit on aggregate of multiple fines

Except as otherwise expressly provided, the aggregate of fines that a court may impose on a defendant at the same time for different offenses that arise from a common scheme or plan, and that do not cause separable or distinguishable kinds of harm or damage, is twice the amount imposable for the most serious offense.

(c) Effect of finality of judgment

Notwithstanding the fact that a sentence to pay a fine can subsequently be—

(1) modified or remitted pursuant to the provisions of section 3573;

(2) corrected pursuant to the provisions of rule 35 [1] and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(d) Time and method of payment

Payment of a fine is due immediately unless the court, at the time of sentencing—

(1) requires payment by a date certain; or

(2) establishes an installment schedule, the specific terms of which shall be fixed by the court.

(e) Alternative sentence precluded

At the time a defendant is sentenced to pay a fine, the court may not impose an alternative sentence to be served in the event that the fine is not paid.

(f) Individual responsibility for payment

If a fine is imposed on an organization, it is the duty of each individual authorized to make disbursement of the assets of the organization to pay the fine from assets of the organization. If a fine is imposed on an agent or shareholder of an organization, the fine shall not be paid, directly or indirectly, out of the assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

(g) Responsibility to provide current address

At the time of imposition of the fine, the court shall order the person fined to provide the Attorney General with a current mailing address for the entire period that any part of the fine remains unpaid. Failure to provide the Attorney General with a current address or a change in address shall be punishable as a contempt of court.

(h) Stay of fine pending appeals

Unless exceptional circumstances exist, if a sentence to pay a fine is stayed pending appeal, the court granting the stay shall include in such stay—

(1) a requirement that the defendant, pending appeal, to deposit the entire fine amount, or the amount due under an installment schedule, during the pendency of an appeal, in an escrow account in the registry of the district court, or to give bond for the payment thereof; or

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[1] See References in Text note below.

(2) an order restraining the defendant from transferring or dissipating assets found to be sufficient, if sold, to meet the defendant's fine obligation.

(i) Delinquent fine

A fine is delinquent if any portion of such fine is not paid within thirty days of when it is due, including any fines to be paid pursuant to an installment schedule.

(j) Default

A fine is in default if any portion of such fine is more than ninety days delinquent. When a criminal fine is in default, the entire amount is due with thirty days of notification of the default, notwithstanding any installment schedule.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1995.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

REFERENCES IN TEXT

Rule 35, referred to in subsec. (c)(2), probably means rule 35 of the Federal Rules of Criminal Procedure which is set out in the Appendix to this title.

CODIFICATION

Another section 3572, effective through Oct. 31, 1986, is set out in chapter 227 following this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3612 of this title.

§ 3573. Modification or remission of fine

(a) Petition for modification or remission

A defendant who has been sentenced to pay a fine, and who—

(1) can show a good faith effort to comply with the terms of the sentence and concerning whom the circumstances no longer exist that warranted the imposition of the fine in the amount imposed or payment by the installment schedule, may at any time petition the court for—

(A) an extension of the installment schedule, not to exceed two years except in case of incarceration or special circumstances; or

(B) a remission of all or part of the unpaid portion including interest and penalties; or

(2) has voluntarily made restitution or reparation to the victim of the offense, may at any time petition the court for a remission of the unpaid portion of the fine in an amount not exceeding the amount of such restitution or reparation.

Any petition filed pursuant to this subsection shall be filed in the court in which sentence was originally imposed, unless that court transfers jurisdiction to another court. The petitioner shall notify the Attorney General that the petition has been filed within ten working days after filing. For the purposes of clause (1), unless exceptional circumstances exist, a person may be considered to have made a good faith effort to comply with the terms of the sentence only after payment of a reasonable portion of the fine.

(b) Order of modification or remission

If, after the filing of a petition as provided in subsection (a), the court finds that the circumstances warrant relief, the court may enter an appropriate order, in which case it shall provide the Attorney General with a copy of such order.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1997.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

CODIFICATION

Another section 3573, effective through Oct. 31, 1986, is set out in chapter 227 following this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3572 of this title; title 28 section 994.

§ 3574. Implementation of a sentence of fine

The implementation of a sentence to pay a fine is governed by the provisions of subchapter B of chapter 229.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1997.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

REFERENCES IN TEXT

Chapter 229, referred to in text, probably means new chapter 229 (§§ 3601 to 3625) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

CODIFICATION

Another section 3574, effective through Oct. 31, 1986, is set out in chapter 227 following this chapter.

SUBCHAPTER D—IMPRISONMENT

Sec.
3581. Sentence of imprisonment.
3582. Imposition of a sentence of imprisonment.
3583. Inclusion of a term of supervised release after imprisonment.
3584. Multiple sentences of imprisonment.
3585. Calculation of a term of imprisonment.
3586. Implementation of a sentence of imprisonment.

SUBCHAPTER D—IMPRISONMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3551, 3605, 3621 of this title.

§ 3581. Sentence of imprisonment

(a) In general

A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment.

(b) Authorized terms

The authorized terms of imprisonment are—

(1) for a Class A felony, the duration of the defendant's life or any period of time;

(2) for a Class B felony, not more than twenty-five years;

(3) for a Class C felony, not more than twelve years;

(4) for a Class D felony, not more than six years;

(5) for a Class E felony, not more than three years;

(6) for a Class A misdemeanor, not more than one year;

(7) for a Class B misdemeanor, not more than six months;

(8) for a Class C misdemeanor, not more than thirty days; and

(9) for an infraction, not more than five days.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1998.)

PROSPECTIVE EFFECTIVE DATE

Section effective the day after U.S. Sentencing Commission has submitted the initial set of sentencing guidelines to Congress, the General Accounting Office has studied and reported to Congress on the guidelines, and Congress has examined the guidelines, see section 235(a)(1)(B)(ii) of Pub. L. 98-473, set out as a note under section 3551 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3552, 3563, 5037 of this title; title 28 sections 994, 2901.

§ 3582. Imposition of a sentence of imprisonment

(a) Factors to be considered in imposing a term of imprisonment

The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) Effect of finality of judgment

Notwithstanding the fact that a sentence to imprisonment can subsequently be—

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35[1] and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742;

a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) Modification of an imposed term of imprisonment

The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that extraordinary and compelling reasons warrant such a reduction and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(n), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

(d) Inclusion of an order to limit criminal association of organized crime and drug offenders

The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter 95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1998.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

REFERENCES IN TEXT

Rule 35, referred to in subsec. (b)(2), probably means rule 35 of the Federal Rules of Criminal Procedure which is set out in the Appendix to this title.

The Comprehensive Drug Abuse Prevention and Control Act of 1970, referred to in subsec. (d), is Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1236, as amended, which is classified principally to chapter 13 (§ 801 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

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[1] See References in Text note below.

§ 3583. Inclusion of a term of supervised release after imprisonment

(a) In general

The court, in imposing a sentence to a term of imprisonment for a felony or a misdemeanor, may include as a part of the sentence a requirement that the defendant be placed on a term of supervised release after imprisonment.

(b) Authorized terms of supervised release

The authorized terms of supervised release are—

(1) for a Class A or Class B felony, not more than three years;

(2) for a Class C or Class D felony, not more than two years; and

(3) for a Class E felony, or for a misdemeanor, not more than one year.

(c) Factors to be considered in including a term of supervised release

The court, in determining whether to include a term of supervised release, and, if a term of supervised release is to be included, in determining the length of the term and the conditions of supervised release, shall consider the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(D), (a)(4), (a)(5), and (a)(6).

(d) Conditions of supervised release

The court shall order, as an explicit condition of supervised release, that the defendant not commit another Federal, State, or local crime during the term of supervision. The court may order, as a further condition of supervised release, to the extent that such condition—

(1) is reasonably related to the factors set forth in section 3553(a)(1), (a)(2)(B), and (a)(2)(D);

(2) involves no greater deprivation of liberty than is reasonably necessary for the purposes set forth in section 3553(a)(2)(B) and (a)(2)(D); and

(3) is consistent with any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

any condition set forth as a discretionary condition of probation in section 3563(b)(1) through (b)(10) and (b)(12) through (b)(19), and any other condition it considers to be appropriate. If an alien defendant is subject to deportation, the court may provide, as a condition of supervised release, that he be deported and remain outside the United States, and may order that he be delivered to a duly authorized immigration official for such deportation.

(e) Modification of term or conditions

The court may, after considering the factors set forth in section 3553(a)(1), (a)(2)(B), (a)(2)(D), (a)(4), (a)(5), and (a)(6)—

(1) terminate a term of supervised release previously ordered and discharge the person released at any time after the expiration of one year of supervised release, if it is satisfied that such action is warranted by the conduct of the person released and the interest of justice;

(2) after a hearing, extend a term of supervised release if less than the maximum authorized term was previously imposed, and may modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, pursuant to the provisions applicable to the initial setting of the terms and conditions of post-release supervision; or

(3) treat a violation of a condition of a term of supervised release as contempt of court pursuant to section 401(3) of this title.

(f) Written statement of conditions

The court shall direct that the probation officer provide the defendant with a written statement that sets forth all the conditions to which the term of supervised release is subject, and that is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 1999.)

PROSPECTIVE EFFECTIVE DATE

Section effective the day after U.S. Sentencing Commission has submitted the initial set of sentencing guidelines to Congress, the General Accounting Office has studied and reported to Congress on the guidelines, and Congress has examined the guidelines, see section 235(a)(1)(B)(ii) of Pub. L. 98-473, set out as a note under section 3551 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3601, 3663, 4101 of this title; title 28 section 994.

§ 3584. Multiple sentences of imprisonment

(a) Imposition of concurrent or consecutive terms

If multiple terms of imprisonment are imposed on a defendant at the same time, or if a term of imprisonment is imposed on a defendant who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively, except that the terms may not run consecutively for an attempt and for another offense that was the sole objective of the attempt. Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.

(b) Factors to be considered in imposing concurrent or consecutive terms

The court, in determining whether the terms imposed are to be ordered to run concurrently or consecutively, shall consider, as to each offense for which a term of imprisonment is being imposed, the factors set forth in section 3553(a).

(c) Treatment of multiple sentence as an aggregate

Multiple terms of imprisonment ordered to run consecutively or concurrently shall be treated for administrative purposes as a single, aggregate term of imprisonment.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2000.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

§ 3585. Calculation of a term of imprisonment

(a) Commencement of sentence

A sentence to a term of imprisonment commences on the date the defendant is received in custody awaiting transportation to, or arrives voluntarily to commence service of sentence at, the official detention facility at which the sentence is to be served.

(b) Credit for prior custody

A defendant shall be given credit toward the service of a term of imprisonment for any time he has spent in official detention prior to the date the sentence commences—

(1) as a result of the offense for which the sentence was imposed; or

(2) as a result of any other charge for which the defendant was arrested after the commission of the offense for which the sentence was imposed;

that has not been credited against another sentence.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

§ 3586. Implementation of a sentence of imprisonment

The implementation of a sentence of imprisonment is governed by the provisions of subchapter C of chapter 229 and, if the sentence includes a term of supervised release, by the provisions of subchapter A of chapter 229.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3551 of this chapter.

REFERENCES IN TEXT

Chapter 229, referred to in text, probably means new chapter 229 (§§ 3601 to 3625) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

CHAPTER 227—SENTENCE, JUDGMENT, AND EXECUTION [1]

Sec.	
3565.	Collection and payment of fines and penalties.

REPEAL OF CHAPTER

Pub. L. 98-473, title II, §§ 212(a)(1), (2), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2031, enacted a new chapter 227 (§§ 3551 to 3586) and repealed this chapter 227 (except sections 3577 to 3580 which were redesignated), effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986). New chapter 227 is set out preceding this chapter. Section 235 of Pub. L. 98-473, relating to effective dates, is set out as an Effective Date note under section 3551 of this title.

AMENDMENTS

1984—Pub. L. 98-596, § 112(a)(7)(B), (9), (b), Oct. 30, 1984, 98 Stat. 3139, 3140; Pub. L. 98-473, title II, §§ 235(a)(1), 238(g)(2), (i), Oct. 12, 1984, 98 Stat. 2031, 2039, affected item 3565 as follows: Section 238(g)(2) of Pub. L. 98-473, provided for the amendment of item 3565 to read "Repealed", effective pursuant to section 235(a)(1) of Pub. L. 98-473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(7)(B) of Pub. L. 98-596 amended item 3565 to read as it had before amendment by Pub. L. 98-473, applicable pursuant to section 12(b) of Pub. L. 98-596 on and after the date of enactment of Pub. L. 98-473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98-473 which repealed section 238 of Pub. L. 98-473 on the same date established by section 235(a)(1) of Pub. L. 98-473 was repealed by section 12(a)(9) of Pub. L. 98-596. The cumulative effect of the amendments resulted in no change in item 3565.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3671 of this title.

§ 3561. Judgment form and entry—(Rule)

[See main edition for text; credit]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding this section.

CODIFICATION

Another section 3561, effective Nov. 1, 1986, is set out in chapter 227 preceding this chapter.

§ 3562. Sentence—(Rule)

[See main edition for text; credit]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

CODIFICATION

Another section 3562, effective Nov. 1, 1986, is set out in chapter 227 preceding this chapter.

§ 3563. Corruption of blood or forfeiture of estate

[See main edition for text; credit]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

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[1] Another chapter 227 (§§ 3551 to 3586), effective Nov. 1, 1986, is set out preceding this chapter.

CODIFICATION

Another section 3563, effective Nov. 1, 1986, is set out in chapter 227 preceding this chapter.

§ 3564. Pillory and whipping

[*See main edition for text; credit*]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

CODIFICATION

Another section 3564, effective Nov. 1, 1986, is set out in chapter 227 preceding this chapter.

§ 3565. Collection and payment of fines and penalties

(a)(1) Except as provided in paragraph (2) of this subsection, in all criminal cases in which judgment or sentence is rendered, imposing the payment of a fine or penalty, whether alone or with any other kind of punishment, such judgment, so far as the fine or penalty is concerned, may be enforced by execution against the property of the defendant in like manner as judgments in civil cases. If the court finds by a preponderance of the information relied upon in imposing sentence that the defendant has the present ability to pay a fine or penalty, the judgment may direct imprisonment until the fine or penalty is paid, and the issue of execution on the judgment shall not discharge the defendant from imprisonment until the amount of the judgment is paid.

(2) A judgment imposing the payment of a fine or penalty shall, upon the filing of notice of lien in the manner in which a notice of tax lien would be filed under section 6323(f) of the Internal Revenue Code of 1954, be a lien in favor of the United States upon all property and rights of property belonging to the defendant, except with respect to properties or transactions specified in subsections (b), (c) or (d) of section 6323 of the Internal Revenue Code of 1954 for which a notice of tax lien properly filed on the same date would not be valid and except with respect to property that would be exempt from levy for taxes under section 6334(a) of the Code. Such lien shall be valid against any subsequent purchaser, holder of a security interest, mechanic's lienor or judgment creditor. A writ of execution may be issued with respect to any property or rights to property subject to such lien.

(3) Such lien is valid against property referred to in paragraph (2) of this subsection if, but for such paragraph, applicable law would permit enforcement of the lien.

(4) The effect of any execution, whether by attachment, garnishment, levy or other means, on salary, wages or other income payable to or receivable by a defendant shall be continuous from the date such execution is first made until the liability for the fine or penalty to which the execution relates is satisfied, the liability ceases to exist or becomes unenforceable, or the execution is released. Salaries, wages and other income shall be exempt from execution only to the extent of the exemptions from levy for taxes provided in section 6334(d) of the Internal Revenue Code of 1954.

(5) For the purposes of any State or local law providing for the filing of a notice of a tax lien, a notice of lien for a judgment imposing the payment of a fine or penalty shall be considered a notice of lien for taxes payable to the United States. If such notice is not accepted for filing, the registration, recording, docketing, or indexing, of the judgment imposing payment of a fine or penalty in accordance with section 1962 of title 28, United States Code shall be considered for all purposes as the filing prescribed by this subsection.

(b)(1) A judgment imposing the payment of a fine or penalty shall—

(A) provide for immediate payment unless, in the interest of justice, the court specifies payment on a date certain or in installments;

(B) include the name and address of the defendant, the docket number of the case, the amount of the fine, and the schedule of payments (if other than immediate payment is specified); and

(C) if other than immediate payment is specified, require the defendant to notify the appropriate United States Attorney of any change in the name or address of the defendant.

(2) If the judgment specifies other than immediate payment of a fine or penalty, the period provided for payment shall not exceed five years, excluding any period served by the defendant as imprisonment for the offense. The defendant shall pay interest on any amount payment of which is deferred under this paragraph. The interest shall be computed on the unpaid balance at the rate of 1.5 percent per month for each full calendar month for which such amount is unpaid.

(3) If the judgment specifies other than immediate payment of a fine or penalty, and the defendant does not pay an amount due, at the discretion of the Attorney General, the entire unpaid balance shall be payable immediately.

(c)(1) The defendant shall pay interest on any amount of a fine or penalty (other than a penalty under paragraph (2) of this subsection) that is past due. The interest shall be computed on the unpaid balance at the rate of 1.5 percent per month.

(2) If an amount owed by a defendant as a fine or penalty is past due for more than 90 days, the defendant shall pay, in addition to any amount otherwise payable, a penalty equal to 25 percent of the amount past due.

(d)(1) Except as provided in paragraph (2) of this subsection, the defendant shall pay to the Attorney General any amount due as a fine or penalty.

(2) The Attorney General and the Director of the Administrative Office of the United States Courts may jointly provide by regulation that fines and penalties for specified categories of offenses shall be paid to the clerk of the court.

(e) If a fine or penalty exceeds $500, the clerk of the court shall furnish to the Attorney General a certified copy of the judgment.

(f) If a fine or penalty is imposed on an organization, it is the duty of each individual authorized to make disbursements for the organization to make payment from assets of the organization. If a fine or penalty is imposed on a director, officer, employee, or agent of an organization, payment shall not be made, directly or indirectly, from assets of the organization, unless the court finds that such payment is expressly permissible under applicable State law.

(g) When a fine or penalty is satisfied as provided by law, the Attorney General shall file with the court a notice of satisfaction of judgment if the defendant makes a written request to the Attorney General for such filing, or if the amount of the fine or penalty exceeds $500. Upon request of the defendant, the clerk shall furnish to the defendant a certified copy of the notice.

(h) The obligation to pay a fine or penalty ceases upon the death of the defendant or the expiration of twenty years after the date of the entry of the judgment, whichever occurs earlier. The defendant and the Attorney General may agree in writing to extend such twenty-year period.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, §§ 235(a)(1), 238(g)(1), (i), 98 Stat. 2031, 2039; Oct. 30, 1984, Pub. L. 98-596, §§ 2, 12(a)(7)(A), (9), (b), 98 Stat. 3134, 3139, 3140.)

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

REFERENCES IN TEXT

The Internal Revenue Code of 1954, referred to in subsec. (a)(2), (4), is classified generally to Title 26, Internal Revenue Code.

CODIFICATION

Another section 3565, effective Nov. 1, 1986, is set out in chapter 227 preceding this chapter.

AMENDMENTS

1984—Pub. L. 98-596, § 2, designated existing provisions as subsec. (a)(1), and in par. (1), as so designated, substituted "Except as provided in paragraph (2) of this subsection, in" for "In" at the beginning thereof and substituted "If the court finds by a preponderance of the information relied upon in imposing sentence that the defendant has the present ability to pay a fine or penalty, the judgment may direct imprisonment until the fine or penalty is paid, and" for "Where the judgment directs imprisonment until the fine or penalty imposed is paid,", added pars. (2) to (5) of subsec. (a), and subsecs. (b) to (h).

Pub. L. 98-473, §§ 235(a)(1), 238(g)(1), (i), and Pub. L. 98-596, § 12(a)(7)(A), (9), (b), affected this section as follows: Section 238(g)(1) of Pub. L. 98-473 repealed this section effective pursuant to section 235(a)(1) of Pub. L. 98-473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(7)(A) of Pub. L. 98-596 reenacted section 3565 to read as it had before repeal by Pub. L. 98-473, applicable pursuant to section 12(b) of Pub. L. 98-596 on and after the date of enactment of Pub. L. 98-473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98-473 which repealed section 238 of Pub. L. 98-473 on the same date established by section 235(a)(1) of Pub. L. 98-473 was repealed by section 12(a)(9) of Pub. L. 98-596. The cumulative effect of the amendments resulted in no change in this section.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Amendment by section 2 of Pub. L. 98-596 applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98-596, set out as a note under section 1 of this title.

Section 12(b) of Pub. L. 98-596 provided that: "The amendments and the repeal made by subsection (a) of this section [enacting this section, amending sections 3569, 3651, 3655, 4209, and 4214 of this title, and repealing chapter 228 (§ 3591 et seq.) of this title and provisions set out as a note below] shall apply on and after the enactment of the joint resolution entitled 'Joint resolution making continuing appropriations for the fiscal year 1985, and for other purposes', H.J. Res. 648, Ninety-eighth Congress [Pub. L. 98-473, Oct. 12, 1984]."

Section 238(i) of Pub. L. 98-473 which provided that this section (enacting chapter 228 (§ 3591 et seq.) of this title, amending sections 3569, 3651, 3655, 4209, and 4214 of this title, and repealing this section) were repealed on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984, was repealed by Pub. L. 98-596, § 12(a)(9), Oct. 30, 1984, 98 Stat. 3140, effective on and after Oct. 12, 1984.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3651 of this title.

§ 3566. Execution of death sentence

[*See main edition for text; credit*]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

CODIFICATION

Another section 3566, effective Nov. 1, 1986, is set out in chapter 227 preceding this chapter.

§ 3567. Death sentence may prescribe dissection

[*See main edition for text; credit*]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

§ 3568. Effective date of sentence; credit for time in custody prior to the imposition of sentence

[*See main edition for text; credits*]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

§ 3569. Discharge of indigent prisoner

When a poor convict, sentenced for violation of any law of the United States by any court established by enactment of Congress, to be imprisoned and pay a fine, or fine and costs, or to pay a fine, or fine and costs, has been confined in prison, solely for the nonpayment of such fine, or fine and costs, such convict may make application in writing to the nearest United States magistrate in the district where he is imprisoned setting forth his inability to pay such fine, or fine and costs, and after notice to the district attorney of the United States, who may appear, offer evidence, and be heard, the magistrate shall proceed to hear and determine the matter.

If on examination it shall appear to him that such convict is unable to pay such fine, or fine and costs, and that he has not any property exceeding $20 in value, except such as is by law exempt from being taken on execution for debt, the magistrate shall administer to him the following oath: "I do solemnly swear that I have not any property, real or personal, exceeding $20, except such as is by law exempt from being taken on civil process for debt; and that I have no property in any way conveyed or concealed, or in any way disposed of, for my future use or benefit. So help me God." Upon taking such oath such convict shall be discharged; and the magistrate shall file with the institution in which the convict is confined, a certificate setting forth the facts. In case the convict is found by the magistrate to possess property valued at an amount in excess of said exemption, nevertheless, if the Attorney General finds that the retention by such convict of all of such property is reasonably necessary for his support or that of his family, such convict shall be released without further imprisonment solely for the nonpayment of such fine, or fine and costs; or if he finds that the retention by such convict of any part of such property is reasonably necessary for his support or that of his family, such convict shall be released without further imprisonment solely for nonpayment of such fine or fine and costs upon payment on account of his fine and costs, of that portion of his property in excess of the amount found to be reasonably necessary for his support or that of his family.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, §§ 235(a)(1), 238(h), (i), 98 Stat. 2031, 2039; Oct. 30, 1984, Pub. L. 98-596, §§ 3, 12(a)(8), (9), (b), 98 Stat. 3136, 3139, 3140.)

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

AMENDMENTS

1984—Pub. L. 98-596, § 3, struck out "(a)" thereby redesignating former subsec. (a) as entire section, struck out "thirty days" before "solely for imprisonment" in the first sentence, and struck out subsec. (b) which provided that indigent prisoners may make application to wardens who shall have power of U.S. magistrates to administer oaths, discharge prisoners, and file certificates to that effect, and that a prisoner may apply to a magistrate if a warden fails or refuses to grant such relief.

Pub. L. 98-473, §§ 235(a)(1), 238(h), (i), and Pub. L. 98-596, § 12(a)(8), (9), (b), affected this section as follows: Section 238(h) of Pub. L. 98-473 struck out subsec. (b) and the subsec. "(a)" designation effective pursuant to section 235(a)(1) of Pub. L. 98-473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(8) of Pub. L. 98-596 amended this section to read as it had before amendment by Pub. L. 98-473, applicable pursuant to section 12(b) of Pub. L. 98-596 on and after the date of enactment of Pub. L. 98-473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98-473 which repealed section 238 of Pub. L. 98-473 on the same date established by section 235(a)(1) of Pub. L. 98-473 was repealed by section 12(a)(9) of Pub. L. 98-596. The cumulative effect of the amendments resulted in no change in this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 3 of Pub. L. 98-596 applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98-596, set out as a note under section 1 of this title.

§ 3570. Presidential remission as affecting unremitted part

[*See main edition for text; credit*]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

§ 3571. Clerical mistakes—(Rule)

[*See main edition for text; credit*]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

CODIFICATION

Another section 3571, effective Nov. 1, 1986, is set out in chapter 227 preceding this chapter.

§ 3572. Correction or reduction of sentence—(Rule)

[*See main edition for text; credit*]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

CODIFICATION

Another section 3572, effective Nov. 1, 1986, is set out in chapter 227 preceding this chapter.

§ 3573. Arrest or setting aside of judgment—(Rule)

[*See main edition for text; credit*]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

CODIFICATION

Another section 3573, effective Nov. 1, 1986, is set out in chapter 227 preceding this chapter.

§ 3574. Stay of execution; supersedeas—(Rule)

[*See main edition for text; credit*]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

CODIFICATION

Another section 3574, effective Nov. 1, 1986, is set out in chapter 227 preceding this chapter.

§ 3575. Increased sentence for dangerous special offenders

[*See main edition for text; credit*]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

§ 3576. Review of sentence

[*See main edition for text; credit*]

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

§ 3577. Use of information for sentencing

[*See main edition for text; credit*]

REDESIGNATION OF SECTION

Section redesignated section 3661 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

§ 3578. Conviction records

[*See main edition for text; credit*]

REDESIGNATION OF SECTION

Section redesignated section 3662 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

§ 3579. Order of restitution

[*See main edition for text of (a) and (b)*]

(c) If the court decides to order restitution under this section, the court shall, if the victim is deceased, order that the restitution be made to the victim's estate.

[*See main edition for text of (d) and (e)*]

(f) [*See main edition for text of (1) to (3)*]

(4) The order of restitution shall require the defendant to make restitution directly to the victim or other person eligible under this section, or to deliver the amount or property due as restitution to the Attorney General for transfer to such victim or person.

[*See main edition for text of (g) and (h)*]

(As amended Pub. L. 98-596, § 9, Oct. 30, 1984, 98 Stat. 3138.)

REDESIGNATION OF SECTION

Section redesignated section 3663 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-596, § 9(1), substituted "court" for "Court" after "If the".

Subsec. (f)(4). Pub. L. 98-596, § 9(2), added par. (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-596 applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98-596, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3525, 3580 of this title.

§ 3580. Procedure for issuing order of restitution

[*See main edition for text; credit*]

REDESIGNATION OF SECTION

Section redesignated section 3664 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding section 3561 of this chapter.

[CHAPTER 228—REPEALED]

[§§ 3591 to 3599. Repealed. Pub. L. 98-596, § 12(a)(1), Oct. 30, 1984, 98 Stat. 3139]

This chapter (§§ 3591 to 3599) was added by Pub. L. 98-473, title II, § 238(a), Oct. 12, 1984, 98 Stat. 2034, effective pursuant to section 235(a)(1) of Pub. L. 98-473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(1) of Pub. L. 98-596 repealed this chapter applicable pursuant to section 12(b) of Pub. L. 98-596 on and after the date of enactment of Pub. L. 98-473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98-473 which repealed section 238 of Pub. L. 98-473 on the same date established by section 235(a)(1) of Pub. L. 98-473 was repealed by section 12(a)(9) of Pub. L. 98-596. See sections 3565 and 3621 to 3623 of this title.

Section 3591 provided for imposition of fines.

Section 3592 provided for payment, deliquency, and default of fines.

Section 3593 provided for modification or remission of fines.

Section 3594 required clerks to forward fine payments to the United States Treasury and to notify the Attorney General of receipt and sentencing courts to certify to the Attorney General the imposition of and changes in fines.

Section 3595 provided for interest and monetary penalties for delinquency and default of fines.

Section 3596 provided civil remedies for satisfaction of unpaid fines.

Section 3597 authorized resentencing a person upon the failure to pay a fine.

Section 3598 established a statute of limitations on the liability to pay fines.

Section 3599 established penalties for the willful failure to pay fines.

CHAPTER 229—POSTSENTENCE ADMINISTRATION [1]

Subchapter		Sec.[2]
A.	Probation	3601
B.	Fines	3611
C.	Imprisonment	3621

PROSPECTIVE EFFECTIVE DATE

Pub. L. 98-473, title II, §§ 212(a)(1), (2), 235(a)(1), Oct. 12, 1984, 98 Stat. 2001, 2031, enacted this chapter 229 (§§ 3601 to 3625) and repealed existing chapter 229 (except sections 3611, 3612, 3615, 3617 to 3620 which were redesignated), effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986). Existing chapter 229 (§§ 3611 to 3624) is set out following this chapter. Section 235 of Pub. L. 98-473, relating to effective dates, is set out as a note under section 3551 of this title.

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[1] Another chapter 229 (§§ 3611 to 3624) is set out after this chapter.

[2] Editorially supplied.

Chapter Referred to in Other Sections

This chapter is referred to in sections 3558, 3673 of this title.

SUBCHAPTER A—PROBATION

Sec.
3601. Supervision of probation.
3602. Appointment of probation officers.
3603. Duties of probation officers.
3604. Transportation of a probationer.
3605. Transfer of jurisdiction over a probationer.
3606. Arrest and return of a probationer.
3607. Special probation and expungement procedures for drug possessor.[3]

SUBCHAPTER A—PROBATION

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 3566, 3586 of this title.

§ 3601. Supervision of probation

A person who has been sentenced to probation pursuant to the provisions of subchapter B of chapter 227, or placed on probation pursuant to the provisions of chapter 403, or placed on supervised release pursuant to the provisions of section 3583, shall, during the term imposed, be supervised by a probation officer to the degree warranted by the conditions specified by the sentencing court.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

Prospective Effective Date

Section effective Nov. 1, 1986, see note set out preceding this section.

References in Text

Chapter 227, referred to in text, probably means new chapter 227 (§§ 3551 to 3586) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

§ 3602. Appointment of probation officers

(a) Appointment

A district court of the United States shall appoint qualified persons to serve, with or without compensation, as probation officers within the jurisdiction and under the direction of the court making the appointment. The court may, for cause, remove a probation officer appointed to serve with compensation, and may, in its discretion, remove a probation officer appointed to serve without compensation.

(b) Record of appointment

The order of appointment shall be entered on the records of the court, a copy of the order shall be delivered to the officer appointed, and a copy shall be sent to the Director of the Administrative Office of the United States Courts.

(c) Chief probation officer

If the court appoints more than one probation officer, one may be designated by the court as chief probation officer and shall direct the work of all probation officers serving in the judicial district.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2001.)

Prospective Effective Date

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

§ 3603. Duties of probation officers

A probation officer shall—

(a) instruct a probationer or a person on supervised release, who is under his supervision, as to the conditions specified by the sentencing court, and provide him with a written statement clearly setting forth all such conditions;

(b) keep informed, to the degree required by the conditions specified by the sentencing court, as to the conduct and condition of a probationer or a person on supervised release, who is under his supervision, and report his conduct and condition to the sentencing court;

(c) use all suitable methods, not inconsistent with the conditions specified by the court, to aid a probationer or a person on supervised release who is under his supervision, and to bring about improvements in his conduct and condition;

(d) be responsible for the supervision of any probationer or a person on supervised release who is known to be within the judicial district;

(e) keep a record of his work, and make such reports to the Director of the Administrative Office of the United States Courts as the Director may require;

(f) upon request of the Attorney General or his designee, supervise and furnish information about a person within the custody of the Attorney General while on work release, furlough, or other authorized release from his regular place of confinement, or while in prerelease custody pursuant to the provisions of section 3624(c);

(g) keep informed concerning the conduct, condition, and compliance with any condition of probation, including the payment of a fine or restitution of each probationer under his supervision and report thereon to the court placing such person on probation and report to the court any failure of a probationer under his supervision to pay a fine in default within thirty days after notification that it is in default so that the court may determine whether probation should be revoked; and

(h) perform any other duty that the court may designate.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2002.)

Prospective Effective Date

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

§ 3604. Transportation of a probationer

A court, after imposing a sentence of probation, may direct a United States marshal to furnish the probationer with—

(a) transportation to the place to which he is required to proceed as a condition of his probation; and

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[3] So in original. Does not conform to section catchline.

(b) money, not to exceed such amount as the Attorney General may prescribe, for subsistence expenses while traveling to his destination.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2002.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

§ 3605. Transfer of jurisdiction over a probationer

A court, after imposing a sentence, may transfer jurisdiction over a probationer or person on supervised release to the district court for any other district to which the person is required to proceed as a condition of his probation or release, or is permitted to proceed, with the concurrence of such court. A later transfer of jurisdiction may be made in the same manner. A court to which jurisdiction is transferred under this section is authorized to exercise all powers over the probationer or releasee that are permitted by this subchapter or subchapter B or D of chapter 227.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2003.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

REFERENCES IN TEXT

Chapter 227, referred to in text, probably means new chapter 227 (§§ 3551 to 3586) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

§ 3606. Arrest and return of a probationer

If there is probable cause to believe that a probationer or a person on supervised release has violated a condition of his probation or release, he may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. A probation officer may make such an arrest wherever the probationer or releasee is found, and may make the arrest without a warrant. The court having supervision of the probationer or releasee, or, if there is no such court, the court last having supervision of the probationer or releasee, may issue a warrant for the arrest of a probationer or releasee for violation of a condition of release, and a probation officer or United States marshal may execute the warrant in the district in which the warrant was issued or in any district in which the probationer or releasee is found.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2003.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

§ 3607. Special probation and expungement procedures for drug possessors

(a) Pre-judgment probation

If a person found guilty of an offense described in section 404 of the Controlled Substances Act (21 U.S.C. 844)—

(1) has not, prior to the commission of such offense, been convicted of violating a Federal or State law relating to controlled substances; and

(2) has not previously been the subject of a disposition under this subsection;

the court may, with the consent of such person, place him on probation for a term of not more than one year without entering a judgment of conviction. At any time before the expiration of the term of probation, if the person has not violated a condition of his probation, the court may, without entering a judgment of conviction, dismiss the proceedings against the person and discharge him from probation. At the expiration of the term of probation, if the person has not violated a condition of his probation, the court shall, without entering a judgment of conviction, dismiss the proceedings against the person and discharge him from probation. If the person violates a condition of his probation, the court shall proceed in accordance with the provisions of section 3565.

(b) Record of disposition

A nonpublic record of a disposition under subsection (a), or a conviction that is the subject of an expungement order under subsection (c), shall be retained by the Department of Justice solely for the purpose of use by the courts in determining in any subsequent proceeding whether a person qualifies for the disposition provided in subsection (a) or the expungement provided in subsection (c). A disposition under subsection (a), or a conviction that is the subject of an expungement order under subsection (c), shall not be considered a conviction for the purpose of a disqualification or a disability imposed by law upon conviction of a crime, or for any other purpose.

(c) Expungement of record of disposition

If the case against a person found guilty of an offense under section 404 of the Controlled Substances Act (21 U.S.C. 844) is the subject of a disposition under subsection (a), and the person was less than twenty-one years old at the time of the offense, the court shall enter an expungement order upon the application of such person. The expungement order shall direct that there be expunged from all official records, except the nonpublic records referred to in subsection (b), all references to his arrest for the offense, the institution of criminal proceedings against him, and the results thereof. The effect of the order shall be to restore such person, in the contemplation of the law, to the status he occupied before such arrest or institution of criminal proceedings. A person concerning whom such an order has been entered shall not be held thereafter under any provision of law to be guilty of perjury, false swearing, or making a false statement by reason of his failure to recite or acknowledge such arrests or institution of criminal proceedings, or the results thereof, in response to an inquiry made of him for any purpose.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2003.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

REFERENCES IN TEXT

Section 3565 of this title, referred to in subsec. (a), probably means the section 3565 in new chapter 227 (§§ 3551 to 3586) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 21 section 841.

SUBCHAPTER B—FINES

Sec.
3611. Payment of a fine.
3612. Collection of an unpaid fine.
3613. Civil remedies for satisfaction of an unpaid fine.
3614. Resentencing upon failure to pay a fine.
3615. Criminal default.

SUBCHAPTER B—FINES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3574 of this title.

§ 3611. Payment of a fine

A person who has been sentenced to pay a fine pursuant to the provisions of subchapter C of chapter 227 shall pay the fine immediately, or by the time and method specified by the sentencing court, to the clerk of the court. The clerk shall forward the payment to the United States Treasury.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2004.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

REFERENCES IN TEXT

Chapter 227, referred to in text, probably means new chapter 227 (§§ 3551 to 3586) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

CODIFICATION

Another section 3611, effective through Oct. 31, 1986, is set out in chapter 229 following this chapter.

§ 3612. Collection of an unpaid fine

(a) Disposition of payment

The clerk shall forward each fine payment to the United States Treasury and shall notify the Attorney General of its receipt within ten working days.

(b) Certification of imposition

If a fine exceeding $100 is imposed, modified, or remitted, the sentencing court shall incorporate in the order imposing, remitting, or modifying such fine, and promptly certify to the Attorney General—

(1) the name of the person fined;

(2) his current address;

(3) the docket number of the case;

(4) the amount of the fine imposed;

(5) any installment schedule;

(6) the nature of any modification or remission of the fine or installment schedule; and

(7) the amount of the fine that is due and unpaid.

(c) Responsibility for collection

The Attorney General shall be responsible for collection of an unpaid fine concerning which a certification has been issued as provided in subsection (b). An order of restitution, pursuant to section 3556, does not create any right of action against the United States by the person to whom restitution is ordered to be paid.

(d) Notification of delinquency

Within ten working days after a fine is determined to be delinquent as provided in section 3572(i), the Attorney General shall notify the person whose fine is delinquent, by certified mail, to inform him that the fine is delinquent.

(e) Notification of default

Within ten working days after a fine is determined to be in default as provided in section 3572(j), the Attorney General shall notify the person defaulting, by certified mail, to inform him that the fine is in default and the entire unpaid balance, including interest and penalties, is due within thirty days.

(f) Interest, monetary penalties for delinquency, and default

Upon a determination of willful nonpayment, the court may impose the following interest and monetary penalties:

(1) Interest

Notwithstanding any other provision of law, interest at the rate of 1 per centum per month, or 12 per centum per year, shall be charged, beginning the thirty-first day after sentencing on the first day of each month during which any fine balance remains unpaid, including sums to be paid pursuant to an installment schedule.

(2) Monetary penalties for delinquent fines

Notwithstanding any other provision of law, a penalty sum equal to 10 per centum shall be charged for any portion of a criminal fine which has become delinquent. The Attorney General may waive all or part of the penalty for good cause.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2004.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

REFERENCES IN TEXT

Section 3572 of this title, referred to in subsecs. (d) and (e), probably means the section 3572 in new chapter 227 (§§ 3551 to 3586) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

CODIFICATION

Another section 3612, effective through Oct. 31, 1986, is set out in chapter 229 following this chapter.

COLLECTION OF OUTSTANDING FINES

Section 237 of Pub. L. 98-473 provided that:

"(a)(1) Except as provided in paragraph (2), for each criminal fine for which the unpaid balance exceeds $100 as of the effective date of this Act [see section 235 of Pub. L. 98-473, set out as a note under section 3551 of this title], the Attorney General shall, within one hundred and twenty days, notify the person by certified mail of his obligation, within thirty days after notification, to—

"(A) pay the fine in full;

"(B) specify, and demonstrate compliance with, an installment schedule established by a court before enactment of the amendments made by this Act [Oct. 12, 1984], specifying the dates on which designated partial payments will be made; or

"(C) establish with the concurrence of the Attorney General, a new installment schedule of a duration not exceeding two years, except in special circumstances, and specifying the dates on which designated partial payments will be made.

"(2) This subsection shall not apply in cases in which—

"(A) the Attorney General believes the likelihood of collection is remote; or

"(B) criminal fines have been stayed pending appeal.

"(b) The Attorney General shall, within one hundred and eighty days after the effective date of this Act, declare all fines for which this obligation is unfulfilled to be in criminal default, subject to the civil and criminal remedies established by amendments made by this Act [see Short Title note set out under section 3551 of this title]. No interest or monetary penalties shall be charged on any fines subject to this section.

"(c) Not later than one year following the effective date of this Act, the Attorney General shall include in the annual crime report steps taken to implement this Act and the progress achieved in criminal fine collection, including collection data for each judicial district."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3663 of this title.

§ 3613. Civil remedies for satisfaction of an unpaid fine

(a) Lien

A fine imposed pursuant to the provisions of subchapter C of chapter 227 is a lien in favor of the United States upon all property belonging to the person fined. The lien arises at the time of the entry of the judgment and continues until the liability is satisfied, remitted, or set aside, or until it becomes unenforceable pursuant to the provisions of subsection (b). On application of the person fined, the Attorney General shall—

(1) issue a certificate of release, as described in section 6325 of the Internal Revenue Code, of any lien imposed pursuant to this section, upon his acceptance of a bond described in section 6325(a)(2) of the Internal Revenue Code; or

(2) issue a certificate of discharge, as described in section 6325 of the Internal Revenue Code, of any part of the person's property subject to a lien imposed pursuant to this section, upon his determination that the fair market value of that part of such property remaining subject to and available to satisfy the lien is at least three times the amount of the fine.

(b) Expiration of lien

A lien becomes unenforceable and liability to pay a fine expires—

(1) twenty years after the entry of the judgment; or

(2) upon the death of the individual fined.

The period set forth in paragraph (1) may be extended, prior to its expiration, by a written agreement between the person fined and the Attorney General. The running of the period set forth in paragraph (1) is suspended during any interval for which the running of the period of limitations for collection of a tax would be suspended pursuant to section 6503(b), 6503(c), 6503(f), 6503(i), or 7508(a)(1)(I) of the Internal Revenue Code of 1954 (26 U.S.C. 6503(b), 6503(c), 6503(f), 6503(i), or 7508(a)(1)(I)), or section 513 of the Act of October 17, 1940, 54 Stat. 1190.

(c) Application of other lien provisions

The provisions of sections 6323, 6331, 6332, 6334 through 6336, 6337(a), 6338 through 6343, 6901, 7402, 7403, 7424 through 7426, 7505(a), 7506, 7701, and 7805 of the Internal Revenue Code of 1954 (26 U.S.C. 6323, 6331, 6332, 6334 through 6336, 6337(a), 6338 through 6343, 6901, 7402, 7403, 7424 through 7426, 7505(a), 7506, 7701, and 7805) and of section 513 of the Act of October 17, 1940, 54 Stat. 1190, apply to a fine and to the lien imposed by subsection (a) as if the liability of the person fined were for an internal revenue tax assessment, except to the extent that the application of such statutes is modified by regulations issued by the Attorney General to accord with differences in the nature of the liabilities. For the purposes of this subsection, references in the preceding sections of the Internal Revenue Code of 1954 to "the Secretary" shall be construed to mean "the Attorney General,"[1] and references in those sections to "tax" shall be construed to mean "fine."[1]

(d) Effect of notice of lien

A notice of the lien imposed by subsection (a) shall be considered a notice of lien for taxes payable to the United States for the purposes of any State or local law providing for the filing of a notice of a tax lien. The registration, recording, docketing, or indexing, in accordance with 28 U.S.C. 1962, of the judgment under which a fine is imposed shall be considered for all purposes as the filing prescribed by section 6323(f)(1)(A) of the Internal Revenue Code of 1954 (26 U.S.C. 6323(f)(1)(A)) and by subsection (c).

(e) Alternative enforcement

Notwithstanding any other provision of this section, a judgment imposing a fine may be enforced by execution against the property of the person fined in like manner as judgments in civil cases, but in no event shall liability for payment of a fine extend beyond the period specified in subsection (b).

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[1] So in original. The ending quotation mark probably should precede the punctuation.

(f) Discharge of debts inapplicable

No discharge of debts pursuant to a bankruptcy proceeding shall render a lien under this section unenforceable or discharge liability to pay a fine.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2005.)

Prospective Effective Date

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

References in Text

Chapter 227, referred to in subsec. (a), probably means new chapter 227 (§§ 3551 to 3586) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

The Internal Revenue Code of 1954, referred to in subsec. (a), is classified generally to Title 26, Internal Revenue Code.

Section 513 of the Act of October 17, 1940, referred to in subsecs. (b) and (c), is classified to section 573 of the Appendix to Title 50, War and National Defense.

Codification

Another section 3613, effective through Oct. 31, 1986, is set out in chapter 229 following this chapter.

Section Referred to in Other Sections

This section is referred to in section 3663 of this title.

§ 3614. Resentencing upon failure to pay a fine

(a) Resentencing

Subject to the provisions of subsection (b), if a defendant knowingly fails to pay a delinquent fine the court may resentence the defendant to any sentence which might originally have been imposed.

(b) Imprisonment

The defendant may be sentenced to a term of imprisonment under subsection (a) only if the court determines that—

(1) the defendant willfully refused to pay the delinquent fine or had failed to make sufficient bona fide efforts to pay the fine; or

(2) in light of the nature of the offense and the characteristics of the person, alternatives to imprisonment are not adequate to serve the purposes of punishment and deterrence.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2006.)

Prospective Effective Date

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

Codification

Another section 3614, effective through Oct. 31, 1986, is set out in chapter 229 following this chapter.

§ 3615. Criminal default

Whoever, having been sentenced to pay a fine, willfully fails to pay the fine, shall be fined not more than twice the amount of the unpaid balance of the fine or $10,000, whichever is greater, imprisoned not more than one year, or both.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2006.)

Prospective Effective Date

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

Codification

Another section 3615, effective through Oct. 31, 1986, is set out in chapter 229 following this chapter.

SUBCHAPTER C—IMPRISONMENT

Sec.
3621. Imprisonment of a convicted person.
3622. Temporary release of a prisoner.
3623. Transfer of a prisoner to State authority.
3624. Release of a prisoner.
3625. Inapplicability of the Administrative Procedure Act.

SUBCHAPTER C—IMPRISONMENT

Subchapter Referred to in Other Sections

This subchapter is referred to in section 3586 of this title.

§ 3621. Imprisonment of a convicted person

(a) Commitment to custody of Bureau of Prisons

A person who has been sentenced to a term of imprisonment pursuant to the provisions of subchapter D of chapter 227 shall be committed to the custody of the Bureau of Prisons until the expiration of the term imposed, or until earlier released for satisfactory behavior pursuant to the provisions of section 3624.

(b) Place of imprisonment

The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering—

(1) the resources of the facility contemplated;

(2) the nature and circumstances of the offense;

(3) the history and characteristics of the prisoner;

(4) any statement by the court that imposed the sentence—

(A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or

(B) recommending a type of penal or correctional facility as appropriate; and

(5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

The Bureau may at any time, having regard for the same matters, direct the transfer of a prisoner from one penal or correctional facility to another.

(c) Delivery of order of commitment

When a prisoner, pursuant to a court order, is placed in the custody of a person in charge of a penal or correctional facility, a copy of the order shall be delivered to such person as evidence of this authority to hold the prisoner, and the original order, with the return endorsed thereon, shall be returned to the court that issued it.

(d) Delivery of prisoner for court appearances

The United States marshal shall, without charge, bring a prisoner into court or return him to a prison facility on order of a court of the United States or on written request of an attorney for the Government.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2007.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

REFERENCES IN TEXT

Chapter 227, referred to in subsec. (a), probably means new chapter 227 (§§ 3551 to 3586) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

CODIFICATION

Another section 3621, effective through Oct. 31, 1986, is set out in chapter 229 following this chapter.

§ 3622. Temporary release of a prisoner

The Bureau of Prisons may release a prisoner from the place of his imprisonment for a limited period if such release appears to be consistent with the purpose for which the sentence was imposed and any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2), if such release otherwise appears to be consistent with the public interest and if there is reasonable cause to believe that a prisoner will honor the trust to be imposed in him, by authorizing him, under prescribed conditions, to—

(a) visit a designated place for a period not to exceed thirty days, and then return to the same or another facility, for the purpose of—

(1) visiting a relative who is dying;

(2) attending a funeral of a relative;

(3) obtaining medical treatment not otherwise available;

(4) contacting a prospective employer;

(5) establishing or reestablishing family or community ties; or

(6) engaging in any other significant activity consistent with the public interest;

(b) participate in a training or educational program in the community while continuing in official detention at the prison facility; or

(c) work at paid employment in the community while continuing in official detention at the penal or correctional facility if—

(1) the rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the community; and

(2) the prisoner agrees to pay to the Bureau such costs incident to official detention as the Bureau finds appropriate and reasonable under all the circumstances, such costs to be collected by the Bureau and deposited in the Treasury to the credit of the appropriation available for such costs at the time such collections are made.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2007.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

CODIFICATION

Another section 3622, effective through Oct. 31, 1986, is set out in chapter 229 following this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 28 section 994.

§ 3623. Transfer of a prisoner to State authority

The Director of the Bureau of Prisons shall order that a prisoner who has been charged in an indictment or information with, or convicted of, a State felony, be transferred to an official detention facility within such State prior to his release from a Federal prison facility if—

(1) the transfer has been requested by the Governor or other executive authority of the State;

(2) the State has presented to the Director a certified copy of the indictment, information, or judgment of conviction; and

(3) the Director finds that the transfer would be in the public interest.

If more than one request is presented with respect to a prisoner, the Director shall determine which request should receive preference. The expenses of such transfer shall be borne by the State requesting the transfer.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2008.)

PROSPECTIVE EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

CODIFICATION

Another section 3623, effective through Oct. 31, 1986, is set out in chapter 229 following this chapter.

§ 3624. Release of a prisoner

(a) Date of release

A prisoner shall be released by the Bureau of Prisons on the date of the expiration of his term of imprisonment, less any time credited toward the service of his sentence as provided in subsection (b). If the date for a prisoner's release falls on a Saturday, a Sunday, or a legal holiday at the place of confinement, the prisoner may be released by the Bureau on the last preceding weekday.

(b) Credit toward service of sentence for satisfactory behavior

A prisoner who is serving a term of imprisonment of more than one year, other than a term of imprisonment for the duration of his life, shall receive credit toward the service of his sentence, beyond the time served, of fifty-four days at the end of each year of his term of imprisonment, beginning after the first year of the term, unless the Bureau of Prisons determines that, during that year, he has not satisfactorily complied with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner. If the Bureau determines that, during that year, the prisoner has not satisfactorily complied with such institutional regulations, he shall receive no such credit toward service of his sentence or shall receive such lesser credit as the Bureau determines to be appropriate. The Bureau's determination shall be made within fifteen days after the end of each year of the sentence. Such credit toward service of sentence vests at the time that it is received. Credit that has vested may not later be withdrawn, and credit that has not been earned may not later be granted. Credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.

(c) Pre-release custody

The Bureau of Prisons shall, to the extent practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part, not to exceed six months, of the last 10 per centum of the term to be served under conditions that will afford the prisoner a reasonable opportunity to adjust to and prepare for his reentry into the community. The United States Probation System shall, to the extent practicable, offer assistance to a prisoner during such pre-release custody.

(d) Allotment of clothing, funds, and transportation

Upon the release of a prisoner on the expiration of his term of imprisonment, the Bureau of Prisons shall furnish him with—

(1) suitable clothing;

(2) an amount of money, not more than $500, determined by the Director to be consistent with the needs of the offender and the public interest, unless the Director determines that the financial position of the offender is such that no sum should be furnished; and

(3) transportation to the place of his conviction, to his bona fide residence within the United States, or to such other place within the United States as may be authorized by the Director.

(e) Supervision after release

A prisoner whose sentence includes a term of supervised release after imprisonment shall be released by the Bureau of Prisons to the supervision of a probation officer who shall, during the term imposed, supervise the person released to the degree warranted by the conditions specified by the sentencing court. The term of supervised release commences on the day the person is released from imprisonment. The term runs concurrently with any Federal, State, or local term of probation or supervised release or parole for another offense to which the person is subject or becomes subject during the term of supervised release, except that it does not run during any period in which the person is imprisoned, other than during limited intervals as a condition of probation or supervised release, in connection with a conviction for a Federal, State, or local crime. No prisoner shall be released on supervision unless such prisoner agrees to adhere to an installment schedule, not to exceed two years except in special circumstances, to pay for any fine imposed for the offense committed by such prisoner.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2008.)

Prospective Effective Date

Section effective the day after U.S. Sentencing Commission has submitted the initial set of sentencing guidelines to Congress, the General Accounting Office has studied and reported to Congress on the guidelines, and Congress has examined the guidelines, see section 235(a)(1)(B)(ii) of Pub. L. 98-473, set out as a note under section 3551 of this title.

Codification

Another section 3624, effective through Oct. 31, 1986, is set out in chapter 229 following this chapter.

Section Referred to in Other Sections

This section is referred to in sections 3603, 3621, 4105, 4106 of this title; title 28 section 994.

§ 3625. Inapplicability of the Administrative Procedure Act

The provisions of sections 554 and 555 and 701 through 706 of title 5, United States Code, do not apply to the making of any determination, decision, or order under this subchapter.

(Added Pub. L. 98-473, title II, § 212(a)(2), Oct. 12, 1984, 98 Stat. 2010.)

Prospective Effective Date

Section effective Nov. 1, 1986, see note set out preceding section 3601 of this chapter.

CHAPTER 229—FINES, PENALTIES AND FORFEITURES [1]

Sec.
3621. Criminal default on fine.
3622. Factors relating to imposition of fines.
3623. Alternative fines.
3624. Security for stayed fine.

Repeal of Chapter

Pub. L. 98-473, title II, §§ 212(a)(1), (2), 235(a)(1), Oct. 12, 1984, 98 Stat. 2001, 2031, enacted a new chapter 229 (§§ 3601 to 3625) and repealed this chapter 229 (except sections 3611, 3612, 3615, 3617 to 3620 which were redesignated), effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986). New chapter 229 is set out preceding this chapter. Section 235 of Pub. L. 98-473, relating to effective dates, is set out as an Effective Date note under section 3551 of this title.

Amendments

1984—Pub. L. 98-596, § 6(b), Oct. 30, 1984, 98 Stat. 3138, added items 3621 to 3624.

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[1] Another chapter 229 (§§ 3601 to 3625) effective Nov. 1, 1986, is set out preceding this chapter.

§ 3611. Firearms possessed by convicted felons

[*See main edition for text; credit*]

Redesignation of Section

Section redesignated section 3665 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding this section.

Codification

Another section 3611, effective Nov. 1, 1986, is set out in chapter 229 preceding this chapter.

Short Title of 1984 Amendment

Pub. L. 98-596, § 1, Oct. 30, 1984, 98 Stat. 3134, provided: "That this Act [enacting sections 3565 and 3621 to 3624 of this title, amending sections 1, 3565, 3569, 3579, 3651, 3655, 4209, and 4214 of this title and rule 12.2 of the Federal Rules of Criminal Procedure, set out in the Appendix to this title, repealing chapter 228 (§ 3591 et seq.) of this title, enacting provisions set out as notes under sections 1 and 3565 of this title and rule 12.2 of the Federal Rules of Criminal Procedure, and repealing a provision set out as a note under section 3565 of this title] may be cited as the 'Criminal Fine Enforcement Act of 1984'."

§ 3612. Bribe moneys

[*See main edition for text; credits*]

Redesignation of Section

Section redesignated section 3666 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

Codification

Another section 3612, effective Nov. 1, 1986, is set out in chapter 229 preceding this chapter.

§ 3613. Fines for setting grass and timber fires

[*See main edition for text; credit*]

Repeal of Section

Section repealed effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

Codification

Another section 3613, effective Nov. 1, 1986, is set out in chapter 229 preceding this chapter.

Section Referred to in Other Sections

This section is referred to in title 42 section 10601.

§ 3614. Fine for seduction

[*See main edition for text; credit*]

Repeal of Section

Section repealed effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

Codification

Another section 3614, effective Nov. 1, 1986, is set out in chapter 229 preceding this chapter.

§ 3615. Liquors and related property; definitions

[*See main edition for text; credit*]

Redesignation of Section

Section redesignated section 3667 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

Codification

Another section 3615, effective Nov. 1, 1986, is set out in chapter 229 preceding this chapter.

§ 3617. Remission or mitigation of forfeitures under liquor laws; possession pending trial

[*See main edition for text; credit*]

Redesignation of Section

Section redesignated section 3668 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

§ 3618. Conveyances carrying liquor

[*See main edition for text; credit*]

Redesignation of Section

Section redesignated section 3669 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

§ 3619. Disposition of conveyances seized for violation of the Indian liquor laws

[*See main edition for text; credit*]

Redesignation of Section

Section redesignated section 3670 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

§ 3620. Vessels carrying explosives and steerage passengers

[*See main edition for text; credit*]

Redesignation of Section

Section redesignated section 3671 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

§ 3621. Criminal default on fine

(a) Whoever, having been sentenced to pay a fine or penalty, willfully does not pay an amount due—

(1) in the case of an individual, shall be fined not more than the greater of $100,000 or twice the unpaid balance of the fine or penalty, or imprisoned not more than one year, or both; and

(2) in the case of a person other than an individual, shall be fined not more than the greater of $250,000 or twice the unpaid balance of the fine or penalty.

(b) It is a defense to a prosecution under subsection (a)(1) of this section that the individual was unable to make the payment because of such individual's responsibility to provide necessities for such individual or other individuals financially dependent upon such individual. The defendant has the burden of establishing the defense under this subsection by a preponderance of the evidence.

(Added Pub. L. 98-596, § 6(a), Oct. 30, 1984, 98 Stat. 3136.)

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

CODIFICATION

Another section 3621, effective Nov. 1, 1986, is set out in chapter 229 preceding this chapter.

EFFECTIVE DATE

Section applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98-596, set out as an Effective Date of 1984 Amendment note under section 1 of this title.

§ 3622. Factors relating to imposition of fines

(a) In determining whether to impose a fine and the amount of a fine, the court shall consider, in addition to other relevant factors—

(1) the nature and circumstances of the offense;

(2) the history and characteristics of the defendant;

(3) the defendant's income, earning capacity, and financial resources;

(4) the burden that the fine will impose upon the defendant, any person who is financially dependent on the defendant, or any other person (including a government) that would be responsible for the welfare of any person financially dependent on the defendant, relative to the burden that alternative punishments would impose;

(5) any pecuniary loss inflicted upon others as a result of the offense;

(6) whether restitution is ordered and the amount of such restitution;

(7) the need to deprive the defendant of illegally obtained gains from the offense;

(8) whether the defendant can pass on to consumers or other persons the expense of the fine; and

(9) if the defendant is an organization, the size of the organization and any measure taken by the organization to discipline any officer, director, employee, or agent of the organization responsible for the offense and to prevent a recurrence of such an offense.

(b) If, as a result of a conviction, the defendant has the obligation to make restitution to a victim of the offense, the court shall impose a fine or penalty only to the extent that such fine or penalty will not impair the ability of the defendant to make restitution.

(Added Pub. L. 98-596, § 6(a), Oct. 30, 1984, 98 Stat. 3136.)

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

CODIFICATION

Another section 3622, effective Nov. 1, 1986, is set out in chapter 229 preceding this chapter.

EFFECTIVE DATE

Section applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98-596, set out as an Effective Date of 1984 Amendment note under section 1 of this title.

§ 3623. Alternative fines

(a) An individual convicted of an offense may be fined not more than the greatest of—

(1) the amount specified in the law setting forth the offense;

(2) the applicable amount under subsection (c) of this section;

(3) in the case of a felony, $250,000;

(4) in the case of a misdemeanor resulting in death, $250,000; or

(5) in the case of a misdemeanor punishable by imprisonment for more than six months, $100,000.

(b) A person (other than an individual) convicted of an offense may be fined not more than the greatest of—

(1) the amount specified in the law setting forth the offense;

(2) the applicable amount under subsection (c) of this section;

(3) in the case of a felony, $500,000;

(4) in the case of a misdemeanor resulting in death, $500,000; or

(5) in the case of a misdemeanor punishable by imprisonment for more than six months, $100,000.

(c)(1) If the defendant derives pecuniary gain from the offense, or if the offense results in pecuniary loss to another person, the defendant may be fined not more than the greater of twice the gross gain or twice the gross loss, unless imposition of a fine under this subsection would unduly complicate or prolong the sentencing process.

(2) Except as otherwise expressly provided, the aggregate of fines that a court may impose on a defendant at the same time for different offenses that arise from a common scheme or plan, and that do not cause separable or distinguishable kinds of harm or damage, is twice the amount imposable for the most serious offense.

(Added Pub. L. 98-596, § 6(a), Oct. 30, 1984, 98 Stat. 3137.)

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

CODIFICATION

Another section 3623, effective Nov. 1, 1986, is set out in chapter 229 preceding this chapter.

EFFECTIVE DATE

Section applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98-596, set out as an Effective Date of 1984 Amendment note under section 1 of this title.

§ 3624. Security for stayed fine

If a sentence imposing a fine is stayed, the court shall, absent exceptional circumstances (as determined by the court)—

(1) require the defendant to deposit, in the registry of the district court, any amount of the fine that is due;

(2) require the defendant to provide a bond or other security to ensure payment of the fine; or

(3) restrain the defendant from transferring or dissipating assets.

(Added Pub. L. 98-596, § 6(a), Oct. 30, 1984, 98 Stat. 3138.)

Repeal of Section

Section repealed effective Nov. 1, 1986, see note set out preceding section 3611 of this chapter.

Codification

Another section 3624, effective Nov. 1, 1986, is set out in chapter 229 preceding this chapter.

Effective Date

Section applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98-596, set out as an Effective Date of 1984 Amendment note under section 1 of this title.

CHAPTER 231—PROBATION

Repeal of Chapter

Pub. L. 98-473, title II, §§ 212(a)(1), (2), 235(a)(1), Oct. 12, 1984, 98 Stat. 1987, 2031, repealed this chapter (except section 3656 which was redesignated), effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986). Section 235 of Pub. L. 98-473, relating to effective dates, is set out as an Effective Date note under section 3551 of this title.

Chapter Referred to in Other Sections

This chapter is referred to in sections 3153, 3671 of this title.

§ 3651. Suspension of sentence and probation

[See main edition for text of first to ninth pars.]

The defendant's liability for any punishment (other than a fine) imposed as to which probation is granted, shall be fully discharged by the fulfillment of the terms and conditions of probation. If at the end of the period of probation, the defendant has not complied with a condition of probation, the court may nevertheless terminate proceedings against the defendant, but no such termination shall affect the defendant's obligation to pay a fine imposed or made a condition of probation, and such fine shall be collected in the manner provided in section 3565 of this title.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, §§ 235(a)(1), 238(b), (c), (i), 98 Stat. 2031, 2038, 2039; Oct. 30, 1984, Pub. L. 98-596, §§ 4, 12(a)(2), (3), (9), (b), 98 Stat. 3136, 3139, 3140.)

Repeal of Section

Section repealed effective Nov. 1, 1986, see note set out preceding section 3651 of this chapter.

Amendments

1984—Pub. L. 98-596, § 4, in last par. relating to defendant's liability for punishment, substituted "punishment (other than a fine)" for "fine or other punishment" and added "If at the end of the period of probation, the defendant has not complied with a condition of probation, the court may nevertheless terminate proceedings against the defendant, but no such termination shall affect the defendant's obligation to pay a fine imposed or made a condition of probation, and such fine shall be collected in the manner provided in section 3565 of this title."

Pub. L. 98-473, §§ 235(a)(1), 238(b), (c), (i), and Pub. L. 98-596, § 12(a)(2), (3), (9), (b), affected this section as follows: Section 238(b), (c), added a new par. and amended generally the final par. effective pursuant to section 235(a)(1) of Pub. L. 98-473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(2), (3) of Pub. L. 98-596 struck out the par. added by Pub. L. 98-473 and amended generally the final par. to read as it had before amendment by Pub. L. 98-473, applicable pursuant to section 12(b) of Pub. L. 98-596 on and after the date of enactment of Pub. L. 98-473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98-473 which repealed section 238 of Pub. L. 98-473 on the same date established by section 235(a)(1) of Pub. L. 98-473 was repealed by section 12(a)(9) of Pub. L. 98-596. The cumulative effect of the amendments resulted in no change in this section.

Effective Date of 1984 Amendment

Amendment by section 4 of Pub. L. 98-596 applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98-596, set out as a note under section 1 of this title.

§ 3652. Probation—(Rule)

Repeal of Section

Section repealed effective Nov. 1, 1986, see note set out preceding section 3651 of this chapter.

§ 3653. Report of probation officer and arrest of probationer

Repeal of Section

Section repealed effective Nov. 1, 1986, see note set out preceding section 3651 of this chapter.

§ 3654. Appointment and removal of probation officers

Repeal of Section

Section repealed effective Nov. 1, 1986, see note set out preceding section 3651 of this chapter.

§ 3655. Duties of probation officers

[See main edition for text of first to fourth pars.]

He shall report to the court any failure of a probationer under his supervision to pay an amount due as a fine or as restitution.

Each probation officer shall perform such duties with respect to persons on parole as the United States Parole Commission shall request.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, §§ 235(a)(1), 238(d), (i), 98 Stat. 2031, 2038, 2039; Oct. 30, 1984, Pub. L. 98-596, §§ 5, 12(a)(4), (9), (b), 98 Stat. 3136, 3139, 3140.)

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 3651 of this chapter.

AMENDMENTS

1984—Pub. L. 98-596, § 5, added par. relating to reporting to the court any failure of a probationer to pay an amount due as a fine or as restitution.

Pub. L. 98-473, §§ 235(a)(1), 238(d), (i), and Pub. L. 98-596, § 12(a)(4), (9), (b), affected this section as follows: Section 238(d) of Pub. L. 98-473 amended generally the second par. effective pursuant to section 235(a)(1) of Pub. L. 98-473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(4) of Pub. L. 98-596 amended generally the second par. to read as it had before amendment by Pub. L. 98-473, applicable pursuant to section 12(b) of Pub. L. 98-596 on and after the date of enactment of Pub. L. 98-473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98-473 which repealed section 238 of Pub. L. 98-473 on the same date established by section 235(a)(1) of Pub. L. 98-473 was repealed by section 12(a)(9) of Pub. L. 98-596. The cumulative effect of the amendments resulted in no change in this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 5 of Pub. L. 98-596 applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98-596, set out as a note under section 1 of this title.

§ 3656. Duties of Director of Administrative Office of the United States Courts

REDESIGNATION OF SECTION

Section redesignated section 3672 of new chapter 232 of this title effective Nov. 1, 1986, see note set out preceding section 3651 of this chapter.

CHAPTER 232—MISCELLANEOUS SENTENCING PROVISIONS [1]

Sec.
3661. Use of information for sentencing.
3662. Conviction records.
3663. Order of restitution.
3664. Procedure for issuing order of restitution.
3665. Firearms possessed by convicted felons.
3666. Bribe moneys.
3667. Liquors and related property; definitions.
3668. Remission or mitigation of forfeitures under liquor laws; possession pending trial.
3669. Conveyance carrying liquor.[2]
3670. Disposition of conveyances seized for violation of the Indian liquor laws.
3671. Vessels carrying explosives and steerage passengers.
3672. Duties of Director of Administrative Office of the United States Courts.
3673. Definitions for sentencing provisions.

PROSPECTIVE EFFECTIVE DATE

Pub. L. 98-473, title II, §§ 212(a)(1), (2), 235(a)(1), Oct. 12, 1984, 98 Stat. 2031, enacted heading, analysis, and section 3673 of this chapter 232 (§§ 3661 to 3673) and provided that sections 3577, 3578, 3579, 3580, 3611, 3612, 3615, 3617, 3618, 3619, 3620, and 3656 of this title are redesignated as sections 3661, 3662, 3663, 3664, 3665, 3666, 3667, 3668, 3669, 3670, 3671, and 3672, respectively, of this chapter 232, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986). Section 235 of Pub. L. 98-473, relating to effective dates, is set out as a note under section 3551 of this title. Another chapter 232 (§§ 3671, 3672) which was enacted by section 1406(a) of Pub. L. 98-473 is set out after this chapter.

§ 3661. Use of information for sentencing

REDESIGNATION OF SECTION

Section 3577 of this title is redesignated as section 3661 of this chapter 232, effective Nov. 1, 1986, see note set out preceding this section.

§ 3662. Conviction records

REDESIGNATION OF SECTION

Section 3578 of this title is redesignated as section 3662 of this chapter 232, effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

§ 3663. Order of restitution

REDESIGNATION OF SECTION; AMENDMENT OF SUBSECTIONS (g) AND (h)

Section 3579 of this title is redesignated as section 3663 of this chapter 232, effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

Pub. L. 98-473, title II, §§ 212(a)(3), 235(a)(1), Oct. 12, 1984, 98 Stat. 2010, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subsecs. (g) and (h) of this section are amended generally to read as follows:

"(g) If such defendant is placed on probation or sentenced to a term of supervised release under this title, any restitution ordered under this section shall be a condition of such probation or supervised release. The court may revoke probation, or modify the term or conditions of a term of supervised release, or hold a defendant in contempt pursuant to section 3583(e) if the defendant fails to comply with such order. In determining whether to revoke probation, modify the term or conditions of supervised release, or hold a defendant serving a term of supervised release in contempt, the court shall consider the defendant's employment status, earning ability, financial resources, the willfulness of the defendant's failure to pay, and any other special circumstances that may have a bearing on the defendant's ability to pay.

"(h) An order of restitution may be enforced by the United States in the manner provided in sections 3812 and 3813 [3] or in the same manner

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[1] Another chapter 232 (§§ 3671, 3672) is set out after this chapter.

[2] So in original. Does not conform to section catchline.

[3] So in original. Probably should be "sections 3612 and 3613".

as a judgment in a civil action, and by the victim named in the order to receive the restitution in the same manner as a judgment in a civil action."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3556 of this title.

§ 3664. Procedure for issuing order of restitution

REDESIGNATION OF SECTION

Section 3580 of this title is redesignated as section 3664 of this chapter 232, effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3556 of this title.

§ 3665. Firearms possessed by convicted felons

REDESIGNATION OF SECTION

Section 3611 of this title is redesignated as section 3665 of this chapter 232, effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

§ 3666. Bribe moneys

REDESIGNATION OF SECTION

Section 3612 of this title is redesignated as section 3666 of this chapter 232, effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

§ 3667. Liquors and related property; definitions

REDESIGNATION OF SECTION

Section 3615 of this title is redesignated as section 3667 of this chapter 232, effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

§ 3668. Remission or mitigation of forfeitures under liquor laws; possession pending trial

REDESIGNATION OF SECTION

Section 3617 of this title is redesignated as section 3668 of this chapter 232, effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

§ 3669. Conveyances carrying liquor

REDESIGNATION OF SECTION

Section 3618 of this title is redesignated as section 3669 of this chapter 232, effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

§ 3670. Disposition of conveyances seized for violation of the Indian liquor laws

REDESIGNATION AND AMENDMENT OF SECTION

Section 3619 of this title is redesignated as section 3670 of this chapter 232, effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

Pub. L. 98-473, title II, §§ 223(k), 235(a)(1), Oct. 12, 1984, 98 Stat. 2029, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended by substituting "3668" for "3617" and "3669" for "3618".

§ 3671. Vessels carrying explosives and steerage passengers

REDESIGNATION OF SECTION

Section 3620 of this title is redesignated as section 3671 of this chapter 232, effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

CODIFICATION

Another section 3671, effective 30 days after Oct. 12, 1984, is set out in chapter 232 following this chapter.

§ 3672. Duties of Director of Administrative Office of the United States Courts

REDESIGNATION OF SECTION

Section 3656 of this title is redesignated as section 3672 of this chapter 232, effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

CODIFICATION

Another section 3672, effective 30 days after Oct. 12, 1984, is set out in chapter 232 following this chapter.

§ 3673. Definitions for sentencing provisions

As used in chapters 227 and 229—

(a) "found guilty" includes acceptance by a court of a plea of guilty or nolo contendere;

(b) "commission of an offense" includes the attempted commission of an offense, the consummation of an offense, and any immediate flight after the commission of an offense; and

(c) "law enforcement officer" means a public servant authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of an offense.

(Added Pub. L. 98-473, title II, § 212(a)(4), Oct. 12, 1984, 98 Stat. 2010.)

REFERENCES IN TEXT

Chapters 227 and 229, referred to in text, probably means new chapters 227 (§§ 3551 to 3586) and 229 (§§ 3601 to 3625) of this title which are set out first and which were added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

EFFECTIVE DATE

Section effective Nov. 1, 1986, see note set out preceding section 3661 of this chapter.

CHAPTER 232—SPECIAL FORFEITURE OF COLLATERAL PROFITS OF CRIME [1]

Sec.
3671. Order of special forfeiture.
3672. Notice to victims of order of special forfeiture.

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[1] Another chapter 232 (§§ 3661 to 3673), effective Nov. 1, 1986, is set out preceding this chapter.

§ 3671. Order of special forfeiture

(a) Upon the motion of the United States attorney made at any time after conviction of a defendant for an offense against the United States resulting in physical harm to an individual, and after notice to any interested party, the court shall, if the court determines that the interest of justice or an order of restitution under chapter 227 [1] or 231 of this title so requires, order such defendant to forfeit all or any part of proceeds received or to be received by that defendant, or a transferee of that defendant, from a contract relating to a depiction of such crime in a movie, book, newspaper, magazine, radio or television production, or live entertainment of any kind, or an expression of that defendant's thoughts, opinions, or emotions regarding such crime.

(b) An order issued under subsection (a) of this section shall require that the person with whom the defendant contracts pay to the Attorney General any proceeds due the defendant under such contract.

(c)(1) Proceeds paid to the Attorney General under this section shall be retained in escrow in the Crime Victims Fund in the Treasury by the Attorney General for five years after the date of an order under this section, but during that five year period may—

- (A) be levied upon to satisfy—
  - (i) a money judgment rendered by a United States district court in favor of a victim of an offense for which such defendant has been convicted, or a legal representative of such victim; and
  - (ii) a fine imposed by a court of the United States; and
- (B) if ordered by the court in the interest of justice, be used to—
  - (i) satisfy a money judgment rendered in any court in favor of a victim of any offense for which such defendant has been convicted, or a legal representative of such victim; and
  - (ii) pay for legal representation of the defendant in matters arising from the offense for which such defendant has been convicted, but no more than 20 percent of the total proceeds may be so used.

(2) The court shall direct the disposition of all such proceeds in the possession of the Attorney General at the end of such five years and may require that all or any part of such proceeds be released from escrow and paid into the Crime Victims Fund in the Treasury.

(d) As used in this section, the term "interested party" includes the defendant and any transferee of proceeds due the defendant under the contract, the person with whom the defendant has contracted, and any person physically harmed as a result of the offense for which the defendant has been convicted.

(Added Pub. L. 98-473, title II, § 1406(a), Oct. 12, 1984, 98 Stat. 2175.)

REFERENCES IN TEXT

Chapter 227 of this title, referred to in subsec. (a), probably means existing chapter 227 (§§ 3651-3580) which is set out second and which is repealed effective Nov. 1, 1986 with certain exceptions.

CODIFICATION

Another section 3671, effective Nov. 1, 1986, is set out in chapter 232 preceding this chapter.

EFFECTIVE DATE

Chapter effective 30 days after Oct. 12, 1984, see section 1409(a) of Pub. L. 98-473, set out as a note under section 10601 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 42 section 10601.

§ 3672. Notice to victims of order of special forfeiture

The United States attorney shall, within thirty days after the imposition of an order under this chapter and at such other times as the Attorney General may require, publish in a newspaper of general circulation in the district in which the offense for which a defendant was convicted occurred, a notice that states—

(1) the name of, and other identifying information about, the defendant;

(2) the offense for which the defendant was convicted; and

(3) that the court has ordered a special forfeiture of certain proceeds that may be used to satisfy a judgment obtained against the defendant by a victim of an offense for which the defendant has been convicted.

(Added Pub. L. 98-473, title II, § 1406(a), Oct. 12, 1984, 98 Stat. 2176.)

CODIFICATION

Another section 3672, effective Nov. 1, 1986, is set out in chapter 232 preceding this chapter.

CHAPTER 235—APPEAL

Sec.	
3742.	Review of a sentence.

AMENDMENTS

1984—Pub. L. 98-473, title II, § 213(b), Oct. 12, 1984, 98 Stat. 2013, added item 3742.

§ 3731. Appeal by United States

In a criminal case an appeal by the United States shall lie to a court of appeals from a decision, judgment, or order of a district court dismissing an indictment or information or granting a new trial after verdict or judgment, as to any one or more counts, except that no appeal shall lie where the double jeopardy clause of the United States Constitution prohibits further prosecution.

An appeal by the United States shall lie to a court of appeals from a decision or order of a district courts suppressing or excluding evidence or requiring the return of seized property in a criminal proceeding, not made after the defendant has been put in jeopardy and before the verdict or finding on an indictment or information, if the United States attorney certifies to the district court that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of a fact material in the proceeding.

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[1] See References in Text note below.

An appeal by the United States shall lie to a court of appeals from a decision or order, entered by a district court of the United States, granting the release of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order granting release.

The appeal in all such cases shall be taken within thirty days after the decision, judgment or order has been rendered and shall be diligently prosecuted.

Pending the prosecution and determination of the appeal in the foregoing instances, the defendant shall be released in accordance with chapter 207 of this title.

The provisions of this section shall be liberally construed to effectuate its purposes.

(As amended Oct. 12, 1984 Pub. L. 98-473, title II, §§ 205, 1206, 98 Stat. 1986, 2153.)

AMENDMENTS

1984—First par. Pub. L. 98-473, § 1206, added "or granting a new trial after verdict or judgment," after "indictment or information".

Third par. Pub. L. 98-473, § 205, added third par. relating to appeals from a decision or order, entered by a district court of the United States, granting the release of a person charged with or convicted of an offense, or denying a motion for revocation of, or modification of the conditions of, a decision or order granting release.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3143, 3145 of this title.

§ 3742. Review of a sentence

(a) Appeal by a defendant

A defendant may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a); or

(3) was imposed for an offense for which a sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and the sentence is greater than—

(A) the sentence specified in the applicable guideline to the extent that the sentence includes a greater fine or term of imprisonment or term of supervised release than the maximum established in the guideline, or includes a more limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the maximum established in the guideline; and

(B) the sentence specified in a plea agreement, if any, under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure; or

(4) was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is greater than the sentence specified in a plea agreement, if any, under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure.

(b) Appeal by the Government

The Government may file a notice of appeal in the district court for review of an otherwise final sentence if the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a);

(3) was imposed for an offense for which a sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1), and the sentence is less than—

(A) the sentence specified in the applicable guideline to the extent that the sentence includes a lesser fine or term of imprisonment or term of supervised release than the minimum established in the guideline, or includes a less limiting condition of probation or supervised release under section 3563(b)(6) or (b)(11) than the minimum established in the guideline; and

(B) the sentence specified in a plea agreement, if any, under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure; or

(4) was imposed for an offense for which no sentencing guideline has been issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1) and is less than the sentence specified in a plea agreement, if any, under Rule 11(e)(1)(B) or (e)(1)(C) of the Federal Rules of Criminal Procedure;

and the Attorney General or the Solicitor General personally approves the filing of the notice of appeal.

(c) Record on review

If a notice of appeal is filed in the district court pursuant to subsection (a) or (b), the clerk shall certify to the court of appeals—

(1) that portion of the record in the case that is designated as pertinent by either of the parties;

(2) the presentence report; and

(3) the information submitted during the sentencing proceeding.

(d) Consideration

Upon review of the record, the court of appeals shall determine whether the sentence—

(1) was imposed in violation of law;

(2) was imposed as a result of an incorrect application of the sentencing guidelines; or

(3) is outside the range of the applicable sentencing guideline, and is unreasonable, having regard for—

(A) the factors to be considered in imposing a sentence, as set forth in chapter 227 of this title; and

(B) the reasons for the imposition of the particular sentence, as stated by the district court pursuant to the provisions of section 3553(c).

The court of appeals shall give due regard to the opportunity of the district court to judge the credibility of the witnesses, and shall accept the findings of fact of the district court unless they are clearly erroneous.

(e) Decision and disposition

If the court of appeals determines that the sentence—

(1) was imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, it shall—

(A) remand the case for further sentencing proceedings; or

(B) correct the sentence;

(2) is outside the range of the applicable sentencing guideline and is unreasonable, it shall state specific reasons for its conclusions and—

(A) if it determines that the sentence is too high and the appeal has been filed under subsection (a), it shall set aside the sentence and—

(i) remand the case for imposition of a lesser sentence;

(ii) remand the case for further sentencing proceedings; or

(iii) impose a lesser sentence;

(B) if it determines that the sentence is too low and the appeal has been filed under subsection (b), it shall set aside the sentence and—

(i) remand the case for imposition of a greater sentence;

(ii) remand the case for further sentencing proceedings; or

(iii) impose a greater sentence; or

(3) was not imposed in violation of law or imposed as a result of an incorrect application of the sentencing guidelines, and is not unreasonable, it shall affirm the sentence.

(Added Pub. L. 98-473, title II, § 213(a), Oct. 12, 1984, 98 Stat. 2011.)

References in Text

Section 3563 and chapter 227 of this title, referred to in subsecs. (a)(3)(A), (b)(3)(A), and (d)(3)(A), probably mean the section 3563 in the new chapter 227 (§§ 3551 to 3586) of this title which is set out first and which was added by section 212(a)(2) of Pub. L. 98-473, effective Nov. 1, 1986.

Effective Date

Section effective on the first day of the first calendar month beginning 24 months after Oct. 12, 1984 (Nov. 1, 1986), see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

Section Referred to in Other Sections

This section is referred to in sections 3557, 3562, 3572, 3582, 4106 of this title.

CHAPTER 237—RULES OF CRIMINAL PROCEDURE

§ 3772. Procedure after verdict

[*See main edition for text of first par.*]

The right of appeal shall continue in those cases in which appeals are authorized by law, but the rules made as herein authorized may prescribe the times for and manner of taking appeals and applying for writs of certiorari and preparing records and bills of exceptions and the conditions on which supersedeas or release pending appeal may be allowed.

[*See main edition for text of third and fourth pars.*]

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 206, 98 Stat. 1986.)

Amendments

1984—Pub. L. 98-473 substituted "release pending appeal" for "bail".

PART III—PRISONS AND PRISONERS

Chap.		Sec.
313.	Offenders with mental disease or defect	4241

Amendment of Analysis

Pub. L. 98-473, title II, §§ 218(d), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), the analysis is amended by amending items 309, 311, and 314 to read: "Repealed".

Amendments

1984—Pub. L. 98-473, title II, § 403(b), Oct. 12, 1984, 98 Stat. 2067, in item 313 substituted "Offenders with mental disease or defect" for "Mental defectives".

CHAPTER 301—GENERAL PROVISIONS

Sec.	
4012.	Summary seizure and forfeiture of prison contraband.

Amendments

1984—Pub. L. 98-473, title II, § 1109(e), Oct. 12, 1984, 98 Stat. 2148, added item 4012.

§ 4004. Oaths and acknowledgments

Amendment of Section

Pub. L. 98-473, title II, §§ 223(l), 235(a)(1), Oct. 12, 1984, 98 Stat. 2029, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended by substituting "and record clerks" for "record clerks, and parole officers".

§ 4012. Summary seizure and forfeiture of prison contraband

An officer or employee of the Bureau of Prisons may, pursuant to rules and regulations of the Director of the Bureau of Prisons, summarily seize any object introduced into a Federal penal or correctional facility or possessed by an inmate of such a facility in violation of a rule, regulation or order promulgated by the Director, and such object shall be forfeited to the United States.

(Added Pub. L. 98-473, title II, § 1109(d), Oct. 12, 1984, 98 Stat. 2148.)

CHAPTER 305—COMMITMENT AND TRANSFER

Amendment of Analysis

Pub. L. 98-473, title II, §§ 218(e), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four *months after Oct. 12, 1984 (Nov. 1, 1986), the analysis is amended by amending items 4084 and 4085 to read: "Repealed".*

§ 4082. Commitment to Attorney General; residential treatment centers; extension of limits of confinement; work furlough

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 218(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended striking out subsecs. (a) to (c) and (e) and redesignating subsecs. (d) and (f) as (a) and (b).

§ 4084. Copy of commitment delivered with prisoner

REPEAL OF SECTION

Pub. L. 98-473, title II, §§ 218(a)(3), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is repealed.

§ 4085. Transfer for state offense; expense

REPEAL OF SECTION

Pub. L. 98-473, title II, §§ 218(a)(3), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is repealed.

CHAPTER 306—TRANSFER TO OR FROM FOREIGN COUNTRIES

§ 4101. Definitions

AMENDMENT OF SUBSECTIONS (f) AND (g)

Pub. L. 98-473, title II, §§ 223(m)(1), 235(a)(1), Oct. 12, 1984, 98 Stat. 2029, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended as follows:

(A) in subsection (f), by adding ", including a term of supervised release pursuant to section 3583" after "supervision"; and

(B) in subsection (g), by deleting "to a penalty of imprisonment the execution of which is suspended and" and substituting "under which", and by deleting "the suspended" and substituting "a".

§ 4105. Transfer of offenders serving sentence of imprisonment

AMENDMENT OF SUBSECTION (c)

Pub. L. 98-473, title II, §§ 223(m)(2), 235(a)(1), Oct. 12, 1984, 98 Stat. 2029, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subsection (c) of this section is amended and as so amended reads as follows:

(c)(1) The transferred offender shall be entitled to all credits for good time, for labor, or any other credit toward the service of the sentence which had been given by the transferring country for time served as of the time of the transfer. Subsequent to the transfer, the offender shall in addition be entitled to credits toward service of sentence for satisfactory behavior, computed on the basis of the time remaining to be served at the time of the transfer and at the rate provided in section 3624(b) of this title for a sentence of the length of the total sentence imposed and certified by the foreign authorities. These credits shall be combined to provide a release date for the offender pursuant to section 3624(a) of this title.

(2) If the country from which the offender is transferred does not give credit for good time, the basis of computing the deduction from the sentence shall be the sentence imposed by the sentencing court and certified to be served upon transfer, at the rate provided in section 3624(b) of this title.

(3) Credit toward service of sentence may be withheld as provided in section 3624(b) of this title.

(4) Any sentence for an offense against the United States, imposed while the transferred offender is serving the sentence of imprisonment imposed in a foreign country, shall be aggregated with the foreign sentence, in the same manner as if the foreign sentence was one imposed by a United States district court for an offense against the United States.

§ 4106. Transfer of offenders on parole; parole of offenders transferred

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 223(m)(3), 235(a)(1), Oct. 12, 1984, 98 Stat. 2029, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended as follows:

(A) in subsection (a), by deleting "Parole Commission" and substituting "Probation System";

(B) by amending subsection (b) to read as follows:

"(b) An offender transferred to the United States to serve a sentence of imprisonment shall be released pursuant to section 3624(a) of this title after serving the period of time specified in the applicable sentencing guideline promulgated pursuant to 28 U.S.C. 994(a)(1). He shall be released to serve a term of supervised release for any term specified in the applicable guideline. The provisions of section 3742 of this title apply to a sentence to a term of imprisonment under this subsection, and the United States court of appeals for the district in which the offender is imprisoned after transfer to the United States has jurisdiction to review the period of imprisonment as though it had been imposed by the United States district court."; and

(C) by repealing subsection (c).

§ 4108. Verification of consent of offender to transfer to the United States

AMENDMENT OF SUBSECTION (a)

Pub. L. 98-473, title II, §§ 223(m)(4), 235(a)(1), Oct. 12, 1984, 98 Stat. 2030, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subsec. (a) of this section is amended by adding ", including any term of imprisonment or term of supervised release specified in the applicable sentencing guideline promulgated pursuant to 28 U.S.C. 994(a)(1)," after "consequences thereof".

CHAPTER 307—EMPLOYMENT

§ 4124. Purchase of prison-made products by Federal departments

[*See main edition for text of first par.*]

Disputes as to the price, quality, character, or suitability of such products shall be arbitrated by a board consisting of the Comptroller General of the United States, the Administrator of General Services, and the President, or their representatives. Their decision shall be final and binding upon all parties.

(As amended Feb. 14, 1984, Pub. L. 98-216, § 3(b)(2), 98 Stat. 6.)

AMENDMENTS

1984—Pub. L. 98-216 substituted "President" for "Director of the Bureau of the Budget" in second par.

CHAPTER 309—GOOD TIME ALLOWANCES

REPEAL OF CHAPTER

Pub. L. 98-473, title II, §§ 218(a)(4), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this chapter is repealed.

§ 4161. Computation generally

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding this section.

§ 4162. Industrial good time

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4161 of this title.

§ 4163. Discharge

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4161 of this title.

§ 4164. Released prisoner as parolee

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4161 of this title.

§ 4165. Forfeiture for offense

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4161 of this title.

§ 4166. Restoration of forfeited commutation

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4161 of this title.

CHAPTER 311—PAROLE

Sec.
4215. Appeal.

AMENDMENTS

1984—Pub. L. 98-473, title II, § 1408(d), Oct. 12, 1984, 98 Stat. 2178, substituted "Appeal" for "Reconsideration and appeal" in item 4215.

REPEAL OF CHAPTER

Pub. L. 98-473, title II, §§ 218(a)(5), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this chapter is repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3522, 4255 of this title.

§ 4201. Definitions

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106 of this title.

§ 4202. Parole Commission created

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106 of this title; title 21 sections 845a, 848.

§ 4203. Powers and duties of the Commission

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106, 4201, 4204, 4206, 4218 of this title.

§ 4204. Powers and duties of the Chairman

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106 of this title.

§ 4205. Time of eligibility for release on parole

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106, 4201, 4208 of this title.

§ 4206. Parole determination criteria

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106, 4215, 5041 of this title.

§ 4207. Information considered

In making a determination under this chapter (relating to release on parole) the Commission shall consider, if available and relevant:

[*See main edition for text of* (*1*) *to* (*3*)]

. (4) recommendations regarding the prisoner's parole made at the time of sentencing by the sentencing judge;

(5) [1] a statement, which may be presented orally or otherwise, by any victim of the offense for which the prisoner is imprisoned about the financial, social, psychological, and emotional harm done to, or loss suffered by such victim; and

(5) [1] reports of physical, mental, or psychiatric examination of the offender.

There shall also be taken into consideration such additional relevant information concerning the prisoner (including information submitted by the prisoner) as may be reasonably available.

(As amended Pub. L. 98-473, title II, § 1408(a), Oct. 12, 1984, 98 Stat. 2177.)

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

AMENDMENTS

1984—Par. (5). Pub. L. 98-473 added the par. (5) set out first relating to statements by victims.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473, effective 30 days after Oct. 12, 1984, see section 1409(a) of Pub. L. 98-473, set out as an Effective Date note under section 10601 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106 of this title.

§ 4208. Parole determination proceeding; time

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106 of this title.

§ 4209. Conditions of parole

(a) In every case, the Commission shall impose as conditions of parole that the parolee not commit another Federal, State, or local crime and, if a fine was imposed, that the parolee make a diligent effort to pay the fine in accordance with the judgment. The Commission may impose or modify other conditions of parole to the extent that such conditions are reasonably related to—

[*See main edition for text of* (*1*) *and* (*2*)]

and may provide for such supervision and other limitations as are reasonable to protect the public welfare.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-473, title II, §§ 235(a)(1), 238(e), (i), Oct. 12, 1984, 98 Stat. 2031, 2039; Pub. L. 98-596, §§ 7, 12(a)(5), (9), (b), Oct. 30, 1984, 98 Stat. 3138, 3139, 3140.)

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-596, § 7, in first sentence, substituted "impose as conditions" for "impose as a condition" and added "and, if a fine was imposed, that the parolee make a diligent effort to pay the fine in accordance with the judgment" after "local crime".

Pub. L. 98-473, §§ 235(a)(1), 238(e), (i), and Pub. L. 98-596, § 12(a)(5), (9), (b), affected this section as follows: Section 238(e) of Pub. L. 98-473 amended provisions of subsec. (a) preceding par. (1) effective pursuant to section 235(a)(1) of Pub. L. 98-473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(5) of Pub. L. 98-596 amended provisions of subsec. (a) preceding par. (1) to read as they had before amendment by Pub. L. 98-473, applicable pursuant to section 12(b) of Pub. L. 98-596 on and after the date of enactment of Pub. L. 98-473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98-473 which repealed section 238 of Pub. L. 98-473 on the same date established by section 235(a)(1) of Pub. L. 98-473 was repealed by section 12(a)(9) of Pub. L. 98-596. The cumulative effect of the amendments resulted in no change in this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 7 of Pub. L. 98-596 applicable to offenses committed after Dec. 31, 1984, see section 10 of Pub. L. 98-596, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106, 4213, 4215 of this title.

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[1] So in original. There are two pars. designated (5).

§ 4210. Jurisdiction of Commission

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106, 4211 of this title.

§ 4211. Early termination of parole

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106, 4210, 4215 of this title.

§ 4212. Aliens

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106 of this title.

§ 4213. Summons to appear or warrant for retaking of parolee

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106, 4214 of this title.

§ 4214. Revocation of parole

(As amended Pub. L. 98-473, title II, §§ 235(a)(1), 238(f), (i), Oct. 12, 1984, 98 Stat. 2031, 2039; Pub. L. 98-596, § 12(a)(6), (9), (b), Oct. 30, 1984, 98 Stat. 3139, 3140.)

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-473, §§ 235(a)(1), 238(f), (i), and Pub. L. 98-596, § 12(a)(6), (9), (b), affected this section as follows: Section 238(f) of Pub. L. 98-473 amended par. (1) effective pursuant to section 235(a)(1) of Pub. L. 98-473 the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984. Section 12(a)(6) of Pub. L. 98-596 amended par. (1) to read as it had before amendment by Pub. L. 98-473, applicable pursuant to section 12(b) of Pub. L. 98-596 on and after the date of enactment of Pub. L. 98-473 (Oct. 12, 1984). Section 238(i) of Pub. L. 98-473 which repealed section 238 of Pub. L. 98-473 on the same date established by section 235(a)(1) of Pub. L. 98-473 was repealed by section 12(a)(9) of Pub. L. 98-596. The cumulative effect of the amendments resulted in no change in this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106, 4203, 4209, 4210, 4211, 4213, 4215 of this title.

§ 4215. Appeal

(a) Whenever parole release is denied under section 4206, parole conditions are imposed or modified under section 4209, parole discharge is denied under section 4211(c), or parole is modified or revoked under section 4214, the individual to whom any such decision applies may appeal such decision by submitting a written application to the National Appeal[1] Board not later than thirty days following the date on which the decision is rendered.

(b) The National Appeals Board, upon receipt of the appellant's papers, must act pursuant to rules and regulations within sixty days to reaffirm, modify, or reverse the decision and shall inform the appellant in writing of the decision and the reasons therefor.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-473, title II, § 1408(c), Oct. 12, 1984, 98 Stat. 2178.)

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

AMENDMENTS

1984—Catchline. Pub. L. 98-473, § 1408(c)(1), substituted "Appeal" for "Reconsideration and appeal".

Subsec. (a). Pub. L. 98-473, § 1408(c)(2), substituted "appeal such decision" for "have the decision reconsidered", substituted "National Appeal Board" for "regional commissioner", and struck out provision that the regional commissioner, upon receipt of such application, must act pursuant to rules and regulations within thirty days to reaffirm, modify, or reverse his original decision and shall inform the applicant in writing of the decision and the reasons therefor.

Subsec. (b). Pub. L. 98-473, § 1408(c)(3), struck out provision that the decision made pursuant to subsection (a) of this section which is adverse to the applicant for reconsideration may be appealed by such individual to the National Appeals Board by submitting a written notice of appeal not later than thirty days following the date on which such decision is rendered.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473, effective 30 days after Oct. 12, 1984, see section 1409(a) of Pub. L. 98-473, set out as a note under section 10601 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3522, 4106 of this title.

§ 4216. Young adult offenders

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

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[1] So in original. Probably should be "Appeals".

References in Text

The Federal Youth Corrections Act, referred to in text, is act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1086, as amended, which was classified generally to chapter 402 (§ 5005 et seq.) of this title, and was repealed by Pub. L. 98-473, title II, § 218(a)(8), Oct. 12, 1984, 98 Stat. 2027.

Section Referred to in Other Sections

This section is referred to in sections 3401, 3522, 4106 of this title.

§ 4217. Warrants to retake Canal Zone parole violators

Repeal of Section

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

§ 4218. Applicability of Administrative Procedure Act

Repeal of Section

Section repealed effective Nov. 1, 1986, see note set out preceding section 4201 of this title.

Section Referred to in Other Sections

This section is referred to in sections 3522, 4106 of this title.

CHAPTER 313—OFFENDERS WITH MENTAL DISEASE OR DEFECT

Sec.	
4241.	Determination of mental competency to stand trial.
4242.	Determination of the existence of insanity at the time of the offense.
4243.	Hospitalization of a person found not guilty only by reason of insanity.
4244.	Hospitalization of a convicted person suffering from mental disease or defect.
4245.	Hospitalization of an imprisoned person suffering from mental disease or defect.
4246.	Hospitalization of a person due for release but suffering from mental disease or defect.
4247.	General provisions for chapter.

Amendments

1984—Pub. L. 98-473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2057, substituted "OFFENDERS WITH MENTAL DISEASE OR DEFECT" for "MENTAL DEFECTIVES" in the chapter heading, "Determination of mental competency to stand trial" for "Examination and transfer to hospital" in item 4241, "Determination of the existence of insanity at the time of the offense" for "Retransfer upon recovery" in item 4242, "Hospitalization of a person found not guilty only by reason of insanity" for "Delivery to state authorities on expiration of sentence" in item 4243, "Hospitalization of a convicted person suffering from mental disease or defect" for "Mental competency after arrest and before trial" in item 4244, "Hospitalization of an imprisoned person suffering from mental disease or defect" for "Mental incompentency undisclosed at trial" in item 4245, "Hospitalization of a person due for release but suffering from mental disease or defect" for "Procedure upon finding of mental incompentency" in item 4246, and "General provisions for chapter" for "Alternate procedure on expiration of sentence" in item 4247, and struck out item 4248 "Termination of custody by release or transfer".

Chapter Referred to in Other Sections

This chapter is referred to in section 3006A of this title.

§ 4241. Determination of mental competency to stand trial

(a) Motion to determine competency of defendant

At any time after the commencement of a prosecution for an offense and prior to the sentencing of the defendant, the defendant or the attorney for the Government may file a motion for a hearing to determine the mental competency of the defendant. The court shall grant the motion, or shall order such a hearing on its own motion, if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense.

(b) Psychiatric or psychological examination and report

Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) Hearing

The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) Determination and disposition

If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for treatment in a suitable facility—

(1) for such a reasonable period of time, not to exceed four months, as is necessary to determine whether there is a substantial probability that in the foreseeable future he will attain the capacity to permit the trial to proceed; and

(2) for an additional reasonable period of time until—

(A) his mental condition is so improved that trial may proceed, if the court finds that there is a substantial probability that within such additional period of time he will attain the capacity to permit the trial to proceed; or

(B) the pending charges against him are disposed of according to law;

whichever is earlier.

If, at the end of the time period specified, it is determined that the defendant's mental condition has not so improved as to permit the trial to proceed, the defendant is subject to the provisions of section 4246.

(e) Discharge

When the director of the facility in which a defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. The court shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine the competency of the defendant. If, after the hearing, the court finds by a preponderance of the evidence that the defendant has recovered to such an extent that he is able to understand the nature and consequences of the proceedings against him and to assist properly in his defense, the court shall order his immediate discharge from the facility in which he is hospitalized and shall set the date for trial. Upon discharge, the defendant is subject to the provisions of chapter 207.

(f) Admissibility of finding of competency

A finding by the court that the defendant is mentally competent to stand trial shall not prejudice the defendant in raising the issue of his insanity as a defense to the offense charged, and shall not be admissible as evidence in a trial for the offense charged.

(As amended Oct. 12, 1984, Pub. L. 98–473, title II, § 403(a), 98 Stat. 2057.)

Amendments

1984—Pub. L. 98–473 amended section generally, thereby substituting in the catchline "Determination of mental compentency to stand trial" for "Examination and transfer to hospital", and substituting provisions relating to motion, report, hearing, etc., for determination of competency of defendant, for provisions relating to boards of examiners for examination of inmates of Federal penal and correctional institutions and transfer of such inmates to hospitals.

Short Title of 1984 Amendment

Section 401 of chapter IV (§§ 401–406) of title II of Pub. L. 98–473 provided that: "This chapter [enacting section 20 of this title and amending this chapter, section 3006A of this title, and rule 12.2 of the Federal Rules of Criminal Procedure and rule 704 of the Federal Rules of Evidence set out in the Appendix to this title] may be sited [cited] as the 'Insanity Defense Reform Act of 1984'."

Section Referred to in Other Sections

This section is referred to in sections 4246, 4247 of this title.

§ 4242. Determination of the existence of insanity at the time of the offense

(a) Motion for pretrial psychiatric or psychological examination

Upon the filing of a notice, as provided in Rule 12.2 of the Federal Rules of Criminal Procedure, that the defendant intends to rely on the defense of insanity, the court, upon motion of the attorney for the Government, shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(b) Special verdict

If the issue of insanity is raised by notice as provided in Rule 12.2 of the Federal Rules of Criminal Procedure on motion of the defendant or of the attorney for the Government, or on the court's own motion, the jury shall be instructed to find, or, in the event of a nonjury trial, the court shall find the defendant—

(1) guilty;
(2) not guilty; or
(3) not guilty only by reason of insanity.

(As amended Oct. 12, 1984, Pub. L. 98–473, title II, § 403(a), 98 Stat. 2059.)

Amendments

1984—Pub. L. 98–473 amended section generally, thereby substituting in the catchline "Determination of the existence of insanity at the time of the offense" for "Retransfer upon recovery", and substituting provisions relating to motion for pretrial psychiatric or psychological examination, and special verdict, for provisions relating to retransfer to a penal or correctional institution upon recovery of an inmate of the United States hospital for defective delinquents.

Section Referred to in Other Sections

This section is referred to in section 4247 of this title.

§ 4243. Hospitalization of a person found not guilty only by reason of insanity

(a) Determination of present mental condition of acquitted person

If a person is found not guilty only by reason of insanity at the time of the offense charged, he shall be committed to a suitable facility until such time as he is eligible for release pursuant to subsection (e).

(b) Psychiatric or psychological examination and report

Prior to the date of the hearing, pursuant to subsection (c), the court shall order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) Hearing

A hearing shall be conducted pursuant to the provisions of section 4247(d) and shall take place not later than forty days following the special verdict.

(d) Burden of proof

In a hearing pursuant to subsection (c) of this section, a person found not guilty only by reason of insanity of an offense involving bodily injury to, or serious damage to the property of, another person, or involving a substantial risk of such injury or damage, has the burden of proving by clear and convincing evidence that his release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect. With respect to any other offense, the person has the burden of such proof by a preponderance of the evidence.

(e) Determination and disposition

If, after the hearing, the court fails to find by the standard specified in subsection (d) of this section that the person's release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental disease or defect, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility until—

(1) such a State will assume such responsibility; or

(2) the person's mental condition is such that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would not create a substantial risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

(f) Discharge

When the director of the facility in which an acquitted person is hospitalized pursuant to subsection (e) determines that the person has recovered from his mental disease or defect to such an extent that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the acquitted person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by the standard specified in subsection (d) that the person has recovered from his mental disease or defect to such an extent that—

(1) his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall order that he be immediately discharged; or

(2) his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall—

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(g) Revocation of conditional discharge

The director of a medical facility responsible for administering a regimen imposed on an acquitted person conditionally discharged under subsection (f) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 403(a), 98 Stat. 2059.)

Amendments

1984—Pub. L. 98-473 amended section generally, thereby substituting in the catchline "Hospitalization of a person found not guilty only by reason of insanity" for "Delivery to state authorities on expiration of sentence", and substituting provisions relating to determination of present mental condition of acquitted person, examination and report, hearing, etc., for provisions relating to duties of the superintendent of the United States hospital for defective delinquents regarding delivery to state authorities on expiration of sentence of any insane person.

Section Referred to in Other Sections

This section is referred to in section 4247 of this title; title 28 section 1826.

§ 4244. Hospitalization of a convicted person suffering from mental disease or defect

(a) Motion to determine present mental condition of convicted defendant

A defendant found guilty of an offense, or the attorney for the Government, may, within ten days after the defendant is found guilty, and prior to the time the defendant is sentenced, file a motion for a hearing on the present mental condition of the defendant if the motion is supported by substantial information indicating that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. The court shall grant the motion, or at any time prior to the sentencing of the defendant shall order such a hearing on its own motion, if it is of the opinion that there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility.

(b) Psychiatric or psychological examination and report

Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c). In addition to the information required to be included in the psychiatric or psychological report pursuant to the provisions of section 4247(c), if the report includes an opinion by the examiners that the defendant is presently suffering from a mental disease or defect but that it is not such as to require his custody for care or treatment in a suitable facility, the report shall also include an opinion by the examiner concerning the sentencing alternatives that could best accord the defendant the kind of treatment he does need.

(c) Hearing

The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) Determination and disposition

If, after the hearing, the court finds by a preponderance of the evidence that the defendant is presently suffering from a mental disease or defect and that he should, in lieu of being sentenced to imprisonment, be committed to a suitable facility for care or treatment, the court shall commit the defendant to the custody of the Attorney General. The Attorney General shall hospitalize the defendant for care or treatment in a suitable facility. Such a commitment constitutes a provisional sentence of imprisonment to the maximum term authorized by law for the offense for which the defendant was found guilty.

(e) Discharge

When the director of the facility in which the defendant is hospitalized pursuant to subsection (d) determines that the defendant has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the defendant's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the provisional sentence imposed pursuant to subsection (d) has not expired, the court shall proceed finally to sentencing and may modify the provisional sentence.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 403(a), 98 Stat. 2061.)

AMENDMENTS

1984—Pub. L. 98-473 amended section generally, thereby substituting in the catchline "Hospitalization of a convicted person suffering from mental disease or defect" for "Mental incompentency after arrest and before trial", and substituting provisions relating to motion, examination and report, hearing, etc., to determine present mental condition of convicted defendant, for provisions relating to motion, examination, etc., to determine the mental competency of a person after arrest and before trial.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4247 of this title.

§ 4245. Hospitalization of an imprisoned person suffering from mental disease or defect

(a) Motion to determine present mental condition of imprisoned person

If a person serving a sentence of imprisonment objects either in writing or through his attorney to being transferred to a suitable facility for care or treatment, an attorney for the Government, at the request of the director of the facility in which the person is imprisoned, may file a motion with the court for the district in which the facility is located for a hearing on the present mental condition of the person. The court shall grant the motion if there is reasonable cause to believe that the person may presently be suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility. A motion filed under this subsection shall stay the transfer of the person pending completion of procedures contained in this section.

(b) Psychiatric or psychological examination and report

Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the person may be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) Hearing

The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) Determination and disposition

If, after the hearing, the court finds by a preponderance of the evidence that the person is presently suffering from a mental disease or defect for the treatment of which he is in need of custody for care or treatment in a suitable facility, the court shall commit the person to the custody of the Attorney General. The Attorney General shall hospitalize the person for treatment in a suitable facility until he is no longer in need of such custody for care or treatment or until the expiration of the sentence of imprisonment, whichever occurs earlier.

(e) Discharge

When the director of the facility in which the person is hospitalized pursuant to subsection

(d) determines that the person has recovered from his mental disease or defect to such an extent that he is no longer in need of custody for care or treatment in such a facility, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. If, at the time of the filing of the certificate, the term of imprisonment imposed upon the person has not expired, the court shall order that the person be reimprisoned until the expiration of his sentence of imprisonment.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 403(a), 98 Stat. 2062.)

AMENDMENTS

1984—Pub. L. 98-473 amended section generally, thereby substituting in the catchline "Hospitalization of an imprisoned person suffering from mental disease or defect" for "Mental incompentency undisclosed at trial", and substituting provisions relating to motion, examination and report, hearing, etc., to determine present mental condition of imprisoned person, for provisions relating to procedures and authorities regarding mental incompentency undisclosed at trial.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4247 of this title.

§ 4246. Hospitalization of a person due for release but suffering from mental disease or defect

(a) Institution of proceeding

If the director of a facility in which a person is hospitalized certifies that a person whose sentence is about to expire, or who has been committed to the custody of the Attorney General pursuant to section 4241(d), or against whom all criminal charges have been dismissed solely for reasons related to the mental condition of the person, is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, and that suitable arrangements for State custody and care of the person are not available, he shall transmit the certificate to the clerk of the court for the district in which the person is confined. The clerk shall send a copy of the certificate to the person, and to the attorney for the Government, and, if the person was committed pursuant to section 4241(d), to the clerk of the court that ordered the commitment. The court shall order a hearing to determine whether the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another. A certificate filed under this subsection shall stay the release of the person pending completion of procedures contained in this section.

(b) Psychiatric or psychological examination and report

Prior to the date of the hearing, the court may order that a psychiatric or psychological examination of the defendant be conducted, and that a psychiatric or psychological report be filed with the court, pursuant to the provisions of section 4247(b) and (c).

(c) Hearing

The hearing shall be conducted pursuant to the provisions of section 4247(d).

(d) Determination and disposition

If, after the hearing, the court finds by clear and convincing evidence that the person is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall commit the person to the custody of the Attorney General. The Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried if such State will assume responsibility for his custody, care, and treatment. The Attorney General shall make all reasonable efforts to cause such a State to assume such responsibility. If, notwithstanding such efforts, neither such State will assume such responsibility, the Attorney General shall hospitalize the person for treatment in a suitable facility, until—

(1) such a State will assume such responsibility; or

(2) the person's mental condition is such that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would not create a substantial risk of bodily injury to another person or serious damage to property of another;

whichever is earlier. The Attorney General shall continue periodically to exert all reasonable efforts to cause such a State to assume such responsibility for the person's custody, care, and treatment.

(e) Discharge

When the director of the facility in which a person is hospitalized pursuant to subsection (d) determines that the person has recovered from his mental disease or defect to such an extent that his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, he shall promptly file a certificate to that effect with the clerk of the court that ordered the commitment. The clerk shall send a copy of the certificate to the person's counsel and to the attorney for the Government. The court shall order the discharge of the person or, on the motion of the attorney for the Government or on its own motion, shall hold a hearing, conducted pursuant to the provisions of section 4247(d), to determine whether he should be released. If, after the hearing, the court finds by a preponderance of the evidence that the person has recovered from his mental disease or defect to such an extent that—

(1) his release would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall order that he be immediately discharged; or

(2) his conditional release under a prescribed regimen of medical, psychiatric, or

psychological care or treatment would no longer create a substantial risk of bodily injury to another person or serious damage to property of another, the court shall—

(A) order that he be conditionally discharged under a prescribed regimen of medical, psychiatric, or psychological care or treatment that has been prepared for him, that has been certified to the court as appropriate by the director of the facility in which he is committed, and that has been found by the court to be appropriate; and

(B) order, as an explicit condition of release, that he comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment.

The court at any time may, after a hearing employing the same criteria, modify or eliminate the regimen of medical, psychiatric, or psychological care or treatment.

(f) Revocation of conditional discharge

The director of a medical facility responsible for administering a regimen imposed on a person conditionally discharged under subsection (e) shall notify the Attorney General and the court having jurisdiction over the person of any failure of the person to comply with the regimen. Upon such notice, or upon other probable cause to believe that the person has failed to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, the person may be arrested, and, upon arrest, shall be taken without unnecessary delay before the court having jurisdiction over him. The court shall, after a hearing, determine whether the person should be remanded to a suitable facility on the ground that, in light of his failure to comply with the prescribed regimen of medical, psychiatric, or psychological care or treatment, his continued release would create a substantial risk of bodily injury to another person or serious damage to property of another.

(g) Release to State of certain other persons

If the director of a facility in which a person is hospitalized pursuant to this subchapter[1] certifies to the Attorney General that a person, against whom all charges have been dismissed for reasons not related to the mental condition of the person, is presently suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another, the Attorney General shall release the person to the appropriate official of the State in which the person is domiciled or was tried for the purpose of institution of State proceedings for civil commitment. If neither such State will assume such responsibility, the Attorney General shall release the person upon receipt of notice from the State that it will not assume such responsibility, but not later than ten days after certification by the director of the facility.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 403(a), 98 Stat. 2062.)

AMENDMENTS

1984—Pub. L. 98-473 amended section generally, thereby substituting in the catchline "Hospitalization of a person due for release but suffering from mental disease or defect" for "Procedure upon finding of mental incompentency", and substituting provisions relating to proceedings, examination and report, hearing, etc., regarding hospitalization of a person due for release but suffering from mental disease or defect, for provisions relating to powers of the trial court with respect to finding of mental incompetency of accused.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4241, 4247 of this title.

§ 4247. General provisions for chapter

(a) Definitions

As used in this chapter—

(1) "rehabilitation program" includes—

(A) basic educational training that will assist the individual in understanding the society to which he will return and that will assist him in understanding the magnitude of his offense and its impact on society;

(B) vocational training that will assist the individual in contributing to, and in participating in, the society to which he will return;

(C) drug, alcohol, and other treatment programs that will assist the individual in overcoming his psychological or physical dependence; and

(D) organized physical sports and recreation programs; and

(2) "suitable facility" means a facility that is suitable to provide care or treatment given the nature of the offense and the characteristics of the defendant.

(b) Psychiatric or psychological examination

A psychiatric or psychological examination ordered pursuant to this chapter shall be conducted by a licensed or certified psychiatrist or clinical psychologist, or, if the court finds it appropriate, by more than one such examiner. Each examiner shall be designated by the court, except that if the examination is ordered under section 4245 or 4246, upon the request of the defendant an additional examiner may be selected by the defendant. For the purposes of an examination pursuant to an order under section 4241, 4244, or 4245, the court may commit the person to be examined for a reasonable period, but not to exceed thirty days, and under section 4242, 4243, or 4246, for a reasonable period, but not to exceed forty-five days, to the custody of the Attorney General for placement in a suitable facility. Unless impracticable, the psychiatric or psychological examination shall be conducted in the suitable facility closest to the court. The director of the facility may apply for a reasonable extension, but not to exceed fifteen days under section 4241, 4244, or 4245, and not to exceed thirty days under section 4242, 4243, or 4246, upon a showing of good cause that the additional time is necessary to observe and evaluate the defendant.

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[1] So in original. Probably should be "chapter".

(c) Psychiatric or psychological reports

A psychiatric or psychological report ordered pursuant to this chapter shall be prepared by the examiner designated to conduct the psychiatric or psychological examination, shall be filed with the court with copies provided to the counsel for the person examined and to the attorney for the Government, and shall include—

(1) the person's history and present symptoms;

(2) a description of the psychiatric, psychological, and medical tests that were employed and their results;

(3) the examiner's findings; and

(4) the examiner's opinions as to diagnosis, prognosis, and—

(A) if the examination is ordered under section 4241, whether the person is suffering from a mental disease or defect rendering him mentally incompetent to the extent that he is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense;

(B) if the examination is ordered under section 4242, whether the person was insane at the time of the offense charged;

(C) if the examination is ordered under section 4243 or 4246, whether the person is suffering from a mental disease or defect as a result of which his release would create a substantial risk of bodily injury to another person or serious damage to property of another;

(D) if the examination is ordered under section 4244 or 4245, whether the person is suffering from a mental disease or defect as a result of which he is in need of custody for care or treatment in a suitable facility; or

(E) if the examination is ordered as a part of a presentence investigation, any recommendation the examiner may have as to how the mental condition of the defendant should affect the sentence.

(d) Hearing

At a hearing ordered pursuant to this chapter the person whose mental condition is the subject of the hearing shall be represented by counsel and, if he is financially unable to obtain adequate representation, counsel shall be appointed for him pursuant to section 3006A. The person shall be afforded an opportunity to testify, to present evidence, to subpoena witnesses on his behalf, and to confront and cross-examine witnesses who appear at the hearing.

(e) Periodic report and information requirements

(1) The director of the facility in which a person is hospitalized pursuant to—

(A) section 4241 shall prepare semiannual reports; or

(B) section 4243, 4244, 4245, or 4246 shall prepare annual reports concerning the mental condition of the person and containing recommendations concerning the need for his continued hospitalization. The reports shall be submitted to the court that ordered the person's commitment to the facility and copies of the reports shall be submitted to such other persons as the court may direct.

(2) The director of the facility in which a person is hospitalized pursuant to section 4241, 4243, 4244, 4245, or 4246 shall inform such person of any rehabilitation programs that are available for persons hospitalized in that facility.

(f) Videotape record

Upon written request of defense counsel, the court may order a videotape record made of the defendant's testimony or interview upon which the periodic report is based pursuant to subsection (e). Such videotape record shall be submitted to the court along with the periodic report.

(g) Habeas corpus unimpaired

Nothing contained in section 4243 or 4246 precludes a person who is committed under either of such sections from establishing by writ of habeas corpus the illegality of his detention.

(h) Discharge

Regardless of whether the director of the facility in which a person is hospitalized has filed a certificate pursuant to the provisions of subsection (e) of section 4241, 4243, 4244, 4245, or 4246, counsel for the person or his legal guardian may, at any time during such person's hospitalization, file with the court that ordered the commitment a motion for a hearing to determine whether the person should be discharged from such facility, but no such motion may be filed within one hundred and eighty days of a court determination that the person should continue to be hospitalized. A copy of the motion shall be sent to the director of the facility in which the person is hospitalized and to the attorney for the Government.

(i) Authority and responsibility of the Attorney General

The Attorney General—

(A) may contract with a State, a political subdivision, a locality, or a private agency for the confinement, hospitalization, care, or treatment of, or the provision of services to, a person committed to his custody pursuant to this chapter;

(B) may apply for the civil commitment, pursuant to State law, of a person committed to his custody pursuant to section 4243 or 4246;

(C) shall, before placing a person in a facility pursuant to the provisions of section 4241, 4243, 4244, 4245, or 4246, consider the suitability of the facility's rehabilitation programs in meeting the needs of the person; and

(D) shall consult with the Secretary of the Department of Health and Human Services in the general implementation of the provisions of this chapter and in the establishment of standards for facilities used in the implementation of this chapter.

(j) This chapter does not apply to a prosecution under an Act of Congress applicable exclusively to the District of Columbia or the Uniform Code of Military Justice.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 403(a), 98 Stat. 2065.)

REFERENCES IN TEXT

Acts of Congress applicable exclusively to the District of Columbia, referred to in subsec. (j), are classified generally to the District of Columbia Code.

The Uniform Code of Military Justice, referred to in subsec. (j), is classified generally to chapter 47 (§ 801 et seq.) of Title 10, Armed Forces.

AMENDMENTS

1984—Pub. L. 98-473 amended section generally, thereby substituting in the catchline "General provisions for chapter" for "Alternate procedure of expiration of sentence", and substituting provisions relating to definitions, examinations, reports, etc., as applicable to chapter, for provisions relating to powers and duties regarding alternate procedure on expiration of sentence of prisoner.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3552, 4241, 4242, 4243, 4244, 4245, 4246 of this title.

[§ 4248. Omitted]

CODIFICATION

Section, act Sept. 7, 1949, ch. 535, § 1, 63 Stat. 688, which related to the termination of custody by release or transfer, was omitted in the general amendment of this chapter by Pub. L. 98-473, title II, § 403(a), Oct. 12, 1984, 98 Stat. 2057.

CHAPTER 314—NARCOTIC ADDICTS

REPEAL OF CHAPTER

Pub. L. 98-473, title II, §§ 218(a)(6), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this chapter is repealed.

§ 4251. Definitions

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding this section.

REFERENCES IN TEXT

Section 102(16) of the Controlled Substances Act, referred to in subsec. (a), was redesignated section 102(17) of the Controlled Substances Act by Pub. L. 98-473, title II, § 507(a), Oct. 12, 1984, 98 Stat. 2071, and is classified to section 802(17) of Title 21, Food and Drugs.

§ 4252. Examination

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4251 of this title.

§ 4253. Commitment

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4251 of this title.

§ 4254. Conditional release

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4251 of this title.

§ 4255. Supervision in the community

REPEAL OF SECTION

Section repealed effective Nov. 1, 1986, see note set out preceding section 4251 of this title.

AUTHORIZATION OF APPROPRIATIONS

Section 4(a) of Pub. L. 95-537, as amended by Pub. L. 98-236, § 2, Mar. 20, 1984, 98 Stat. 66, provided that: "To carry out the purposes of this Act [amending sections 3651 and 4255 of this title and enacting provisions set out as notes under section 3651 of this title], there are authorized to be appropriated sums not to exceed $3,500,000 for the fiscal year ending September 30, 1980; $3,645,000 for the fiscal year ending September 30, 1981; $3,750,000 for the fiscal year ending September 30, 1982; $5,000,000 for the fiscal year ending September 30, 1984; $5,500,000 for the fiscal year ending September 30, 1985; and $6,000,000 for the fiscal year ending September 30, 1986."

CHAPTER 315—DISCHARGE AND RELEASE PAYMENTS

AMENDMENT OF ANALYSIS

Pub. L. 98-473, title II, §§ 218(f), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), the analysis is amended by amending items 4281, 4283, and 4384 to read: "Repealed".

§ 4281. Discharge from prison

REPEAL OF SECTION

Pub. L. 98-473, title II, §§ 218(a)(7), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is repealed.

§ 4282. Arrested but unconvicted persons

On the release from custody of a person arrested on a charge of violating any law of the United States or of the Territory of Alaska, but not indicted nor informed against, or indicted or informed against but not convicted, and detained pursuant to chapter 207, or a person held as a material witness, the court in its discretion may direct the United States marshal for the district wherein he is released, pursuant to regulations promulgated by the Attorney General, to furnish the person so released with transportation and subsistence to the place of his arrest, or, at his election, to the place of his bona fide residence if such cost is not greater than to the place of arrest.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 207, 98 Stat. 1986.)

AMENDMENTS

1984—Pub. L. 98-473 substituted "and detained pursuant to chapter 207" for "and not admitted to bail" and struck out "and unable to make bail" after "held as a material witness".

§ 4283. Probation

REPEAL OF SECTION

Pub. L. 98-473, title II, §§ 218(a)(7), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is repealed.

§ 4284. Advances for rehabilitation

REPEAL OF SECTION

Pub. L. 98-473, title II, §§ 218(a)(7), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is repealed.

CHAPTER 317—INSTITUTIONS FOR WOMEN

§ 4321. Board of Advisers

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 223(n), 235(a)(1), Oct. 12, 1984, 98 Stat. 2030, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended by deleting "parole or".

CHAPTER 319—NATIONAL INSTITUTE OF CORRECTIONS

§ 4351. Establishment; Advisory Board; appointment of members; compensation; officers; committees; delegation of powers; Director, appointment and powers [2]

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 223(o), 235(a)(1), Oct. 12, 1984, 98 Stat. 2030, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subsec. (b) of this section is amended by substituting "Sentencing Commission" for "Parole Board".

PART IV—CORRECTION OF YOUTHFUL OFFENDERS

Chap. Sec.

402. Repealed..

AMENDMENTS

1984—Pub. L. 98-473, title II, § 218(g), Oct. 12, 1984, 98 Stat. 2027, in item for chapter 402 substituted "Repealed" for "Federal Youth Corrections Act".

CHAPTER 401—GENERAL PROVISIONS

§ 5002. Advisory Corrections Council

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 223(p), 235(a)(1), Oct. 12, 1984, 98 Stat. 2030, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended by substituting "United States Sentencing Commission" for "Board of Parole, the Chairman of the Youth Division".

[CHAPTER 402—REPEALED]

[§§ 5005, 5006. Repealed. Pub. L. 98-473, title II, § 218(a)(8), Oct. 12, 1984, 98 Stat. 2027]

Section 5005, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1086, and amended Mar. 15, 1976, Pub. L. 94-233, § 3, 90 Stat. 231, related to the making of youth correction decisions by the United States Parole Commission.

Section 5006, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1086, and amended Mar. 15, 1976, Pub. L. 94-233, § 4, 90 Stat. 231, defined terms for the purpose of this chapter.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective Oct. 12, 1984, see section 235(a)(1)(A) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

[§§ 5010 to 5026. Repealed. Pub. L. 98-473, title II, § 218(a)(8), Oct. 12, 1984, 98 Stat. 2027]

Section 5010, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1087, and amended Mar. 15, 1976, Pub. L. 94-233, § 9, 90 Stat. 232, provided for the imposition of a suspended sentence or sentence to the custody of the Attorney General in the case of youth offenders.

Section 5011, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1087, provided for the treatment of youth offenders.

Section 5012, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1087, provided for the Director's certification of the availability of proper and adequate treatment facilities for youth offenders.

Section 1513, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1087, authorized the Director of the Bureau of Prisons to contract for the maintenance of youth offenders.

Section 5014, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1087, and amended July 17, 1970, Pub. L. 91-339, § 1, 84 Stat. 437; Mar. 15, 1976, Pub. L. 94-233, § 6, 90 Stat. 231, related to classification studies and reports.

Section 5015, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1088, and amended Mar. 15, 1976, Pub. L. 94-233, § 9, 90 Stat. 232, related to the powers of the Director as to placement of youth offenders.

Section 5016, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1088, and amended Mar. 15, 1976, Pub. L. 94-233, § 9, 90 Stat. 232, related to the periodic reports which the Director was required to make on all committed youth offenders.

Section 5017, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1088, and amended Mar. 15, 1976, Pub. L. 94-233, § 7, 9, 90 Stat. 232, related to the release of youth offenders.

Section 5018, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089, and amended Mar. 15, 1976, Pub. L. 94-233, § 9, 90 Stat. 232, related to revocation of Commission orders.

Section 5019, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089, and amended Mar. 15, 1976, Pub. L.

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[2] Section catchline editorially supplied.

94-233, § 9, 90 Stat. 232, related to supervision of released youth offenders.

Section 5020, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089, and amended July 17, 1970, Pub. L. 91-339, § 2, 84 Stat. 437; Mar. 15, 1976, Pub. L. 94-233, § 8, 90 Stat. 232, related to the apprehension of released youth offenders.

Section 5021, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089, and amended Oct. 3, 1961, Pub. L. 87-336, 75 Stat. 750; Mar. 15, 1976, Pub. L. 94-233, § 9, 90 Stat. 232, related to the issuance of certificates setting aside the convictions of youth offenders.

Section 5022, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089, provided that this chapter would not apply to offenses committed before its enactment (Sept. 30, 1950).

Section 5023, added act Sept. 30, 1950, ch. 1115, § 2 64 Stat. 1089, and amended Apr. 8, 1952, ch. 163, § 1, 66 Stat. 45, related to the relationship between this chapter and the Probation and Juvenile Delinquency Acts.

Section 5024, added act Sept. 30, 1950, ch. 1115, § 2, 64 Stat. 1089, and amended Apr. 8, 1952, ch. 163, § 2, 66 Stat. 45; June 25, 1959, Pub. L. 86-70, § 17(a), 73 Stat. 144; July 12, 1960, Pub. L. 86-624, § 13(b), 74 Stat. 413; Dec. 27, 1967, Pub. L. 90-226, title VIII, § 801(a), 81 Stat. 741, provided that this chapter was applicable to the States of the United States and to the District of Columbia.

Section 5025, added act Apr. 8, 1952, ch. 163, § 3(a), 66 Stat. 46, and amended Dec. 27, 1967, Pub. L. 90-226, title VIII, § 801(b), 81 Stat. 741, related to the applicability of this chapter to the District of Columbia.

Section 5026, added act Apr. 8, 1952, ch. 163, § 3(a), 66 Stat. 46, provided that this chapter did not affect the parole of other offenders.

Effective Date of Repeal

Repeal of sections effective Oct. 12, 1984, see section 235(a)(1)(A) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of this title.

CHAPTER 403—JUVENILE DELINQUENCY

Amendment of Analysis

Pub. L. 98-473, title II, §§ 214(d), 235(a)(1), Oct. 12, 1984, 98 Stat. 2014, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), the analysis is amended by substituting "Repealed" for "Parole" in item 5041 and "Revocation of Probation" for "Revocation of parole or probation" in item 5042.

Chapter Referred to in Other Sections

This chapter is referred to in sections 3401, 3601, 4101, 4110, 4216 of this title; title 42 section 257.

§ 5032. Delinquency proceedings in district courts; transfer for criminal prosecution

A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that (1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency, (2) the State does not have available programs and services adequate for the needs of juveniles, or (3) the offense charged is a crime of violence that is a felony or an offense described in section 841, 952(a), 955, or 959 of title 21, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State.

If an alleged juvenile delinquent is not surrendered to the authorities of a State or the District of Columbia pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

A juvenile who is alledged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile fifteen years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21, criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice; however, a juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has as an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844(d), (e), (f), (h), (i) or 2275 of this title, and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this subsection [1] or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution.

Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems.

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[1] So in original. Probably should be "paragraph".

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

Whenever a juvenile transferred to district court under this section is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

Any proceedings against a juvenile under this chapter or as an adult shall not be commenced until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 1201, 98 Stat. 2149.)

AMENDMENTS

1984—Pub. L. 98-473, § 1201(a), amended first par. generally, thereby adding ", other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months," before "shall not be proceeded", added "(1)" before "the juvenile court", struck out "(1)" before "does not have", added "the State" after "(2)", and added ", or (3) the offense charged is a crime of violence that is a felony, or an offense described in section 841, 952(a), 955, or 959 of title 21, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction."

Pub. L. 98-473, § 1201(b)(1), which directed the amendment of fourth par. by substituting "that is a crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21" for "punishable by a maximum penalty of ten years imprisonment or more, life imprisonment or death" was executed by substituting the quoted wording for "punishable by a maximum penalty of ten years imprisonment or more, life imprisonment, or death" as the probable intent of Congress.

Pub. L. 98-473, § 1201(b)(2), in fourth par. substituted "fifteen" for "sixteen" and "fifteenth" for "sixteenth".

Pub. L. 98-473, § 1201(b)(3), added provision at end of fourth par., relating to transfer of a juvenile who is alleged to have committed certain acts after his sixteenth birthday to the appropriate district court of the United States for criminal prosecution.

Pub. L. 98-473, § 1201(c), added three pars. at the end of section relating to juveniles not convicted of crimes in district court, reception of prior juvenile court records by the court, and description of the specific act of delinquency for the record.

§ 5037. Dispositional hearing

AMENDMENT OF SECTION

Pub. L. 98-473, title II, §§ 214(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2013, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended as follows:

(1) by redesignating subsection (c) as subsection (d); and

(2) by striking out subsections (a) and (b) and inserting the following new subsections in lieu thereof:

(a) If the court finds a juvenile to be a juvenile delinquent, the court shall hold a disposition hearing concerning the appropriate disposition no later than twenty court days after the juvenile delinquency hearing unless the court has ordered further study pursuant to subsection (e). After the disposition hearing, and after considering any pertinent policy statements promulgated by the Sentencing Commission pursuant to 28 U.S.C. 994, the court may suspend the findings of juvenile delinquency, enter an order of restitution pursuant to section 3556, place him on probation, or commit him to official detention. With respect to release or detention pending an appeal or a petition for a writ of certiorari after disposition, the court shall proceed pursuant to the provisions of chapter 207.

(b) The term for which probation may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—

(A) the date when the juvenile becomes twenty-one years old; or

(B) the maximum term that would be authorized by section 3561(b) if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old, beyond the lesser of—

(A) three years; or

(B) the maximum term that would be authorized by section 3561(b) if the juvenile had been tried and convicted as an adult.

The provisions dealing with probation set forth in sections 3563, 3564, and 3565 are applicable to an order placing a juvenile on probation.

(c) The term for which official detention may be ordered for a juvenile found to be a juvenile delinquent may not extend—

(1) in the case of a juvenile who is less than eighteen years old, beyond the lesser of—

(A) the date when the juvenile becomes twenty-one years old; or

(B) the maximum term of imprisonment that would be authorized by section 3581(b) if the juvenile had been tried and convicted as an adult; or

(2) in the case of a juvenile who is between eighteen and twenty-one years old—

(A) who if convicted as an adult would be convicted of a Class A, B, or C felony, beyond five years; or

(B) in any other case beyond the lesser of—

(i) three years; or

(ii) the maximum term of imprisonment that would be authorized by section 3581(b) if the juvenile had been tried and convicted as an adult.

§ 5038. Use of juvenile records

(a) Throughout and upon the completion of the juvenile delinquency proceeding, the records shall be safeguarded from disclosure to unauthorized persons. The records shall be released to the extent necessary to meet the following circumstances:

(1) inquiries received from another court of law;

(2) inquiries from an agency preparing a presentence report for another court;

(3) inquiries from law enforcement agencies where the request for information is related to the investigation of a crime or a position within that agency;

(4) inquiries, in writing, from the director of a treatment agency or the director of a facility to which the juvenile has been committed by the court;

(5) inquiries from an agency considering the person for a position immediately and directly affecting the national security; and

(6) inquiries from any victim of such juvenile delinquency, or if the victim is deceased from the immediate family of such victim, related to the final disposition of such juvenile by the court in accordance with section 5037.

Unless otherwise authorized by this section, information about the juvenile record may not be released when the request for information is related to an application for employment, license, bonding, or any civil right or privilege. Responses to such inquiries shall not be different from responses made about persons who have never been involved in a delinquency proceeding.

(b) District courts exercising jurisdiction over any juvenile shall inform the juvenile, and his parent or guardian, in writing in clear and nontechnical language, of rights relating to his juvenile record.

(c) During the course of any juvenile delinquency proceeding, all information and records relating to the proceeding, which are obtained or prepared in the discharge of an official duty by an employee of the court or an employee of any other governmental agency, shall not be disclosed directly or indirectly to anyone other than the judge, counsel for the juvenile and the Government, or others entitled under this section to receive juvenile records.

(d) Whenever a juvenile is found guilty of committing an act which if committed by an adult would be a felony that is a crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21, such juvenile shall be fingerprinted and photographed. Except a juvenile described in subsection (f), fingerprints and photographs of a juvenile who is not prosecuted as an adult shall be made available only in accordance with the provisions of subsection (a) of this section. Fingerprints and photographs of a juvenile who is prosecuted as an adult shall be made available in the manner applicable to adult defendants.

(e) Unless a juvenile who is taken into custody is prosecuted as an adult neither the name nor picture of any juvenile shall be made public in connection with a juvenile delinquency proceeding.

(f) Whenever a juvenile has on two separate occasions been found guilty of committing an act which if committed by an adult would be a felony crime of violence or an offense described in section 841, 952(a), 955, or 959 of title 21, the court shall transmit to the Federal Bureau of Investigation, Identification Division, the information concerning the adjudications, including name, date of adjudication, court, offenses, and sentence, along with the notation that the matters were juvenile adjudications.

(As amended Pub. L. 98–473, title II, § 1202, Oct. 12, 1984, 98 Stat. 2150.)

AMENDMENTS

1984—Pub. L. 98–473 amended section generally, thereby striking out in subsec. (a) provisions that, upon completion of any delinquency proceedings the court shall order the entire record and file to be sealed, substituting a new subsec. (d) for a former subsec. (d) which provided that unless a juvenile is prosecuted as an adult neither fingerprints nor photographs shall be taken without the consent of the judge and the juveniles name and picture shall not be made available to any public medium of communication and adding subsecs. (e) and (f).

§ 5041. Parole

REPEAL OF SECTION

Pub. L. 98–473, title II, §§ 214(b), 235(a)(1), Oct. 12, 1984, 98 Stat. 2014, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is repealed.

§ 5042. Revocation of parole or probation

AMENDMENT OF SECTION

Pub. L. 98–473, title II, §§ 214(c), 235(a)(1), Oct. 12, 1984, 98 Stat. 2014, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended by striking out "parole or", each place it appears in the caption and text, and striking out "parolee or".

PART V—IMMUNITY OF WITNESSES

§ 6001. Definitions

SAVINGS PROVISION

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

TITLE 18—APPENDIX

Item	Page
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UNLAWFUL POSSESSION OR RECEIPT OF FIREARMS

Pub. L. 90-351, title VII, §§ 1201-1203, June 19, 1968, 82 Stat. 236, as amended Pub. L. 90-618, title III, § 301, Oct. 22, 1968, 82 Stat. 1236; Pub. L. 98-473, title II, §§ 1802, 1803, Oct. 12, 1984, 98 Stat. 2185

§ 1201. Congressional findings and declaration

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-473, title II, chapter XVIII (§§ 1801-1803), § 1801, Oct. 12, 1984, 98 Stat. 2185, provided that: "This chapter [amending section 1202 of this Appendix] may be cited as the 'Armed Career Criminal Act of 1984'."

§ 1202. Receipt, possession, or transportation of firearms

(a) Persons liable; penalties for violations

Any person who—

[*See main edition for text of* (*1*) *to* (*5*)]

and who receives, possesses, or transports in commerce or affecting commerce, after the date of enactment of this Act, any firearm shall be fined not more than $10,000 or imprisoned for not more than two years, or both. In the case of a person who receives, possesses, or transports in commerce or affecting commerce any firearm and who has three previous convictions by any court referred to in paragraph (1) of this subsection for robbery or burglary, or both, such person shall be fined not more than $25,000 and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under this subsection, and such person shall not be eligible for parole with respect to the sentence imposed under this subsection.

[*See main edition for text of* (*b*)]

(c) Definitions

As used in this title—

[*See main edition for text of* (*1*) *to* (*6*)]

(7) "rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger;

(8) "robbery" means any felony consisting of the taking of the property of another from the person or presence of another by force or violence, or by threatening or placing another person in fear that any person will imminently be subjected to bodily injury; and

(9) "burglary" means any felony consisting of entering or remaining surreptitiously within a building that is property of another with intent to engage in conduct constituting a Federal or State offense.

(As amended Pub. L. 98-473, title II, §§ 1802, 1803, Oct. 12, 1984, 98 Stat. 2185.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, § 1802, added last sentence providing higher penalties for firearms violations for persons having three previous convictions for robbery or burglary.

Subsec. (c)(8), (9). Pub. L. 98-473, § 1803, added pars. (8) and (9).

RULES OF CRIMINAL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS

(As amended to January 1, 1985)

HISTORICAL NOTE

The original Rules of Criminal Procedure for the District Courts were transmitted to the Congress by the Attorney General on January 3, 1945, and became effective on March 21, 1946.

These Rules have been amended Dec. 27, 1948, eff. Jan. 1, 1949; Dec. 27, 1948, eff. Oct. 20, 1949; Apr. 12, 1954, eff. July 1, 1954; Apr. 9, 1956, eff. July 8, 1956; Feb. 28, 1966, eff. July 1, 1966; Dec. 4, 1967, eff. July 1, 1968; Mar. 1, 1971, eff. July 1, 1971; Apr. 24, 1972, eff. Oct. 1, 1972; Nov. 20, 1972, eff. July 1, 1975, pursuant to Pub. L. 93-595; Mar. 18, 1974, eff. July 1, 1974; Apr. 22, 1974, eff. in part Aug. 1, 1975, and Dec. 1, 1975, pursuant to Pub. L. 93-361 and Pub. L. 94-64; Dec. 12, 1975, Pub. L. 94-149, § 5, 89 Stat. 806; Apr. 26, 1976, eff. in part Aug. 1, 1976, and Oct. 1, 1977, pursuant to Pub. L. 94-349 and Pub. L. 95-78; Apr. 30, 1979, eff. in part Aug. 1, 1979, and Dec. 1, 1980, pursuant to Pub. L. 96-42; Apr. 28, 1982, eff. Aug. 1, 1982; Oct. 12, 1982, Pub. L. 97-291, § 3, 96 Stat. 1249; Apr. 28, 1983, eff. Aug. 1, 1983; Oct. 12, 1984, Pub. L. 98-473, title II, §§ 209, 215, 404, 98 Stat. 1986, 2014, 2067; Pub. L. 98-596, § 11(a), (b), Oct. 30, 1984, 98 Stat. 3138.

X. GENERAL PROVISIONS

Rule	
58.	Abrogated.

[APPENDIX OF FORMS] (Abrogated)

AMENDMENT OF TABLE OF RULES

Pub. L. 98-473, title II, §§ 215(g), 235(a)(1), Oct. 12, 1984, 98 Stat. 2017, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), the Table of Rules that precedes Rule 1 is amended as follows:

(1) The item relating to Rule 35 is amended to read as follows:

"35. Correction of Sentence.
  "(a) Correction of a Sentence on Remand.
  "(b) Correction of a Sentence for Changed Circumstances.".

(2) The item relating to Rule 38 is amended to read as follows:

"38. Stay of Execution.
  "(a) Death.
  "(b) Imprisonment.
  "(c) Fine.
  "(d) Probation.
  "(e) Criminal Forfeiture, Notice to Victims, and Restitution.
  "(f) Disabilities.".

II. PRELIMINARY PROCEEDINGS

Rule 5. Initial Appearance Before the Magistrate

[See main edition for text of (a) and (b)]

(c) OFFENSES NOT TRIABLE BY THE UNITED STATES MAGISTRATE. If the charge against the defendant is not triable by the United States magistrate, the defendant shall not be called upon to plead. The magistrate shall inform the defendant of the complaint against him and of any affidavit filed therewith, of his right to retain counsel, of his right to request the assignment of counsel if he is unable to obtain counsel, and of the general circumstances under which he may secure pretrial release. He shall inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The magistrate shall also inform the defendant of his right to a preliminary examination. He shall allow the defendant reasonable time and opportunity to consult counsel and shall detain or conditionally release the defendant as provided by statute or in these rules.

[See main edition for text of last par.]

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 209(a), 98 Stat. 1986.)

1984 AMENDMENT

Subd. (c). Pub. L. 98-473 substituted "shall detain or conditionally release the defendant" for "shall admit the defendant to bail".

III. INDICTMENT AND INFORMATION

Rule 6. The Grand Jury

[See main edition for text of (a) to (d)]

(e) RECORDING AND DISCLOSURE OF PROCEEDINGS.

[See main edition for text of (1) and (2)]

(3) *Exceptions.*

[See main edition for text of (A) and (B)]

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made—

(i) when so directed by a court preliminarily to or in connection with a judicial proceeding;

(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury; or

(iii) when the disclosure is made by an attorney for the government to another federal grand jury.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

(D) A petition for disclosure pursuant to subdivision (e)(3)(C)(i) shall be filed in the district where the grand jury convened. Unless the hearing is ex parte, which it may be when the petitioner is the government, the petitioner shall serve written notice of the petition upon (i) the attorney for the government, (ii) the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and (iii) such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and be heard.

(E) If the judicial proceeding giving rise to the petition is in a federal district court in another district, the court shall transfer the matter to that court unless it can reasonably obtain sufficient knowledge of the proceeding to determine whether disclosure is proper. The court shall order transmitted to the court to which the matter is transferred the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand jury secrecy. The court to which the matter is transferred shall afford the aforementioned persons a reasonable opportunity to appear and be heard.

[*See main edition for text of* (*4*)]

(5) *Closed Hearing.* Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

(6) *Sealed Records.* Records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent disclosure of matters occurring before a grand jury.

[*See main edition for text of* (*f*)]

(g) DISCHARGE AND EXCUSE. A grand jury shall serve until discharged by the court, but no grand jury may serve more than 18 months unless the court extends the service of the grand jury for a period of six months or less upon a determination that such extension is in the public interest. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

AMENDMENT OF RULE

Pub. L. 98-473, title II, §§ 215(f), 235(a)(1), Oct. 12, 1984, 98 Stat. 2016, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subdivision (e)(3)(C) of this rule is amended by adding the following subdivision:

(iv) when permitted by a court at the request of an attorney for the government, upon a showing that such matters may disclose a violation of state criminal law, to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law.

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

Note to Subdivision (e)(3)(C)

New subdivision (e)(3)(C)(iii) recognizes that it is permissible for the attorney for the government to make disclosure of matters occurring before one grand jury to another federal grand jury. Even absent a specific provision to that effect, the courts have permitted such disclosure in some circumstances. See, e.g., *United States v. Socony-Vacuum Oil Co.* 310 U.S. 150 (1940); *United States v. Garcia*, 420 F.2d 309 (2d Cir. 1970). In this kind of situation, "[s]ecrecy of grand jury materials should be protected almost as well by the safeguards at the second grand jury proceeding, including the oath of the jurors, as by judicial supervision of the disclosure of such materials." *United States v. Malatesta*, 583 F.2d 748 (5th Cir. 1978).

Note to Subdivision (e)(3)(D)

In *Douglas Oil Co. v. Petrol Stops Northwest*, 441, U.S. 211 (1979), the Court held on the facts there presented that it was an abuse of discretion for the district judge to order disclosure of grand jury transcripts for use in civil proceedings in another district where that judge had insufficient knowledge of those proceedings to make a determination of the need for disclosure. The Court suggested a "better practice" on those facts, but declared that "procedures to deal with the many variations are best left to the rulemaking procedures established by Congress."

The first sentence of subdivision (e)(3)(D) makes it clear that when disclosure is sought under subdivision (e)(2)(C)(i), the petition is to be filed in the district where the grand jury was convened, whether or not it is the district of the "judicial proceeding" giving rise to the petition. Courts which have addressed the question have generally taken this view, e.g., *Illinois v. Sarbaugh*, 522 F.2d 768 (7th Cir. 1977). As stated in *Douglas Oil*,

> those who seek grand jury transcripts have little choice other than to file a request with the court that supervised the grand jury, as it is the only court with control over the transcripts.

Quite apart from the practical necessity, the policies underlying Rule 6(e) dictate that the grand jury's supervisory court participate in reviewing such requests, as it is in the best position to determine the continuing need for grand jury secrecy. Ideally, the judge who supervised the grand jury should review the request for disclosure, as he will have firsthand knowledge of the grand jury's activities. But even other judges of the district where the grand jury sat may be able to discover facts affecting the need for secrecy more easily than would judges from elsewhere around the country. The records are in the custody of the District Court, and therefore are readily available for references. Moreover, the personnel of that court—particularly those of the United States Attorney's Office who worked with the grand jury—are more likely to be informed about the grand jury proceedings than those in a district that had no prior experience with the subject of the request.

The second sentence requires the petitioner to serve notice of his petition upon several persons who, by the third sentence, are recognized as entitled to appear and be heard on the matter. The notice requirement ensures that all interested parties, if they wish, may make a timely appearance. Absent such notice, these persons, who then might only learn of the order made in response to the motion after it was entered, have had to resort to the cumbersome and inefficient procedure of a motion to vacate the order. *In re Special February 1971 Grand Jury v. Conlisk*, 490 F.2d 894 (7th Cir. 1973).

Though some authority is to be found that parties to the judicial proceeding giving rise to the motion are not entitled to intervene, in that "the order to produce was not directed to" them, *United States v. American Oil Co.*, 456 F.2d 1043 (3d Cir. 1972), that position was rejected in *Douglas Oil*, where it was noted that such persons have standing "to object to the disclosure order, as release of the transcripts to their civil adversaries could result in substantial injury to them." As noted in *Illinois v. Sarbaugh*, supra, while present rule 6(e) "omits to state whether any one is entitled to object to disclosure," the rule

> seems to contemplate a proceeding of some kind, judicial proceedings are not normally *ex parte*, and persons in the situation of the intervenors [parties to the civil proceeding] are likely to be the only ones to object to an order for disclosure. If they are not allowed to appear, the advantages of an adversary proceeding are lost.

If the judicial proceeding is a class action, notice to the representative is sufficient.

The amendment also recognizes that the attorney for the government in the district where the grand jury convened also has an interest in the matter and should be allowed to be heard. It may sometimes be the case, as in *Douglas Oil*, that the prosecutor will have relatively little concern for secrecy, at least as compared with certain parties to the civil proceeding. Nonetheless, it is appropriate to recognize that generally the attorney for the government is entitled to be heard so that he may represent what *Douglas Oil* characterizes as "the public interest in secrecy," including the government's legitimate concern about "the possible effect upon the functioning of future grand juries" of unduly liberal disclosure.

The second sentence leaves it to the court to decide whether any other persons should receive notice and be allowed to intervene. This is appropriate, for the necessity for and feasibility of involving others may vary substantially from case to case. In *Douglas Oil*, it was noted that the individual who produced before the grand jury the information now sought has an interest in the matter:

> Fear of future retribution or social stigma may act as powerful deterrents to those who would come forward and aid the grand jury in the performance of its duties. Concern as to the future consequences of frank and full testimony is heightened where the witness is an employee of a company under investigation.

Notice to such persons, however is by no means inevitably necessary, and in some cases the information sought may have reached the grand jury from such a variety of sources that it is not practicable to involve these sources in the disclosure proceeding. Similarly, while *Douglas Oil* notes that rule 6(e) secrecy affords "protection of the innocent accused from disclosure of the accusation made against him before the grand jury," it is appropriate to leave to the court whether that interest requires representation directly by the grand jury target at this time. When deemed necessary to protect the identity of such other persons, it would be a permissible alternative for the government or the court directly to give notice to these other persons, and thus the rule does not foreclose such action.

The notice requirement in the second sentence is inapplicable if the hearing is to be *ex parte*. The legislative history of rule 6(e) states: "It is contemplated that the judicial hearing in connection with an application for a court order by the government, under subparagraph (3)(C)(i) should be *ex parte* so as to preserve, to the maximum extent possible, grand jury secrecy." S.Rep. No. 95-354, 1977 U.S. Code Cong. & Admin. News p. 532. Although such cases are distinguishable from other cases arising under this subdivision because internal regulations limit further disclosure of information disclosed to the government, the rule provides only that the hearing "may" be *ex parte* when the petitioner is the government. This allows the court to decide that matter based upon the circumstances of the particular case. For example, an *ex parte* proceeding is much less likely to be appropriate if the government acts as petitioner as an accommodation to, e.g., a state agency.

Note to Subdivision (e)(3)(E)

Under the first sentence in new subdivision (e)(3)(E), the petitioner or any intervenor might seek to have the matter transferred to the federal district court where the judicial proceeding giving rise to the petition is pending. Usually, it will be the petitioner, who is seeking disclosure, who will desire the transfer, but this is not inevitably the case. An intervenor might seek transfer on the ground that the other court, with greater knowledge of the extent of the need, would be less likely to conclude "that the material * * * is needed to avoid a possible injustice" (the test under *Douglas Oil*). The court may transfer on its own motion, for as noted in *Douglas Oil*, if transfer is the better course of action it should not be foreclosed "merely because the parties have failed to specify the relief to which they are entitled."

It must be emphasized that transfer is proper only if the proceeding giving rise to the petition "is in federal district court in another district." If, for example, the proceeding is located in another district but is at the state level, a situation encompassed within rule 6(e)(3)(C)(i), *In re Special February 1971 Grand Jury v. Conlisk*, supra, there is no occasion to transfer. Ultimate resolution of the matter cannot be placed in the hands of the state court, and in such a case the federal court in that place would lack what *Douglas Oil* recognizes as the benefit to be derived from transfer: "first-hand knowledge of the litigation in which the transcripts allegedly are needed." Formal transfer is unnecessary in intradistrict cases, even when the grand jury court and judicial proceeding court are not in the same division.

As stated in the first sentence, transfer by the court is appropriate "unless it can reasonably obtain sufficient knowledge of the proceeding to determine whether disclosure is proper." (As reflected by the "whether disclosure is proper" language, the amendment makes no effort to define the disclosure standard; that matter is currently governed by *Douglas Oil* and the authorities cited therein, and is best left to elaboration by future case law.) The amendment expresses a preference for having the disclosure issue decided by the grand jury court. Yet, it must be recognized, as stated in *Douglas Oil*, that often this will not be possible because

> the judges of the court having custody of the grand jury transcripts will have no first-hand knowledge of the litigation in which the transcripts allegedly are needed, and no practical means by which such knowledge can be obtained. In such a case, a judge in the district of the grand jury cannot weigh in an informed manner the need for disclosure against the need for maintaining grand jury secrecy.

The penultimate sentence provides that upon transfer the transferring court shall order transmitted the material sought to be disclosed and also a written evaluation of the need for continuing grand jury secrecy. Because the transferring court is in the best position to assess the interest in continued grand jury secrecy in the particular instance, it is important that the court which will now have to balance that interest against the need for disclosure receive the benefit of the transferring court's assessment. Transmittal of the material sought to be disclosed will not only facilitate timely disclosure if it is thereafter ordered, but will also assist the other court in deciding how great the need for disclosure actually is. For example, with that material at hand the other court will be able to determine if there is any inconsistency between certain grand jury testimony and testimony received in the other judicial proceeding. The rule recognizes, however, that there may be instances in which transfer of everything sought to be disclosed is not feasible. See, e.g., *In re 1975-2 Grand Jury Investigation*, 566 F.2d 1293 (5th Cir. 1978) (court ordered transmittal of "an inventory of the grand jury subpoenas, transcripts, and documents," as the materials in question were "exceedingly voluminous, filling no less than 55 large file boxes and one metal filing cabinet").

The last sentence makes it clear that in a case in which the matter is transferred to another court, that court should permit the various interested parties specified in the rule to be heard. Even if those persons were previously heard before the court which ordered the transfer, this will not suffice. The order of transfer did not decide the ultimate issue of "whether a particularized need for disclosure outweighs the interest in continued grand jury secrecy," *Douglas Oil*, supra, which is what now remains to be resolved by the court to which transfer was made. Cf. *In re 1975-2 Grand Jury Investigation*, supra, holding that a transfer order is not appealable because it does not determine the ultimate question of disclosure, and thus "[n]o one has yet been aggrieved and no one will become aggrieved until [the court to which the matter was transferred] acts."

Note to Subdivision (e)(5)

This addition to rule 6 would make it clear that certain hearings which would reveal matters which have previously occurred before a grand jury or are likely to occur before a grand jury with respect to a pending or ongoing investigation must be conducted in camera in whole or in part in order to prevent public disclosure of such secret information. One such hearing is that conducted under subdivision (e)(3)(D), for it will at least sometimes be necessary to consider and assess some of the "matters occurring before the grand jury" in order to decide the disclosure issue. Two other kinds of hearings at which information about a particular grand jury investigation might need to be discussed are those at which the question is whether to grant a grand jury witness immunity or whether to order a grand jury witness to comply fully with the terms of a subpoena directed to him.

A recent GAO study established that there is considerable variety in the practice as to whether such hearings are closed or open, and that open hearings often seriously jeopardize grand jury secrecy:

> For judges to decide these matters, the witness' relationship to the case under investigation must be discussed. Accordingly, the identities of witnesses and targets, the nature of expected testimony, and the extent to which the witness is cooperating are often revealed during preindictment proceedings. Because the matters discussed can compromise the purposes of grand jury secrecy, some judges close the preindictment proceedings to the public and the press; others do not. When the proceeding is open, information that may otherwise be kept secret under rule 6(e) becomes available to the public and the press . . . .
>
> Open preindictment proceedings are a major source of information which can compromise the purposes of grand jury secrecy. In 25 cases we were able to establish links between open proceedings and later newspaper articles containing information about the identities of witnesses and targets and the nature of grand jury investigations.

Comptroller General, More Guidance and Supervision Needed over Federal Grand Jury Proceedings 8-9 (Oct. 16, 1980).

The provisions of rule 6(e)(5) do not violate any constitutional right of the public or media to attend such pretrial hearings. There is no Sixth Amendment right in the public to attend pretrial proceedings, *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368 (1979), and *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, (1980), only recognizes a First Amendment "right to attend criminal trials." *Richmond Newspapers* was based largely upon the "unbroken, uncontradicted history" of public trials, while in *Gannett* it was noted "there exists no persuasive evidence that at common law members of the public had any right to attend pretrial proceedings." Moreover, even assuming some public right to attend certain pretrial proceedings, see *United States v. Criden*, 675 F.2d 550 (3d Cir. 1982), that right is not absolute; it must give way, as stated in *Richmond Newspapers*, to "an overriding interest" in a particular case in favor of a closed proceeding. By permitting closure only "to the extent necessary to prevent disclosure of matters occurring before a grand jury," rule 6(e)(5) recognizes the longstanding interest in the secrecy of grand jury proceedings. Counsel or others allowed to be present at the closed hearing may be put under a protective order by the court.

Subdivision (e)(5) is expressly made "subject to any right to an open hearing in contempt proceedings." This will accommodate any First Amendment right which might be deemed applicable in that context because of the proceedings' similarities to a criminal trial, cf. *United States v. Criden*, supra, and also any Fifth or Sixth Amendment right of the contemnor. The latter right clearly exists as to a criminal contempt proceeding, *In re Oliver*, 333 U.S. 257 (1948), and some authority is to be found recognizing such a right in civil contempt proceedings as well. *In re Rosahn*, 671 F.2d 690 (2d Cir. 1982). This right of the contemnor must be requested by him and, in any event, does not require that the entire contempt proceedings, including recitation of the substance of the questions he has refused to answer, be public. *Levine v. United States*. 362 U.S. 610 (1960).

Note to Subdivision (e)(6)

Subdivision (e)(6) provides that records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for so long as is necessary to prevent disclosure of matters occurring before a grand jury. By permitting such documents as grand jury subpoenas and immunity orders to be kept under seal, this provision addresses a serious problem of grand jury secrecy and expressly authorizes a procedure now in use in many but not all diricts. As reported in Comptroller General, More Guidance and Supervision Needed over Federal Grand Jury Proceedings 10, 14 (Oct. 16, 1980):

> In 262 cases, documents presented at open preindictment proceedings and filed in public files revealed details of grand jury investigations. These documents are, of course, available to anyone who wants them, including targets of investigations. [There are] two documents commonly found in public files which usually reveal the identities of witnesses and targets. The first document is a Department of Justice authorization to a U.S. attorney to apply to the court for a grant of immunity for a witness. The second document is the court's order granting the witness immunity from prosecution and compelling him to testify and produce requested information. * * *
>
> Subpoenas are the fundamental documents used during a grand jury's investigation because through subpoenas, grand juries can require witnesses to testify and produce documentary evidence for their consideration. Subpoenas can identify witnesses, potential targets, and the nature of an investigation. Rule 6(e) does not provide specific guidance on whether a grand jury's subpoena should be kept secret. Additionally, case law has not consistently stated whether the subpoenas are protected by rule 6(e).
>
> District courts still have different opinions about whether grand jury subpoenas should be kept secret.

Out of 40 Federal District Courts we contacted, 36 consider these documents to be secret. However, 4 districts do make them available to the public.

Note to Subdivision (g)

In its present form, subdivision 6(g) permits a grand jury to serve no more than 18 months after its members have been sworn, and absolutely no exceptions are permitted. (By comparison, under the Organized Crime Control Act of 1970, Title I, 18 U.S.C. §§ 3331-3334, special grand juries may be extended beyond their basic terms of 18 months if their business has not been completed.) The purpose of the amendment is to permit some degree of flexibility as to the discharge of grand juries where the public interest would be served by an extension.

As noted in *United States v. Fein*, 504 F.2d 1170 (2d Cir. 1974), upholding the dismissal of an indictment returned 9 days after the expiration of the 18-month period but during an attempted extension, under the present inflexible rule "it may well be that criminal proceedings which would be in the public interest will be frustrated and that those who might be found guilty will escape trial and conviction." The present inflexible rule can produce several undesirable consequences, especially when complex fraud, organized crime, tax or antitrust cases are under investigation: (i) wastage of a significant amount of time and resources by the necessity of presenting the case once again to a successor grand jury simply because the matter could not be concluded before the term of the first grand jury expired; (ii) precipitous action to conclude the investigation before the expiration date of the grand jury; and (iii) potential defendants may be kept under investigation for a longer time because of the necessity to present the matter again to another grand jury.

The amendment to subdivision 6(g) permits extension of a regular grand jury only "upon a determination that such extension is in the public interest." This permits some flexibility, but reflects the fact that extension of regular grand juries beyond 18 months is to be the exception and not the norm. The intention of the amendment is to make it possible for a grand jury to have sufficient extra time to wind up an investigation when, for example, such extension becomes necessary because of the unusual nature of the case or unforeseen developments.

Because terms of court have been abolished, 28 U.S.C. § 138, the second sentence of subdivision 6(g) has been deleted.

IV. ARRAIGNMENT, AND PREPARATION FOR TRIAL

Rule 11. Pleas

(a) ALTERNATIVES.

(1) *In General.* A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) *Conditional Pleas.* With the approval of the court and the consent of the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, he shall be allowed to withdraw his plea.

[*See main edition for text of* (*b*) *to* (*g*)]

(h) HARMLESS ERROR. Any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

Note to Subdivision (a)

There are many defenses, objections and requests which a defendant must ordinarily raise by pretrial motion. See, e.g., 18 U.S.C. § 3162(a)(2); Fed.R.Crim.P.12(b). Should that motion be denied, interlocutory appeal of the ruling by the defendant is seldom permitted. See *United States v. MacDonald*, 435 U.S. 850 (1978) (defendant may not appeal denial of his motion to dismiss based upon Sixth Amendment speedy trial grounds); *DiBella v. United States*, 369 U.S. 121 (1962) (defendant may not appeal denial of pretrial motion to suppress evidence); compare *Abney v. United States*, 431 U.S. 651 (1977) (interlocutory appeal of denial of motion to dismiss on double jeopardy grounds permissible). Moreover, should the defendant thereafter plead guilty or nolo contendere, this will usually foreclose later appeal with respect to denial of the pretrial motion "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." *Tollett v. Henderson*, 411 U.S. 258, (1973). Though a nolo plea differs from a guilty plea in other respects, it is clear that it also constitutes a waiver of all nonjurisdictional defects in a manner equivalent to a guilty plea. *Lott v. United States*, 367 U.S. 421 (1961).

As a consequence, a defendant who has lost one or more pretrial motions will often go through an entire trial simply to preserve the pretrial issues for later appellate review. This results in a waste of prosecutorial and judicial resources, and causes delay in the trial of other cases, contrary to the objectives underlying the Speedy Trial Act of 1974, 18 U.S.C. § 3161 et seq. These unfortunate consequences may be avoided by the conditional plea device expressly authorized by new subdivision (a)(2).

The development of procedures to avoid the necessity for trials which are undertaken for the sole purpose of preserving pretrial objections has been consistenly favored by the commentators. See ABA Standards Relating to the Administration of Criminal Justice, standard 21-1.3(c) (2d ed. 1978); Model Code of Pre-Arraignment Procedure § SS 290.1(4)(b) (1975); Uniform Rules of Criminal Procedure, rule 444(d) (Approved Draft, 1974); 1 C. Wright, Federal Practice and Procedure — Criminal § 175 (1969); 3 W. LaFave, Search and Seizure § 11.1 (1978). The Supreme Court has characterized the New York practice, whereby appeals from suppression motions may be appealed notwithstanding a guilty plea, as a "commendable effort to relieve the problem of congested trial calendars in a manner that does not diminish the opportunity for the assertion of rights guaranteed by the Constitution." *Lefkowitz v. Newsome*, 420 U.S. 283, 293 (1975). That Court has never discussed conditional pleas as such, but has permitted without comment a federal appeal on issues preserved by a conditional plea. *Jaben v. United States*, 381 U.S. 214 (1965).

In the absence of specific authorization by statute or rule for a conditional plea, the circuits have divided on the permissibility of the practice. Two circuits have actually approved the entry of conditional pleas, *United States v. Burke*, 517 F.2d 377 (2d Cir. 1975); *United States v. Moskow*, 588 F.2d 882 (3d Cir. 1978); and two others have praised the conditional plea concept, *United States v. Clark*, 459 F.2d 977 (8th Cir. 1972); *United States v. Dorsey*, 449 F.2d 1104 (D.C.Cir. 1971). Three circuits have expressed the view that a conditional plea is logically inconsistent and thus improper, *United States v. Brown*, 499 F.2d 829 (7th Cir. 1974); *United States v. Sepe*, 472 F.2d 784, aff'd en banc, 486 F.2d 1044 (5th Cir. 1973); *United States v. Cox*, 464 F.2d 937 (6th Cir. 1972); three others have determined only that conditional pleas are not now authorized in the federal system, *United States v. Benson*, 579 F.2d 508 (9th Cir. 1978); *United States v. Nooner*, 565 F.2d 633 (10th Cir. 1977); *United States v. Matthews*, 472 F.2d 1173 (4th Cir. 1973); while one circuit has reserved judgment on the issue, *United States v. Warwar*, 478 F.2d 1183 (1st Cir. 1973). (At the state level, a few jurisdictions by statute allow appeal from denial of a motion to suppress notwithstanding a subsequent guilty plea, Cal. Penal Code § 1538.5(m); N.Y.Crim. Proc. Law § 710.20(1); Wis.Stat.Ann. § 971.31(10), but in the absence of such a provision the state courts are also in disagreement as to whether a conditional plea is permissible; see cases collected in Comment, 26 U.C.L.A. L.Rev. 360, 373 (1978).)

The conditional plea procedure provided for in subdivision (a)(2) will, as previously noted, serve to conserve prosecutorial and judicial resources and advance speedy trial objectives. It will also produce much needed uniformity in the federal system on this matter; see *United States v. Clark*, supra, noting the split of authority and urging resolution by statute or rule. Also, the availability of a conditional plea under specified circumstances will aid in clarfying the fact that traditional, unqualified pleas do constitute a waiver of nonjurisdictional defects. See *United States v. Nooner*, supra (defendant sought appellate review of denial of pretrial suppression motion, despite his prior unqualified guilty plea, claiming the Second Circuit conditional plea practice led him to believe a guilty plea did not bar appeal of pretrial issues).

The obvious advantages of the conditional plea procedure authorized by subdivision (a)(2) are not outweighed by any significant or compelling disadvantages. As noted in Comment, supra, at 375: "Four major arguments have been raised by courts disapproving of conditioned pleas. The objections are that the procedure encourages a flood of appellate litigation, militates against achieving finality in the criminal process, reduces effectiveness of appeallate review due to the lack of a full trial record, and forces decision on constitutional questions that could otherwise be avoided by invoking the harmless error doctrine." But, as concluded therein, those "arguments do not withstand close analysis." Ibid.

As for the first of those arguments, experience in states which have permitted appeals of suppression motions notwithstanding a subsequent plea of guilty is most relevant, as conditional pleas are likely to be most common when the objective is to appeal that kind of pretrial ruling. That experience has shown that the number of appeals has not increased substantially. See Comment, 9 Hous.L.Rev. 305, 315-19 (1971). The minimal added burden at the appellate level is certainly a small price to pay for avoiding otherwise unnecessary trials.

As for the objection that conditional pleas conflict with the government's interest in achieving finality, it is likewise without force. While it is true that the conditional plea does not have the complete finality of the traditional plea of guilty or nolo contendere because "the essence of the agreement is that the legal guilt of the defendant exists only if the prosecution's case" survives on appeal, the plea

> continues to serve a partial state interest in finality, however, by establishing admission of the defendant's factual guilt. The defendant stands guilty and the proceedings come to an end if the reserved issue is ultimately decided in the government's favor.

Comment, 26 U.C.L.A. L.Rev. 360, 378 (1978).

The claim that the lack of a full trial record precludes effective appellate review may on occassion be relevant. Cf. *United States v. MacDonald*, supra (holding interlocutory appeal not available for denial of defendant's pretrial motion to dismiss, on speedy trial grounds, and noting that "most speedy trial claims * * * are best considered only after the relevant facts have been developed at trial"). However, most of the objections which would likely be raised by pretrial motion and preserved for appellate review by a conditional plea are subject to appellate resolution without a trial record. Certainly this is true as to the very common motion to suppress evidence, as is indicated by the fact that appeallate courts presently decide such issues upon interlocutory appeal by the government.

With respect to the objection that conditional pleas circumvent application of the harmless error doctrine, it must be acknowledged that "[a]bsent a full trial record, containing all the government's evidence against the defendant, invocation of the harmless error rule is arguably impossible." Comment, supra, at 380. But, the harmless error standard with respect to constitutional objections is sufficiently high, see *Chapman v. California*, 386 U.S. 18 (1967), that relatively few appellate decisions result in affirmance upon that basis. Thus it will only rarely be true that the conditional plea device will cause an appellate court to consider constitutional questions which could otherwise have been avoided by invocation of the doctrine of harmless error.

To the extent that these or related objections would otherwise have some substance, they are overcome by the provision in Rule 11(a)(2) that the defendant may enter a conditional plea only "with the approval of the court and the consent of the government." (In this respect, the rule adopts the practice now found in the Second Circuit.) The requirement of approval by the court is most appropriate, as it ensures, for example, that the defendant is not allowed to take an appeal on a matter which can only be fully developed by proceeding to trial; cf. *United States v. MacDonald*, supra. As for consent by the government, it will ensure that conditional pleas will be allowed only when the decision of the court of appeals will dispose of the case either by allowing the plea to stand or by such action as compelling dismissal of the indictment or suppressing essential evidence. Absent such circumstances, the conditional plea might only serve to postpone the trial and require the government to try the case after substantial delay, during which time witnesses may be lost, memories dimmed, and the offense grown so stale as to lose jury appeal. The government is in a unique position to determine whether the matter at issue would be case-dispositive, and, as a party to the litigation, should have an absolute right to refuse to consent to potentially prejudicial delay. Although it was suggested in *United States v. Moskow*, supra, that the government should have no right to prevent the entry of a conditional plea because a defendant has no comparable right to block government appeal of a pretrial ruling pursuant to 18 U.S.C. § 3731, that analogy is unconvincing. That statute requires the government to certify that the appeal is not taken for purposes of delay. Moreover, where the pretrial ruling is case-dispositive, § 3731 is the only mechanism by which the government can obtain appellate review, but a defendant may always obtain review by pleading not guilty.

Unlike the state statutes cited earlier, Rule 11(a)(2) is not limited to instances in which the pretrial ruling the defendant wishes to appeal was in response to defendant's motion to suppress evidence. Though it may be true that the conditional plea device will be most commonly employed as to such rulings, the objectives of the rule are well served by extending it to other pretrial rulings as well. See, e.g., ABA Standards, supra (declaring the New York provision "should be enlarged to include other pretrial defenses"); Uniform Rules of Criminal Procedure, rule 444(d) (Approved Draft, 1974) ("any pretrial motion which, if granted, would be dispositive of the case").

The requirement that the conditional plea be made by the defendant "reserving in writing the right to appeal from the adverse determination of any specified pretrial motion," though extending beyond the Second Circuit practice, will ensure careful attention to any conditional plea. It will document that a particular plea was in fact conditional, and will identify precisely what pretrial issues have been preserved for appellate review. By requiring this added step, it will be possible to avoid entry of a conditional plea without the considered acquiscence of the government (see *United States v. Burke*, supra, holding that failure of the government to object to entry of a conditional plea constituted consent) and post-plea claims by the defendant that his plea should be deemed conditional merely because it occurred after denial of his pretrial motions (see *United States v. Nooner*, supra).

It must be emphasized that the *only* avenue of review of the specified pretrial ruling permitted under a rule 11(a)(2) conditional plea is an appeal, which must be brought in compliance with Fed.R.App.P. 4(b). Relief via 28 U.S.C. § 2255 is not available for this purpose.

The Supreme Court has held that certain kinds of constitutional objections may be raised after a plea of guilty. *Menna v. New York*, 423 U.S. 61 (1975) (double jeopardy violation); *Blackledge v. Perry*, 417 U.S. 21 (1974) (due process violation by charge enhancement following defendant's exercise of right to trial de novo). Subdivision 11(a)(2) has no application to such situations, and should not be interpreted as either broadening or narrowing the *Menna-Blackledge* doctrine or as establishing procedures for its application.

Note to Subdivision (h)

Subdivision (h) makes clear that the harmless error rule of Rule 52(a) is applicable to Rule 11. The provision does not, however, attempt to define the meaning of "harmless error," which is left to the case law. Prior to the amendments which took effect on Dec. 1, 1975, Rule 11 was very brief; it consisted of but four sentences. The 1975 amendments increased significantly the procedures which must be undertaken when a defendant tenders a plea of guilty or nolo contendere, but this change was warranted by the "two principal objectives" then identified in the Advisory Committee Note: (1) ensuring that the defendant has made an informed plea; and (2) ensuring that plea agreements are brought out into the open in court. An inevitable consequence of the 1975 amendments was some increase in the risk that a trial judge, in a particular case, might inadvertently deviate to some degree from the procedure which a very literal reading of Rule 11 would appear to require.

This being so, it became more apparent than ever that Rule 11 should not be given such a crabbed interpretation that ceremony was exalted over substance. As stated in *United States v. Scarf*, 551 F.2d 1124 (8th Cir. 1977), concerning amended Rule 11: "It is a salutary rule, and district courts are required to act in substantial compliance with it although * * * ritualistic compliance is not required." As similarly pointed out in *United States v. Saft*, 558 F.2d 1073 (2d Cir. 1977),

> the Rule does note say that compliance can be achieved only by reading the specified items *in haec verba*. Congress meant to strip district judges of freedom to decide *what* they must explain to a defendant who wishes to plead guilty, not to tell them precisely *how* to perform this important task in the great variety of cases that would come before them. While a judge who contents himself with literal application of the Rule will hardly be reversed, it cannot be supposed that Congress preferred this to a more meaningful explanation, provided that all the specified elements were covered.

Two important points logically flow from these sound observations. One concerns the matter of construing Rule 11: it is not to be read as requiring a litany or other ritual which can be carried out only by word-for-word adherence to a set "script." The other, specifically addressed in new subdivision (h), is that even when it may be concluded Rule 11 has not been complied with in all respects, it does not inevitably follow that the defendant's plea of guilty or nolo contendere is invalid and subject to being overturned by any remedial device then available to the defendant.

Notwithstanding the declaration in Rule 52(a) that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded," there has existed for some years considerable disagreement concerning the applicability of the harmless error doctrine to Rule 11 violations. In large part, this is attributable to uncertanity as to the continued vitatlity and the reach of *McCarthy v. United States*, 394 U.S. 459 (1969). In *McCarthy*, involving a direct appeal from a plea of guilty because of noncompliance with Rule 11, the Court concluded

> that prejudice inheres in a failure to comply with Rule 11, for noncompliance deprives the defendant of the Rule's procedural safeguards, which are designed to facilitate a more accurate determination of the voluntariness of his plea. Our holding [is] that a defendant whose plea has been accepted in violation of Rule 11 should be afforded the opportunity to plead anew * * *.

McCarthy has been most frequently relied upon in cases where, as in that case, the defendant sought relief because of a Rule 11 violation by the avenue of direct appeal. It has been held that in such circumstances a defendant's conviction must be reversed whenever the "district court accepts his guilty plea without fully adhering to the procedure provided for in Rule 11," *United States v. Boone*, 543 F.2d 1090 (4th Cir. 1976), and that in this context any reliance by the government on the Rule 52(a) harmless error concept "must be rejected." *United States v. Journet*, 544 F.2d 633 (2d Cir. 1976). On the other hand, decisions are to be found taking a harmless error approach on direct appeal where it appeared the nature and extent of the deviation from Rule 11 was such that it could not have had any impact on the defendant's decision to plead or the fairness in now holding him to his plea. *United States v. Peters*, No. 77-1700 (4th Cir., Dec. 22, 1978) (where judge failed to comply fully with Rule 11(c)(1), in that defendant not correctly advised of maximum years of special parole term but was told it is at least 3 years, and defendant thereafter sentenced to 15 years plus 3-year special parole term, government's motion for summary affirmance granted, as "the error was harmless"); *United States v. Coronado*, 554 F.2d 166 (5th Cir. 1977) (court first holds that charge of conspiracy requires some explanation of what conspiracy means to comply with Rule 11(c)(1), but then finds no reversible error "because the rule 11 proceeding on its face discloses, despite the trial court's failure sufficiently to make the required explicitation of the charges, that Coronado understood them").

But this conflict has not been limited to cases involving nothing more than a direct appeal following defendant's plea. For example, another type of case is that in which the defendant has based a post-sentence motion to withdraw his plea on a Rule 11 violation. Rule 32(d) says that such a motion may be granted "to correct manifest injustice," and some courts have relied upon this latter provision in holding that post-sentence plea withdrawal need not be permitted merely because Rule 11 was not fully complied with and that instead the district court should hold an evidentiary hearing to determine "whether manifest injustice will result if the conviction based on the guilty plea is permitted to stand." *United States v. Scarf*, 551 F.2d 1124 (8th Cir. 1977). Others, however, have held that *McCarthy* applies and prevails over the language of Rule 32(d), so that "a failure to scrupulously comply with Rule 11 will invalidate a plea without a showing of manifest injustice." *United States v. Cantor*, 469 F.2d 435 (3d Cir. 1972).

Disagreement has also existed in the context of collateral attack upon pleas pursuant to 28 U.S.C. § 2255. On the one hand, it has been concluded that "[n]ot every violation of Rule 11 requires that the plea be set aside" in a § 2255 proceeding, and that "a guilty plea will be set aside on collateral attack only where to not do so would result in a miscarriage of justice, or where there exists exceptional circumstances justifying such relief." *Evers v. United States*, 579 F.2d 71 (10th Cir. 1978). The contrary view was that *McCarthy* governed in § 2255 proceedings because "the Supreme Court hinted at no exceptions to its policy of strict enforcement of Rule 11." *Timmreck v. United States*, 577 F.2d 377 (6th Cir. 1978). But a unanimous Supreme Court resolved this conflict in *United States v. Timmreck*, 441 U.S. 780 (1979), where the Court concluded that the reasoning of *Hill v. United States*, 368 U.S. 424 (1962) (ruling a collateral attack could not be predicated on a violation of Rule 32(a))

> is equally applicable to a formal violation of Rule 11.* * *
>
> Indeed, if anything, this case may be a stronger one for foreclosing collateral relief than the *Hill* case. For the concern with finality served by the limitation on collateral attack has special force with respect to convictions based on guilty pleas.
>
> > "Every inroad on the concept of finality undermines confidence in the integrity of our procedures; and, by increasing the volume of judicial work, inevitably delays and impairs the orderly administration of justice. The impact is greatest when new grounds for setting aside guilty pleas are approved because the vast majority of criminal convictions result from such pleas. Moreover, the concern that unfair procedures may have resulted in the conviction of an innocent defendant is only rarely raised by a petition to set aside a guilty plea."

This interest in finality is strongest in the collateral attack context the Court was dealing with in *Timmreck*, which explains why the Court there adopted the *Hill* requirement that in a § 2255 proceeding the rule violation must amount to "a fundamental defect which inherently results in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure." The interest in finality of guilty pleas described in *Timmreck* is of somewhat lesser weight when a direct appeal is involved (so that the *Hill* standard is obviously inappropriate in that setting), but yet is sufficiently compelling to make unsound the proposition that reversal is required even where it is apparent that the Rule 11 violation was of the harmless error variety.

Though the *McCarthy* per se rule may have been justified at the time and in the circumstances which obtained when the plea in that case was taken, this is no longer the case. For one thing, it is important to recall that *McCarthy* dealt only with the much simpler pre-1975 version of Rule 11, which required only a brief procedure during which the chances of a minor, insignificant and inadvertent deviation were relatively slight. This means that the chances of a *truly* harmless error (which was not involved in *McCarthy* in any event, as the judge made *no* inquiry into the defendant's understanding of the nature of the charge, and the government had presented only the extreme argument that a court "could properly *assume* that petitioner was entering that plea with a complete understanding of the charge against him" merely from the fact he had stated he desired to plead guilty) are much greater under present Rule 11 than under the version before the Court in *McCarthy*. It also means that the more elaborate and lengthy procedures of present Rule 11, again as compared with the version applied in *McCarthy*, make it more apparent than ever that a guilty plea is not "a mere gesture, a temporary and meaningless formality reversible at the defendant's whim," but rather "'a grave and solemn act,' which is 'accepted only with care and discernment.'" *United States v. Barker*, 514 F.2d 208 (D.C.Cir.1975), quoting from *Brady v. United States*, 397 U.S. 742 (1970). A plea of that character should not be overturned, even on direct appeal, when there has been a minor and technical violation of Rule 11 which amounts to harmless error.

Secondly, while *McCarthy* involved a situation in which the defendant's plea of guilty was before the court of appeals on direct appeal, the Supreme Court appears to have been primarily concerned with § 2255-type cases, for the Court referred exclusively to cases of that kind in the course of concluding that a per se rule was justified as to Rule 11 violations because of "the difficulty of achieving [rule 11's] purposes through a post-conviction voluntariness hearing." But that reasoning has now been substantially undercut by *United States v. Timmreck*, supra, for the Court there concluded § 2255 relief "is not available when all that is shown is a failure to comply with the formal requirements of the Rule," at least absent "other aggravating circumstances," which presumably could often only be developed in the course of a later evidentiary hearing.

Although all of the aforementioned considerations support the policy expressed in new subdivision (h), the Advisory Committee does wish to emphasize two important cautionary notes. The first is that subdivision (h) should *not* be read as supporting extreme or speculative harmless error claims or as, in effect, nullifying important Rule 11 safeguards. There would *not* be harmless error under subdivision (h) where, for example, as in *McCarthy*, there had been absolutely no inquiry by the judge into defendant's understanding of the nature of the charge and the harmless error claim of the government rests upon nothing more than the assertion that it may be "assumed" defendant possessed such understanding merely because he expressed a desire to plead guilty. Likewise, it would *not* be harmless error if the trial judge totally abdicated to the prosecutor the responsibility for giving to the defendant the various Rule 11 warnings, as this "results in the creation of an atmosphere of subtle coercion that clearly contravenes the policy behind Rule 11." *United States v. Crook*, 526 F.2d 708 (5th Cir. 1976).

Indeed, it is fair to say that the kinds of Rule 11 violations which might be found to constitute harmless error upon direct appeal are fairly limited, as in such instances the matter "must be resolved solely on the basis of the Rule 11 transcript" and the other portions (e.g., sentencing hearing) of the limited record made in such cases. *United States v. Coronado*, supra. Illustrative are: where the judge's compliance with subdivision (c)(1) was not absolutely complete, in that some essential element of the crime was not mentioned, but the defendant's responses clearly indicate his awareness of that element, see *United States v. Coronado*, supra; where the judge's compliance with subdivision (c)(2) was erroneous in part in that the judge understated the maximum penalty somewhat, but the penalty actually imposed did not exceed that indicated in the warnings, see *United States v. Peters*, supra; and where the judge completely failed to comply with subdivision (c)(5), which of course has no bearing on the validity of the plea itself, cf. *United States v. Sinagub*, supra.

The second cautionary note is that subdivision (h) should *not* be read as an invitation to trial judges to take a more casual approach to Rule 11 proceedings. It is still true, as the Supreme Court pointed out in *McCarthy*, that thoughtful and careful compliance with Rule 11 best serves the cause of fair and efficient administration of criminal justice, as it

> will help reduce the great waste of judicial resources required to process the frivolous attacks on guilty plea convictions that are encouraged, and are more difficult to dispose of, when the original record is inadequate. It is, therefore, not too much to require that, before sentencing defendants to years of imprisonment, district judges take the few minutes necessary to inform them of their rights and to determine whether they understand the action they are taking.

Subdivision (h) makes *no change* in the responsibilities of the judge at Rule 11 proceedings, but instead merely rejects the extreme sanction of automatic reversal.

It must also be emphasized that a harmless error provision has been added to Rule 11 because some courts have read *McCarthy* as meaning that the general harmless error provision in Rule 52(a) cannot be utilized with respect to Rule 11 proceedings. Thus, the addition of subdivision (h) should *not* be read as suggesting that Rule 52(a) does not apply in other circumstances because of the absence of a provision comparable to subdivision (h) attached to other rules.

Rule 12. Pleadings and Motions Before Trial; Defenses and Objections

[See main edition for text of (a) to (h)]

(i) PRODUCTION OF STATEMENTS AT SUPPRESSION HEARING. Except as herein provided, rule 26.2 shall apply at a hearing on a motion to suppress evidence under subdivision (b)(3) of this rule. For purposes of this subdivision, a law enforcement officer shall be deemed a witness called by the government, and upon a claim of privilege the court shall excise the portions of the statement containing privileged matter.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

Note to Subdivision (i)

As noted in the recent decision of *United States v. Raddatz*, 447 U.S. 667 (1980), hearings on pretrial suppression motions not infrequently necessitate a determination of the credibility of witnesses. In such a situation, it is particularly important, as also highlighted by *Raddatz*, that the record include some other evidence which tends to either verify or controvert the assertions of the witness. (This is especially true in light of the *Raddatz* holding that a district judge, in order to make an independent evaluation of credibility, is not required to rehear testimony on which a magistrate based his findings and recommendations following a suppression hearing before the magistrate.) One kind of evidence which can often fulfill this function is prior statements of the testifying witness, yet courts have consistently held that in light of the Jencks Act, 18 U.S.C. § 3500, such production of statements cannot be compelled at a pretrial suppression hearing. *United States v. Spagnuolo*, 515 F.2d 818 (9th Cir. 1975); *United States v. Sebastian*, 497 F.2d 1267 (2nd Cir. 1974); *United States v. Montos*, 421 F.2d 215 (5th Cir. 1970). This result, which finds no express Congressional approval in the legislative history of the Jencks Act, see *United States v. Sebastian*, supra; *United States v. Covello*, 410 F.2d 536 (2d Cir. 1969), would be obviated by new subdivision (i) of rule 12.

This change will enhance the accuracy of the factual determinations made in the context of pretrial suppression hearings. As noted in *United States v. Sebastian*, supra, it can be argued

> most persuasively that the case for pre-trial disclosure is strongest in the framework of a suppression hearing. Since findings at such a hearing as to admissibility of challenged evidence will often determine the result at trial and, at least in the case of fourth amendment suppression motions, cannot be relitigated later before the trier of fact, pre-trial production of the statements of witnesses would aid defense counsel's impeachment efforts at perhaps the most crucial point in the case. * * * [A] government witness at the suppression hearing may not appear at trial so that defendants could never test his credibility with the benefits of Jencks Act material.

The latter statement is certainly correct, for not infrequently a police officer who must testify on a motion to suppress as to the circumstances of an arrest or search will not be called at trial because he has no information necessary to the determination of defendant's guilt. See, e.g., *United States v. Spagnuolo*, supra (dissent notes that "under the prosecution's own admission, it did not intend to produce at trial the witnesses called at the pre-trial suppression hearing"). Moreover, even if that person did testify at the trial, if that testimony went to a different subject matter, then under rule 26.2(c) only portions of prior statements covering the same subject matter need be produced, and thus portions which might contradict the suppression hearing testimony would not be revealed. Thus, while it may be true, as declared in *United States v. Montos*, supra, that "due process does not require premature production at pre-trial hearings on motions to suppress of statements ultimately subject to discovery under the Jencks Act," the fact of the matter is that those statements—or, the esential portions thereof—are not necessarily subject to later discovery.

Moreover, it is not correct to assume that somehow the problem can be solved by leaving the suppression issue "open" in some fashion for resolution once the trial is under way, at which time the prior statements will be produced. In *United States v. Spagnuolo*, supra, the court responded to the defendant's dilemma of inaccessible prior statements by saying that the suppression motion could simply be deferred until trial. But, under the current version of rule 12 this is not possible; subdivision (b) declares that motions to suppress "must" be made before trial, and subdivision (e) says such motions cannot be deferred for determination at trial "if a party's right to appeal is adversely affected," which surely is the case as to suppression motions. As for the possibility of the trial judge reconsidering the motion to suppress on the basis of prior statements produced at trial and casting doubt on the credibility of a suppression hearing witness, it is not a desirable or adequate solution. For one thing, as already noted, there is no assurance that the prior statements will be forthcoming. Even if they are, it is not efficient to delay the continuation of the trial to undertake a reconsideration of matters which could have been resolved in advance of trial had the critical facts then been available. Furthermore, if such reconsideration is regularly to be expected of the trial judge, then this would give rise on appeal to unnecessary issues of the kind which confronted the court in *United States v. Montos*, supra—whether the trial judge was obligated either to conduct a new hearing or to make a new determination in light of the new evidence.

The second sentence of subdivision (i) provides that a law enforcement officer is to be deemed a witness called by the government. This means that when such a federal, state or local officer has testified at a suppression hearing, the defendant will be entitled to any statement of the officer in the possession of the government and relating to the subject matter concerning which the witness has testified, without regard to whether the officer was in fact called by the government or the defendant. There is considerable variation in local practice as to whether the arresting or searching officer is considered the witness of the defendant or of the government, but the need for the prior statement exists in either instance.

The second sentence of subdivision (i) also provides that upon a claim of privilege the court is to excise the privileged matter before turning over the statement. The situation most likely to arise is that in which the prior statement of the testifying officer identifies an informant who supplied some or all of the probable cause information to the police. Under *McCray v. Illinois*, 386 U.S. 300 (1967), it is for the judge who hears the motion to decide whether disclosure of the informant's identity is necessary in the particular case. Of course, the government in any case may prevent disclosure of the informant's identity by terminating reliance upon information from that informant.

Rule 12.2. Notice of Insanity Defense or Expert Testimony of Defendant's Mental Condition

(a) Defense of Insanity. If a defendant intends to rely upon the defense of insanity at the time of the alleged offense, he shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. If there is a failure to comply with the requirements of this subdivision, insanity may not be raised as a defense. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(b) Expert Testimony of Defendant's Mental Condition. If a defendant intends to introduce expert testimony relating to a mental disease or defect or any other mental condition of the defendant bearing upon the issue of his guilt, he shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) Mental Examination of Defendant. In an appropriate case the court may, upon motion of the attorney for the government, order the defendant to submit to an examination pursuant to 18 U.S.C. 4242. No statement made by the defendant in the course of any examination provided for by this rule, whether the examination be with or without the consent of the defendant, no testimony by the expert based upon such statement, and no other fruits of the statement shall be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced testimony.

(d) Failure To Comply. If there is a failure to give notice when required by subdivision (b) of this rule or to submit to an examination when ordered under subdivision (c) of this rule, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his guilt.

(e) Inadmissibility of Withdrawn Intention. Evidence of an intention as to which notice was given under subdivision (a) or (b), later withdrawn, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983; Oct. 12, 1984, Pub. L. 98-473, title II, § 404, 98 Stat. 2067; Oct. 30, 1984, Pub. L. 98-596, § 11(a), (b), 98 Stat. 3138.)

Notes of Advisory Committee on Rules—1983 Amendment

Note to Subdivision (b)

Courts have recently experienced difficulty with the question of what kind of expert testimony offered for what purpose falls within the notice requirement of rule 12.2(b). See, e.g., *United States v. Hill*, 655 F.2d 512 (3d Cir. 1980) (rule not applicable to tendered testimony of psychologist concerning defendant's susceptibility of inducement, offered to reinforce defendant's entrapment defense); *United States v. Webb*, 625 F.2d 709 (5th Cir. 1980) (rule not applicable to expert testimony tendered to show that defendant lacked the "propensity to commit a violent act," as this testimony was offered "to prove that Webb did not commit the offense charged," shooting at a helicopter, "not that certain conduct was unaccompanied by criminal intent"); *United States v. Perl*, 584 F.2d 1316 (4th Cir. 1978) (because entrapment defense properly withheld from jury, it was unnecessary to decide if the district court erred in holding rule applicable to tendered testimony of the doctor that defendant had increased susceptibility to suggestion as a result of medication he was taking); *United States v. Olson*, 576 F.2d 1267 (8th Cir. 1978) (rule applicable to tendered testimony of an alcoholism and drug therapist that defendant was not responsible for his actions because of a problem with alcohol); *United States v. Staggs*, 553 F.2d 1073 (7th Cir. 1977) (rule applicable to tendered testimony of psychologist that defendant, charged with assaulting federal officer, was more likely to hurt himself than to direct his aggressions toward others, as this testimony bears upon whether defendant intended to put victim in apprehension when he picked up the gun).

What these cases illustate is that expert testimony about defendant's mental condition may be tendered in a wide variety of circumstances well beyond the situation clearly within rule 12.2(b), i.e., where a psychiartist testifies for the defendant regarding his diminished capacity. In all of these situations and others like them, there is good reason to make applicable the notice provisions of rule 12.2(b). This is because in all circumstances in which the defendant plans to offer expert testimony concerning his mental condition at the time of the crime charged, advance disclosure to the government will serve "to permit adequate pretrial preparation, to prevent surprise at trial, and to avoid the necessity of delays during trial." 2 *A.B.A. Standards for Criminal Justice* 11-55 (2d 1980). Thus, while the district court in *United States v. Hill*, 481 F.Supp. 558 (E.D.Pa. 1979), incorrectly concluded that present rule 12.2(b) covers testimony by a psychologist bearing on the defense of entrapment, the court quite properly concluded that the government would be seriously disadvantaged by lack of notice. This would have meant that the government would not have been equipped to cross-examine the expert, that any expert called by the government would not have had an opportunity to hear the defense expert testify, and that the government would not have had an opportunity to conduct the kind of investigation needed to acquire rebuttal testimony on defendant's claim that he was especially susceptible to inducement. Consequently, rule 12.2(b) has been expanded to cover all of the aforementioned situations.

Note to Subdivision (c)

The amendment of the first sentence of subdivision (c), recognizing that the government may seek to have defendant subjected to a mental examination by an expert other than a psychiatrist, is prompted by the same considerations discussed above. Because it is possible that the defendant will submit to examination by an expert of his own other than a psychiatrist, it is necessary to recognize that it will sometimes be appropriate for defendant to be examined by a government expert other than a psychiatrist.

The last sentence of subdivision (c) has been amended to more accurately reflect the Fifth Amendment considerations at play in this context. See *Estelle v. Smith*, 451 U.S. 454 (1981), holding that self-incrimination protections are not inevitably limited to the guilt phase of a trial and that the privilege, when applicable, protects against use of defendant's statement and also the fruits thereof, including expert testimony based upon defendant's statements to the expert. *Estelle* also intimates that "a defendant can be required to submit to a sanity examination," and presumably some other form of mental examination, when "his silence may deprive the State of the only effective means it has of controverting his proof on an issue that he interjected into the case."

Note to Subdivision (d)

The broader term "mental condition" is appropriate here in light of the above changes to subdivisions (b) and (c).

Note to Subdivision (e)

New subdivision (e), generally consistent with the protection afforded in rule 12.1(f) with respect to notice of alibi, ensures that the notice required under subdivision (b) will not deprive the defendant of an opportunity later to elect not to utilize any expert testimony. This provision is consistent with *Williams v. Florida*, 399 U.S. 78 (1970), holding the privilege against self-incrimination is not violated by requiring the defendant to give notice of a defense where the defendant retains the "unfettered choice" of abandoning the defense.

DISSENTING STATEMENT OF JUSTICE O'CONNOR TO 1983 AMENDMENT

With one minor reservation, I join the Court in its adoption of the proposed amendments. They represent the product of considerable effort by the Advisory Committee, and they will institute desirable reforms. My sole disagreement with the Court's action today lies in its failure to recommend correction of an apparent error in the drafting of Proposed Rule 12.2(e).

As proposed, Rule 12.2(e) reads:

> "Evidence of an intention as to which notice was given under subdivision (a) or (b), later withdrawn, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention."

Identical language formerly appeared in Fed. Rules Crim. Proc. 11(e)(6) and Fed. Rules Evid. 410, each of which stated that

> "[Certain material] is not admissible in any civil or criminal proceeding against the defendant."

Those rules were amended, Supreme Court Order April 30, 1979, 441 U.S. 970, 987, 1007, Pub. Law 96-42, approved July 31, 1979, 93 Stat. 326. After the amendments, the relevant language read,

> "[Certain material] is not, in any civil or criminal proceeding, admissible against the defendant."

As the Advisory Committee explained, this minor change was necessary to eliminate an ambiguity. Before the amendment, the word "against" could be read as referring either to the kind of proceeding in which the evidence was offered or to the purpose for which it was offered. Thus, for instance, if a person was a witness in a suit but not a party, it was unclear whether the evidence could be used to impeach him. In such a case, the *use* would be against the person, but the *proceeding* would not be against him. Similarly, if the person wished to introduce the evidence in a proceeding in which he was the defendant, the use, but not the proceeding, would be against him. To eliminate the ambiguity, the Advisory Committee proposed the amendment clarifying that the evidence was inadmissible against the person, regardless of whether the particular proceeding was against the person. See Adv. Comm. Note to Fed. Rules Crim. Proc. 11(e)(6); Adv. Comm. Note to Fed. Rules Evid. 410.

The same ambiguity inheres in the proposed version of Rule 12.2(e). We should recommend that it be eliminated now. To that extent, I respectfully dissent.

1984 AMENDMENT

Subd. (a). Pub. L. 98-473, § 404(a), substituted "offense" for "crime".

Subd. (b). Pub. L. 98-473, § 404(b), which directed the amendment of subd. (b) by deleting "other condition bearing upon the issue of whether he had the mental state required for the offense charged" and inserting in lieu thereof "any other mental condition bearing upon the issue of guilt", was repealed by section 11(b) of Pub. L. 98-596.

Subd. (c). Pub. L. 98-596, § 11(a)(1), substituted "to an examination pursuant to 18 U.S.C. 4242" for "to a mental examination by a psychiatrist or other expert designated for this purpose in the order of the court".

Pub. L. 98-473, § 404(c), which directed the amendment of subd. (c) by deleting "to a psychiatric examination by a psychiatrist designated for this purpose in the order of the court" and inserting in lieu thereof "to an examination pursuant to 18 U.S.C. 4242" could not be executed because the phrase to be deleted did not appear. See amendment note for section 11(a)(1) of Pub. L. 98-596 above.

Subd. (d). Pub. L. 98-596, § 11(a)(2), substituted "guilt" for "mental condition".

Pub. L. 98-473, § 404(d), which directed the amendment of subd. (d) by deleting "mental state" and inserting in lieu thereof "guilt", was repealed by section 11(b) of Pub. L. 98-596.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 11(c) of Pub. L. 98-596 provided that: "The amendments and repeals made by subsections (a) and (b) of this section [amending this rule] shall apply on and after the enactment of the joint resolution entitled 'Joint resoluton making continuing appropriations for the fiscal year 1985, and for other purposes', H.J. Res. 648, Ninety-eighth Congress [Pub. L. 98-473, Oct. 12, 1984]."

Rule 15. Depositions

(a) WHEN TAKEN. Whenever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial, the court may upon motion of such party and notice to the parties order that testimony of such witness be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged, be produced at the same time and place. If a witness is detained pursuant to section 3144 of title 18, United States Code, the court on written motion of the witness and upon notice to the parties may direct that his deposition be taken. After the deposition has been subscribed the court may discharge the witness.

[*See main edition for text of* (*b*) *to* (*g*)]

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 209(b), 98 Stat. 1986.)

1984 AMENDMENT

Subd. (a). Pub. L. 98-473 substituted "detained pursuant to section 3144 of title 18, United States Code" for "committed for failure to give bail to appear to testify at a trial or hearing".

Rule 16. Discovery and Inspection

(a) DISCLOSURE OF EVIDENCE BY THE GOVERNMENT.

[*See main edition for text of* (*1*) *and* (*2*)]

(3) *Grand Jury Transcripts.* Except as provided in Rules 6, 12(i) and 26.2, and subdivision (a)(1)(A) of this rule, these rules do not

relate to discovery or inspection of recorded proceedings of a grand jury.

[*See main edition for text of* (4); (b) *to* (e)]

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

Note to Subdivision (a)(3)

The added language is made necessary by the addition of Rule 26.2 and new subdivision (i) of Rule 12, which contemplate the production of statements, including those made to a grand jury, under specified circumstances.

VI. TRIAL

Rule 23. Trial by Jury or by the Court

[*See main edition for text of* (a)]

(b) JURY OF LESS THAN TWELVE. Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12 or that a valid verdict may be returned by a jury of less than 12 should the court find it necessary to excuse one or more jurors for any just cause after trial commences. Even absent such stipulation, if the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, in the discretion of the court a valid verdict may be returned by the remaining 11 jurors.

[*See main edition for text of* (c)]

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

Note to Subdivision (b)

The amendment to subdivision (b) addresses a situation which does not occur with great frequency but which, when it does occur, may present a most difficult issue concerning the fair and efficient administration of justice. This situation is that in which, after the jury has retired to consider its verdict and any alternate jurors have been discharged, one of the jurors is seriously incapacitated or otherwise found to be unable to continue service upon the jury. The problem is acute when the trial has been a lengthy one and consequently the remedy of mistrial would necessitate a second expenditure of substantial prosecution, defense and court resources. See, e.g., *United States v. Meinster*, 484 F.Supp. 442 (S.D.Fla. 1980), aff'd sub nom. *United States v. Phillips*, 664 F.2d 971 (5th Cir. 1981) (juror had heart attack during deliberations after "well over four months of trial"); *United States v. Barone*, 83 F.R.D. 565 (S.D. Fla. 1979) (juror removed upon recommendation of psychiatrist during deliberations after "approximately six months of trial").

It is the judgment of the Committee that when a juror is lost during deliberations, especially in circumstances like those in *Barone* and *Meinster*, it is essential that there be available a course of action other than mistrial. Proceeding with the remaining 11 jurors, though heretofore impermissible under rule 23(b) absent stipulation by the parties and approval of the court, *United States v. Taylor*, 507 F.2d 166 (5th Cir. 1975), is constitutionally permissible. In *Williams v. Florida*, 399 U.S. 78 (1970), the Court concluded

> the fact that the jury at common law was composed of precisely 12 is an historical accident, unnecessary to effect the purposes of the jury system and wholly without significance "except to mystics." * * * To read the Sixth Amendment as forever codifying a feature so incidental to the real purpose of the Amendment is to ascribe a blind formalism to the Framers which would require considerably more evidence than we have been able to discover in the history and language of the Constitution or in the reasoning of our past decisions. * * * Our holding does no more than leave these considerations to Congress and the States, unrestrained by an interpretation of the Sixth Amendment which would forever dictate the precise number which can constitute a jury.

Williams held that a six-person jury was constitutional because such a jury had the "essential feature of a jury," i.e., "the interposition between the accused and his accuser of the common-sense judgment of a group of laymen, and in the community participation and shared responsibility which results from that group's determination of guilt or innocence," necessitating only a group "large enough to promote group deliberation, free from outside attempts at intimidation, and to provide a fair possibility for obtaining a representative cross section of the community." This being the case, quite clearly the occasional use of a jury of slightly less than 12, as contemplated by the amendment to rule 23(b), is constitutional. Though the alignment of the Court and especially the separate opinion by Justice Powell in *Apodoca v. Oregon*, 406 U.S. 404 (1972), makes it at best uncertain whether less-than-unanimous verdicts would be constitutionally permissible in federal trials, it hardly follows that a requirement of unanimity of a group slightly less than 12 is similarly suspect.

The *Meinster* case clearly reflects the need for a solution other than mistrial. There twelve defendants were named in a 36-count, 100-page indictment for RICO offenses and related violations, and the trial lasted more than four months. Before the jury retired for deliberations, the trial judge inquired of defense counsel whether they would now agree to a jury of less than 12 should a juror later be unable to continue during the deliberations which were anticipated to be lengthy. All defense counsel rejected that proposal. When one juror was excused a day later after suffering a heart attack, all defense counsel again rejected the proposal that deliberations continue with the remaining 11 jurors. Thus, the solution now provided in rule 23(b), stipulation to a jury of less than 12, was not possible in that case, just as it will not be possible in any case in which defense counsel believe some tactical advantage will be gained by retrial. Yet, to declare a mistrial at that point would have meant that over four months of trial time would have gone for naught and that a comparable period of time would have to be expended on retrial. For a variety of reasons, not the least of which is the impact such a retrial would have upon that court's ability to comply with speedy trial limits in other cases, such a result is most undesirable.

That being the case, it is certainly understandable that the trial judge in *Meinster* (as in *Barone*) elected to substitute an alternate juror at that point. Given the rule 23(b) bar on a verdict of less than 12 absent stipulation, *United States v. Taylor*, supra, such substitution seemed the least objectionable course of action. But in terms of what change in the Federal Rules of Criminal Procedure is to be preferred in order to facilitate response to such situations in the future, the judgment of the Advisory Committee is that it is far better to permit the deliberations to continue with a jury of 11 than to make a substitution at that point.

In rejecting the substitution-of-juror alternative, the Committee's judgment is in accord with that of most commentators and many courts.

> There have been proposals that the rule should be amended to permit an alternate to be substituted if a regular juror becomes unable to perform his duties after the case has been submitted to the jury. An early draft of the original Criminal Rules

> had contained such a provision, but it was withdrawn when the Supreme Court itself indicated to the Advisory Committee on Criminal Rules doubts as to the desirability and constitutionality of such a procedure. These doubts are as forceful now as they were a quarter century ago. To permit substitution of an alternate after deliberations have begun would require either that the alternate participate though he has missed part of the jury discussion, or that he sit in with the jury in every case on the chance he might be needed. Either course is subject to practical difficulty and to strong constitutional objection.

Wright, *Federal Practice and Procedure*, § 388 (1969). See also Moore, *Federal Practice* par. 24.05 (2d ed. Cipes 1980) ("The inherent coercive effect upon an alternate who joins a jury leaning heavily toward a guilty verdict may result in the alternate reaching a permature guilty verdict"); 3 *ABA Standards for Criminal Justice* § 15-2.7, commentary (2d ed. 1980) ("It is not desirable to allow a juror who is unfamiliar with the prior deliberations to suddenly join the group and participate in the voting without the benefit of earlier group discussion"); *United States v. Lamb*, 529 F.2d 1153 (9th Cir. 1975); *People v. Ryan*, 19 N.Y.2d 100, 224 N.E.2d 710 (1966). Compare *People v. Collins*, 17 Cal.3d 687, 131 Cal.Rptr. 782, 522 P.2d 742 (1976); *Johnson v. State*, 267 Ind. 256, 396 N.E.2d 623 (1977).

The central difficulty with substitution, whether viewed only as a practical problem or a question of constitutional dimensions (procedural due process under the Fifth Amendment or jury trial under the Sixth Amendment), is that there does not appear to be any way to nullify the impact of what has occurred without the participation of the new juror. Even were it required that the jury "review" with the new juror their prior deliberations or that the jury upon substitution start deliberations anew, it still seems likely that the continuing jurors would be influenced by the earlier deliberations and that the new juror would be somewhat intimidated by the others by virtue of being a newcomer to the deliberations. As for the possibility of sending in the alternates at the very beginning with instructions to listen but not to participate until substituted, this scheme is likewise attended by practical difficulties and offends "the cardinal principle that the deliberations of the jury shall remain private and secret in every case." *United States v. Virginia Erection Corp.*, 335 F.2d 868 (4th Cir. 1964).

The amendment provides that if a juror is excused after the jury has retired to consider its verdict, it is within the discretion of the court whether to declare a mistrial or to permit deliberations to continue with 11 jurors. If the trial has been brief and not much would be lost by retrial, the court might well conclude that the unusual step of allowing a jury verdict by less than 12 jurors absent stipulation should not be taken. On the other hand, if the trial has been protracted the court is much more likely to opt for continuing with the remaining 11 jurors.

VII. JUDGMENT

Rule 32. Sentence and Judgment

(a) SENTENCE.

(1) *Imposition of Sentence.* Sentence shall be imposed without unreasonable delay. Before imposing sentence, the court shall

(A) determine that the defendant and his counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)(3)(B);

(B) afford counsel an opportunity to speak on behalf of the defendant; and

(C) address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

The attorney for the government shall have an equivalent opportunity to speak to the court.

[*See main edition for text of* (*2*); (*b*)]

(c) PRESENTENCE INVESTIGATION.

[*See main edition for text of* (*1*) *and* (*2*)]

(3) *Disclosure.*

(A) At a reasonable time before imposing sentence the court shall permit the defendant and his counsel to read the report of the presentence investigation exclusive of any recommendation as to sentence, but not to the extent that in the opinion of the court the report contains diagnostic opinions which, if disclosed, might seriously disrupt a program of rehabilitation; or sources of information obtained upon a promise of confidentiality; or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons. The court shall afford the defendant and his counsel an opportunity to comment on the report and, in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in it.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant and his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material which may be disclosed to the defendant and his counsel shall be disclosed to the attorney for the government.

(D) If the comments of the defendant and his counsel or testimony or other information introduced by them allege any factual inaccuracy in the presentence investigation report or the summary of the report or part thereof, the court shall, as to each matter controverted, make (i) a finding as to the allegation, or (ii) a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to the Bureau of Prisons or the Parole Commission.

(E) Any copies of the presentence investigation report made available to the defendant and his counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion otherwise directs.

(F) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons or the Parole Commission pursuant to 18 U.S.C. §§ 4205(c), 4252, 5010(e), or 5037(c) shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

(d) PLEA WITHDRAWAL. If a motion for withdrawal of a plea of guilty or nolo contendere is made before sentence is imposed, imposition of sentence is suspended, or disposition is had under 18 U.S.C. § 4205(c), the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. At any later time, a plea may be set aside only on direct appeal or by motion under 28 U.S.C. § 2255.

[*See main edition for text of* (e) *and* (f)]

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

AMENDMENT OF RULE

Pub. L. 98-473, title II, §§ 215(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2014, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this rule is amended as follows:

(1) by deleting subdivision (a)(1) and inserting in lieu thereof the following:

"(1) Imposition of Sentence.—Sentence shall be imposed without unnecessary delay, but the court may, upon a motion that is jointly filed by the defendant and by the attorney for the Government and that asserts a factor important to the sentencing determination is not capable of being resolved at that time, postpone the imposition of sentence for a reasonable time until the factor is capable of being resolved. Prior to the sentencing hearing, the court shall provide the counsel for the defendant and the attorney for the Government with notice of the probation officer's determination, pursuant to the provisions of subdivision (c)(2)(B), of the sentencing classifications and sentencing guideline range believed to be applicable to the case. At the sentencing hearing, the court shall afford the counsel for the defendant and the attorney for the Government an opportunity to comment upon the probation officer's determination and on other matters relating to the appropriate sentence. Before imposing sentence, the court shall also—

"(A) determine that the defendant and his counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)(3)(B);

"(B) afford counsel for the defendant an opportunity to speak on behalf of the defendant; and

"(C) address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of the sentence. The attorney for the Government shall have an equivalent opportunity to speak to the court. Upon a motion that is jointly filed by the defendant and by the attorney for the Government, the court may hear in camera such a statement by the defendant, counsel for the defendant, or the attorney for the Government.";

(2) in subdivision (a)(2), by adding ", including any right to appeal the sentence," after "right to appeal" in the first sentence;

(3) in subdivision (a)(2), by adding ", except that the court shall advise the defendant of any right to appeal his sentence" after "nolo contendere" in the second sentence;

(4) by amending the first sentence of subdivision (c)(1) to read as follows: "A probation officer shall make a presentence investigation and report to the court before the imposition of sentence unless the court finds that there is in the record information sufficient to enable the meaningful exercise of sentencing authority pursuant to 18 U.S.C. 3553, and the court explains this finding on the record.";

(5) by amending subdivision (c)(2) to read as follows:

"(2) Report.—The report of the presentence investigation shall contain—

"(A) information about the history and characteristics of the defendant, including his prior criminal record, if any, his financial condition, and any circumstances affecting his behavior that may be helpful in imposing sentence or in the correctional treatment of the defendant;

"(B) the classification of the offense and of the defendant under the categories established by the Sentencing Commission pursuant to section 994(a) of title 28, that the probation officer believes to be applicable to the defendant's case; the kinds of sentence and the sentencing range suggested for such a category of offense committed by such a category of defendant as set forth in the guidelines issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(1); and an explanation by the probation officer of any factors that may indicate that a sentence of a different kind or of a different length than one within the applicable guideline would be more appropriate under all the circumstances;

"(C) any pertinent policy statement issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2);

"(D) verified information stated in a nonargumentative style containing an assessment of the financial, social, psychological, and medical impact upon, and cost to, any individual against whom the offense has been committed;

"(E) unless the court orders otherwise, information concerning the nature and extent of nonprison programs and resources available for the defendant; and

"(F) such other information as may be required by the court.";

(6) in subdivision (c)(3)(A), by deleting "exclusive of any recommendations as to

sentence" and inserting in lieu thereof ", including the information required by subdivision (c)(2) but not including any final recommendation as to sentence,";

(7) in subdivision (c)(3)(D), delete "or the Parole Commission";

(8) in subdivision (c)(3)(F), delete "or the Parole Commission pursuant to 18 U.S.C. §§ 4205(c), 4252, 5010(e), or 5037(c)" and substitute "pursuant to 18 U.S.C. § 3552(b)"; and

(9) by deleting "imposition of sentence is suspended, or disposition is had under 18 U.S.C. § 4205(c)," in subdivision (d).

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

Note to Subdivision (a)(1)

Subdivision (a)(1) has been amended so as to impose upon the sentencing court the additional obligation of determining that the defendant and his counsel have had an opportunity to read the presentence investigation report or summary thereof. This change is consistent with the amendment of subdivision (c)(3), discussed below, providing for disclosure of the report (or, in the circumstances indicated, a summary thereof) to *both* defendant *and* his counsel *without request.* This amendment is also consistent with the findings of a recent empirical study that under present rule 32 meaningful disclosure is often lacking and "that some form of judicial prodding is necessary to achieve full disclosure." Fennell & Hall, *Due Process at Sentencing: An Empirical and Legal Analysis of the Disclosure of Presentence Reports in Federal Courts,* 93 Harv.L.Rev. 1613, 1651 (1980):

> The defendant's interest in an accurate and reliable presentence report does not cease with the imposition of sentence. Rather, these interests are implicated at later stages in the correctional process by the continued use of the presentence report as a basic source of information in the handling of the defendant. If the defendant is incarcerated, the presentence report accompanies him to the correctional institution and provides background information for the Bureau of Prisons' classification summary, which, in turn, determines the defendant's classification within the facility, his ability to obtain furloughs, and the choice of treatment programs. The presentence report also plays a crucial role during parole determination. Section 4207 of the Parole Commission and Reorganization Act directs the parole hearing examiner to consider, if available, the presentence report as well as other records concerning the prisoner. In addition to its general use as background at the parole hearing, the presentence report serves as the primary source of information for calculating the inmate's parole guideline score.

Though it is thus important that the defendant be aware *now* of all these potential uses, the Advisory Committee has considered but not adopted a requirement that the trial judge specifically advise the defendant of these matters. The Committee believes that this additional burden should not be placed upon the trial judge, and that the problem is best dealt with by a form attached to the presentence report, to be signed by the defendant, advising of these potential uses of the report. This suggestion has been forwarded to the Probation Committee of the Judicial Conference.

Note to Subdivision (c)(3)(A), (B) & (C)

Three important changes are made in subdivision (c)(3): disclosure of the presentence report is no longer limited to those situations in which a request is made; disclosure is now provided to both defendant and his counsel; and disclosure is now required a reasonable time before sentencing. These changes have been prompted by findings in a recent empirical study that the extent and nature of disclosure of the presentence investigation report in federal courts under current rule 32 is insufficient to ensure accuracy of sentencing information. In 14 districts, disclosure is made only on request, and such requests are received in fewer than 50% of the cases. Forty-two of 92 probation offices do not provide automatic notice to defendant or counsel of the availability of the report; in 18 districts, a majority of the judges do not provide any notice of the availability of the report, and in 20 districts such notice is given only on the day of sentencing. In 28 districts, the report itself is not disclosed until the day of sentencing in a majority of cases. Thirty-one courts generally disclose the report only to counsel and not to the defendant, unless the defendant makes a specific request. Only 13 districts disclose the presentence report to both defendant and counsel prior to the day of sentencing in 90% or more of the cases. Fennell & Hall, supra, at 1640–49.

These findings make it clear that rule 32 in its present form is failing to fulfill its purpose. Unless disclosure is made sufficiently in advance of sentencing to permit the assertion and resolution of claims of inaccuracy prior to the sentencing hearing, the submission of additional information by the defendant when appropriate, and informed comment on the presentence report, the purpose of promoting accuracy by permitting the defendant to contest erroneous information is defeated. Similarly, if the report is not made available to the defendant and his counsel in a timely fashion, and if disclosure is only made on request, their opportunity to review the report may be inadequate. Finally, the failure to disclose the report to the defendant, or to require counsel to review the report with the defendant, significantly reduces the likelihood that false statements will be discovered, as much of the content of the presentence report will ordinarily be outside the knowledge of counsel.

The additional change to subdivision (c)(3)(C) is intended to make it clear that the government's right to disclosure does not depend upon whether the defendant elects to exercise his right to disclosure.

Note to Subdivision (c)(3)(D)

Subdivision (c)(3)(D) is entirely new. It requires the sentencing court, as to each matter controverted, either to make a finding as to the accuracy of the challanged factual proposition or to determine that no reliance will be placed on that proposition at the time of sentencing. This new provision also requires that a record of this action accompany any copy of the report later made available to the Bureau of Prisons or Parole Commission.

As noted above, the Bureau of Prisons and the Parole Commission make substantial use of the presentence investigation report. Under current practice, this can result in reliance upon assertions of fact in the report in the making of critical determinations relating to custody or parole. For example, it is possible that the Bureau or Commission, in the course of reaching a decision on such matters as institution assignment, eligibility for programs, or computation of salient factors, will place great reliance upon factual assertions in the report which are in fact untrue and which remained unchallenged at the time of the sentencing because defendant or his counsel deemed the error unimportant in the sentencing context (e.g., where the sentence was expected to conform to an earlier plea agreement, or where the judge said he would disregard certain controverted matter in setting the sentence).

The first sentence of new subdivision (c)(3)(D) is intended to ensure that a record is made as to exactly what resolution occurred as to controverted matter. The second sentence is intended to ensure that this record comes to the attention of the Bureau or Commission when these agencies utilize the presentence investigation report. In current practice, "less than one-fourth of the district courts (twenty of ninety-two) communicate to the correctional agencies the defendant's challenges to information in the presentence report and the resolution of these challenges." Fennell & Hall, supra, at 1680.

New subdivision (c)(3)(D) does not impose an onerous burden. It does not even require the preparation of a transcript. As is now the practice in some courts, these findings and determinations can be simply entered onto a form which is then appended to the report.

Note to Subdivision (c)(3)(E) & (F)

Former subdivisions (c)(3)(D) and (E) have been renumbered as (c)(3)(E) and (F). The only change is in the former, necessitated because disclosure is now to defendant and his counsel.

The issue of access to the presentence report at the institution was discussed by the Advisory Committee, but no action was taken on that matter because it was believed to be beyond the scope of the rule-making power. Rule 32 in its present form does not speak to this issue, and thus the Bureau of Prisons and the Parole Commission are free to make provision for disclosure to inmates and their counsel.

Note to Subdivision (d)

The amendment to Rule 32(d) is intended to clarify (i) the standard applicable to plea withdrawal under this rule, and (ii) the circumstances under which the appropriate avenue of relief is other than a withdrawal motion under this rule. Both of these matters have been the source of considerable confusion under the present rule. In its present form, the rule declares that a motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed, but then states the standard for permitting withdrawal after sentence. In fact, "there is no limitation upon the time within which relief thereunder may, after sentencing, be sought." *United States v. Watson*, 548 F.2d 1058 (D.C.Cir. 1977). It has been critically stated that "the Rule offers little guidance as to the applicable standard for a pre-sentence withdrawal of plea," *United States v. Michaelson*, 552 F.2d 472 (2d Cir. 1977), and that as a result "the contours of [the presentence] standard are not easily defined." *Bruce v. United States*, 379 F.2d 113 (D.C.Cir. 1967).

By replacing the "manifest injustice" standard with a requirement that, in cases to which it applied, the defendant must (unless taking a direct appeal) proceed under 28 U.S.C. § 2255, the amendment avoids language which has been a cause of unnecessary confusion. Under the amendment, a defendant who proceeds too late to come under the more generous "fair and just reason" standard must seek relief under § 2255, meaning the applicable standard is that stated in *Hill v. United States*, 368 U.S. 424 (1962): "a fundamental defect which inherently results in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure."

Some authority is to be found to the effect that the rule 32(d) "manifest injustice" standard is indistinguishable from the § 2255 standard. In *United States v. Hamilton*, 553 F.2d 63 (10th Cir. 1977), for example, the court, after first concluding defendant was not entitled to relief under the § 2255 "miscarriage of justice" test, then held that "[n]othing is to be gained by the invocation of Rule 32(d)" and its manifest injustice" standard. Some courts, however, have indicated that the rule 32(d) standard provides a somewhat broader basis for relief than § 2255. *United States v. Dabdoub-Diaz*, 599 F.2d 96 (5th Cir. 1979); *United States v. Watson*, 548 F.2d 1058 (D.C.Cir. 1977); *Meyer v. United States*, 424 F.2d 1181 (8th Cir.1970); *United States v. Kent*, 397 F.2d 446 (7th Cir. 1968). It is noteworthy, however, that in *Dabdoub-Diaz, Meyer* and *Kent* the defendant did not prevail under either § 2255 or Rule 32(d), and that in *Watson*, though the § 2255 case was remanded for consideration as a 32(d) motion, defendant's complaint (that he was not advised of the special parole term, though the sentence he received did not exceed that he was warned about by the court) was one as to which relief had been denied even upon direct appeal from the conviction. *United States v. Peters*, No. 77-1700 (4th Cir. Dec. 22, 1978).

Indeed, it may more generally be said that the results in § 2255 and 32(d) guilty plea cases have been for the most part the same. Relief has often been granted or recognized as available via either of these routes for essentially the same reasons: that there exists a complete constitutional bar to conviction on the offense charged, *Brooks v. United States*, 424 F.2d 425 (5th Cir. 1970) (§ 2255), *United States v. Bluso*, 519 F.2d 473 (4th Cir. 1975) (Rule 32); that the defendant was incompetent at the time of his plea, *United States v. Masthers*, 539 F.2d 721 (D.C.Cir. 1976) (§ 2255), *Kienlen v. United States*, 379 F.2d 20 (10th Cir. 1967) (Rule 32); and that the bargain the prosecutor made with defendant was not kept, *Walters v. Harris*, 460 F.2d 988 (4th Cir. 1972) (§ 2255), *United States v. Hawthorne*, 502 F.2d 1183 (3rd Cir. 1974) (Rule 32). Perhaps even more significant is the fact that relief has often been denied under like circumstances whichever of the two procedures was used: a mere technical violation of Rule 11, *United States v. Timmreck*, 441 U.S. 780 (1979) (§ 2255), *United States v. Saft*, 558 F.2d 1073 (2d Cir. 1977) (Rule 32); the mere fact defendants expected a lower sentence, *United States v. White*, 572 F.2d 1007 (4th Cir. 1978) (§ 2255), *Masciola v. United States*, 469 F.2d 1057 (3rd Cir. 1972) (Rule 32); or mere familial coercion, *Wojtowicz v. United States*, 550 F.2d 786 (2d Cir. 1977) (§ 2255), *United States v. Bartoli*, 572 F.2d 188 (8th Cir. 1978) (Rule 32).

The one clear instance in which a Rule 32(d) attack might prevail when a § 2255 challenge would not is present in those circuits which have reached the questionable result that post-sentence relief under 32(d) is available not merely upon a showing of a "manifest injustice" but also for any deviation from literal compliance with Rule 11. *United States v. Cantor*, 469 F.2d 435 (3d Cir. 1972). See Advisory Committee Note to Rule 11(h), noting the unsoundness of that position.

The change in Rule 32(d), therefore, is at best a minor one in terms of how post-sentence motions to withdraw pleas will be decided. It avoids the confusion which now obtains as to whether a § 2255 petition must be assumed to also be a 32(d) motion and, if so, whether this bears significantly upon how the matter should be decided. See, e.g., *United States v. Watson*, supra. It also avoids the present undesirable situation in which the mere selection of one of two highly similar avenues of relief, rule 32(d) or § 2255, may have significant procedural consequences, such as whether the government can take an appeal from the district court's adverse ruling (possible under § 2255 only). Moreover, because § 2255 and Rule 32(d) are properly characterized as the "two principal procedures for collateral attack of a federal plea conviction," Borman, *The Hidden Right to Direct Appeal From a Federal Conviction*, 64 Cornell L.Rev. 319, 327 (1979), this amendment is also in keeping with the proposition underlying the Supreme Court's decision in *United States v. Timmreck*, supra, namely, that "the concern with finality served by the limitation on collateral attack has special force with respect to convictions based on guilty pleas." The amendment is likewise consistent with ALI Code of Pre-Arraignment Procedure § 350.9 (1975) ("Allegations of noncompliance with the procedures provided in Article 350 shall not be a basis for review of a conviction after the appeal period for such conviction has expired, unless such review is required by the Constitution of the United States or of this State or otherwise by the law of this State other than Article 350"); ABA Standards Relating to the Administration of Criminal Justice § 14-2.1 (2d ed. 1978) (using "manifest injustice" standard, but listing six specific illustrations each of which would be basis for relief under § 2255); Unif.R.Crim.P. 444(e) (Approved Draft, 1974) (using "interest of justice" test, but listing five specific illustrations each of which would be basis for relief under § 2255).

The first sentence of the amended rule incorporates the "fair and just" standard which the federal courts, relying upon dictum in *Kercheval v. United States*, 274 U.S. 220 (1927), have consistently applied to presentence motions. See, e.g., *United States v. Strauss*, 563 F.2d 127 (4th Cir. 1977); *United States v. Bradin*, 535 F.2d 1039 (8th Cir. 1976); *United States v. Barker*, 514 F.2d 208 (D.C.Cir. 1975). Under the rule as amended, it is made clear that the defendant has the burden of showing a "fair and just" reason for withdrawal of the plea. This is consistent with the prevailing view, which is that "the defendant has the burden of satisfying the trial judge that there are valid grounds for withdrawal," see *United States v. Michaelson*, supra, and cases cited therein. (Illustrative of a reason which would meet this test but would likely fall short of the § 2255 test is where the defendant now wants to pursue a certain defense which he for good reason did not put forward earlier, *United States v. Barker*, supra.)

Although "the terms 'fair and just' lack any pretense of scientific exactness," *United States v. Barker*, supra, guidelines have emerged in the appellate cases for applying this standard. Whether the movant has asserted his legal innocence is an important factor to be weighed, *United States v. Joslin*, 434 F.2d 526 (D.C.Cir. 1970), as is the reason why the defenses were not put forward at the time of original pleading. *United Statess v. Needles*, 472 F.2d 652 (2d Cir. 1973). The amount of time which has passed between the plea and the motion must also be taken into account.

> A swift change of heart is itself strong indication that the plea was entered in haste and confusion * * *. By contrast, if the defendant has long delayed his withdrawal motion, and has had the full benefit of competent counsel at all times, the reasons given to support withdrawal must have considerably more force.

United States v. Barker, supra.

If the defendant establishes such a reason, it is then appropriate to consider whether the government would be prejudiced by withdrawal of the plea. Substantial prejudice may be present for a variety of reasons. See *United States v. Jerry*, 487 F.2d 600 (3d Cir. 1973) (physical evidence had been discarded); *United States v. Vasquez-Velasco*, 471 F.2d 294 (9th Cir. 1973) (death of chief government witness); *United States v. Lombardozzi*, 436 F.2d 878 (2d Cir. 1971) (other defendants with whom defendant had been joined for trial had already been tried in a lengthy trial); *Farnsworth v. Sanfor*, 115 F.2d 375 (5th Cir. 1940) (prosecution had dismissed 52 witnesses who had come from all over the country and from overseas bases).

There is currently some disparity in the manner in which presentence motions to withdraw a guilty plea are dealt with. Some courts proceed as if any desire to withdraw the plea before sentence is "fair and just" so long as the government fails to establish that it would be prejudiced by the withdrawal. Illustrative is *United States v. Savage*, 561 F.2d 554 (4th Cir. 1977), where the defendant pleaded guilty pursuant to a plea agreement that the government would recommend a sentence of 5 years. At the sentencing hearing, the trial judge indicated his unwillingness to follow the government's recommendation, so the defendant moved to withdraw his plea. That motion was denied. On appeal, the court held that there had been no violation of Rule 11, in that refusal to accept the government's recommendation does not constitute a rejection of the plea agreement. But the court then proceeded to hold that absent any showing of prejudice by the government, "the defendant should be allowed to withdraw his plea"; only upon such a showing by the government must the court "weigh the defendant's reasons for seeking to withdraw his plea against the prejudice which the government will suffer." The other view is that there is no occasion to inquire into the matter of prejudice unless the defendant first shows a good reason for being allowed to withdraw his plea. As stated in *United States v. Saft*, 558 F.2d 1073 (2d Cir. 1977): "The Government is not required to show prejudice when a defendant has shown no sufficient grounds for permitting withdrawal of a guilty plea, although such prejudice may be considered by the district court in exercising its discretion." The second sentence of the amended rule, by requiring that the defendant show a "fair and just" reason, adopts the *Saft* position and rejects that taken in *Savage*.

The *Savage* position, as later articulated in *United States v. Strauss*, supra, is that the "sounder view, supported by both the language of the rule and by the reasons for it, would be to allow withdrawal of the plea prior to sentencing unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea." (Quoting 2 C. Wright, Federal Practice and Procedure § 538, at 474–75 (1969). Although that position may once have been sound, this is no longer the case in light of the recent revisions of Rule 11. Rule 11 now provides for the placing of plea agreements on the record, for full inquiry into the voluntariness of the plea, for detailed advice to the defendant concerning his rights and the consequences of his plea and a determination that the defendant understands these matters, and for a determination of the accuracy of the plea. Given the great care with which pleas are taken under this revised Rule 11, there is no reason to view pleas so taken as merely "tentative," subject to withdrawal before sentence whenever the government cannot establish prejudice.

> Were withdrawal automatic in every case where the defendant decided to alter his tactics and present his theory of the case to the jury, the guilty plea would become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim. In fact, however, a guilty plea is no such trifle, but "a grave and solemn act," which is "accepted only with care and discernment."

United States v. Barker, supra, quoting from *Brady v. United States*, 397 U.S. 742 (1970).

The facts of the *Savage* case reflect the wisdom of this position. In *Savage*, the defendant had entered into a plea agreement whereby he agreed to plead guilty in exchange for the government's promise to recommend a sentence of 5 years, which the defendant knew was not binding on the court. Yet, under the approach taken in *Savage*, the defendant remains free to renege on his plea bargain, notwithstanding full compliance therewith by the attorney for the government, if it later appears to him from the presentence report or the comments of the trial judge or any other source that the court will not follow the government's recommendation. Having bargained for a recommendation pursuant to Rule 11(e)(1)(B), the defendant should not be entitled, in effect, to unilaterally convert the plea agreement into a Rule 11(e)(1)(C) type of agreement (i.e., one with a guarantee of a specific sentence which, if not given, permits withdrawal of the plea).

The first sentence of subdivision (d) provides that the motion, to be judged under the more liberal "fair and just reason" test, must have been made before sentence is imposed, imposition of sentence is suspended, or disposition is had under 18 U.S.C. § 4205(c). The latter of these has been added to the rule to make it clear that the lesser standard also governs prior to the second stage of sentencing when the judge, pursuant to that statute, has committed the defendant to the custody of the Attorney General for study pending final disposition. Several circuits have left this issue open, e.g., *United States v. McCoy*, 477 F.2d 550 (5th Cir. 1973); *Callaway v. United States*, 367 F.2d 140 (10th Cir. 1966); while some have held that a withdrawal motion filed between tentative and final sentencing should be judged against the presentence standard. *United States v. Barker*, 514 F.2d 208 (D.C.Cir. 1975); *United States v. Thomas*, 415 F.2d 1216 (9th Cir. 1969).

Inclusion of the § 4205(c) situation under the presentence standard is appropriate. As explained in *Barker:*

> Two reasons of policy have been advanced to explain the near-presumption which Rule 32(d) erects against post-sentence withdrawal motions. The first is that post-sentence withdrawal subverts the "stability" of "final judgments." * * * The second reason is that the post-sentence withdrawal motion often constitutes a veiled attack on the judge's sentencing decision; to grant such motions in lenient fashion might
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> > undermine respect for the courts and fritter away the time and painstaking effort devoted to the sentence process.
>
> * * * Concern for the "stability of final judgments" has little application to withdrawal motions filed between tentative and final sentencing under Section 4208(b) [now 4205(c)]. The point at which a defendant's judgment of conviction becomes "final" for purposes of appeal—whether at tentative or at final sentencing—is wholly within the defendant's discretion. * * * Concern for the integrity of the sentencing process is, however, another matter. The major point, in our view, is that tentative sentencing under Section 4208(b) [now 4205(c)] leaves the defendant ignorant of his final sentence. He will therefore be unlikely to use a withdrawal motion as an oblique attack on the judge's sentencing policy. The relative leniency of the "fair and just" standard is consequently not out of place.

Rule 35. Correction or Reduction of Sentence

[*See main edition for text of* (*a*)]

(b) **Reduction of Sentence.** The court may reduce a sentence within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

Amendment of Rule

Pub. L. 98-473, title II, §§ 215(b), 235(a)(1), Oct. 12, 1984, 98 Stat. 2015, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this rule is amended to read as follows:

Rule 35. Correction of Sentence

(a) Correction of a Sentence on Remand.—The court shall correct a sentence that is determined on appeal under 18 U.S.C. 3742 to have been imposed in violation of law, to have been imposed as a result of an incorrect application of the sentencing guidelines, or to be unreasonable, upon remand of the case to the court—

(1) for imposition of a sentence in accord with the findings of the court of appeals; or

(2) for further sentencing proceedings if, after such proceedings, the court determines that the original sentence was incorrect.

(b) Correction of Sentence for Changed Circumstances.—The court, on motion of the Government, may within one year after the imposition of a sentence, lower a sentence to reflect a defendant's subsequent, substantial assistance in the investigation or prosecution of another person who has committed an offense, to the extent that such assistance is a factor in applicable guidelines or policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a).

Notes of Advisory Committee on Rules—1983 Amendment

Note to Subdivision (b)

There is currently a split of authority on the question of whether a court may reduce a sentence within 120 days after revocation of probation when the sentence was imposed earlier but execution of the sentence had in the interim been suspended in part or in its entirety. Compare *United States v. Colvin*, 644 F.2d 703 (8th Cir. 1981) (yes); *United States v. Johnson*, 634 F.2d 94 (3d Cir. 1980) (yes); with *United States v. Rice*, 671 F.2d 455 (11th Cir. 1982) (no); *United States v. Kahane*, 527 F.2d 491 (2d Cir. 1975) (no). The Advisory Committee believes that the rule should be clarified in light of this split, and has concluded that as a policy matter the result reached in *Johnson* is preferable.

The Supreme Court declared in *Korematsu v. United States*, 319 U.S. 432, 435 (1943), that "the difference to the probationer between imposition of sentence followed by probation . . . and suspension of the imposition of sentence [followed by probation]" is not a meaningful one. When imposition of sentence is suspended entirely at the time a defendant is placed on probation, that defendant has 120 days after revocation of probation and imposition of sentence to petition for leniency. The amendment to subdivision (b) makes it clear that similar treatment is to be afforded probationers for whom execution, rather than imposition, of sentence was originally suspended.

The change facilitates the underlying objective of rule 35, which is to "give every convicted defendant a second round before the sentencing judge, and [afford] the judge an opportunity to reconsider the sentence in the light of any further information about the defendant or the case which may have been presented to him in the interim." *United States v. Ellenbogan*, 390 F.2d 537, 543 (2d Cir. 1968). It is only technically correct that a reduction may be sought when a suspended sentence is imposed. As noted in *Johnson*, supra, at 96:

> It frequently will be unrealistic for a defendant whose sentence has just been suspended to petition the court for the further relief of a reduction of that suspended sentence.
>
> Just as significant, we doubt that sentencing judges would be very receptive to Rule 35 motions proffered at the time the execution of a term of imprisonment is suspended in whole or in part and the defendant given a term of probation. Moreover, the sentencing judge cannot know of events that might occur later and that might bear on what would constitute an appropriate term of imprisonment should the defendant violate his probation. . . . In particular, it is only with the revocation hearing that the judge is in a position to consider whether a sentence originally suspended pending probation should be reduced. The revocation hearing is thus the first point at which an offender can be afforded a realistic opportunity to plead for a light sentence. If the offender is to be provided two chances with the sentencing judge, to be meaningful this second sentence must occur subsequent to the revocation hearing.

Rule 38. Stay of Execution, and Relief Pending Review

Amendment of Rule

Pub. L. 98-473, title II, §§ 215(c), 235(a)(1), Oct. 12, 1984, 98 Stat. 2016, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this rule is amended as follows:

(1) by amending the caption to read: "Stay of Execution" and deleting "(a) Stay of Execution.";

(2) by deleting subdivisions (b) and (c);

(3) by redesignating subdivisions (a)(1) through (a)(4) as subdivisions (a) through (d), respectively;

(4) in subdivision (a), by adding "from the conviction or sentence" after "is taken";

(5) in the first sentence of subdivision (b), by adding "from the conviction or sentence" after "is taken";

(6) by amending subdivision (d) to read as follows:

"(d) Probation.—A sentence of probation may be stayed if an appeal from the conviction or sentence is taken. If the sentence is stayed, the court shall fix the terms of the stay."; and

(7) by adding new subdivision (e) and (f) as follows:

"(e) Criminal Forfeiture, Notice to Victims, and Restitution.—A sanction imposed as part of the sentence pursuant to 18 U.S.C. 3554, 3555, or 3556 may, if an appeal of the conviction or sentence is taken, be stayed by the district court or by the court of appeals upon such terms as the court finds appropriate. The court may issue such orders as may be reasonably necessary to ensure compliance with the sanction upon disposition of the appeal, including the entering of a restraining order or an injunction or requiring a deposit in whole or in part of the monetary amount involved into the registry of the district court or execution of a performance bond.

"(f) Disabilities.—A civil or employment disability arising under a Federal statute by reason of the defendant's conviction or sentence, may, if an appeal is taken, be stayed by the district court or by the court of appeals upon such terms as the court finds appropriate. The court may enter a restraining order or an injunction, or take any other action that may be reasonably necessary to protect the interest represented by the disability pending disposition of the appeal.".

IX. SUPPLEMENTARY AND SPECIAL PROCEEDINGS

Rule 40. Commitment to Another District

[*See main edition for text of* (a) *to* (e)]

(f) Release or Detention.—If a person was previously detained or conditionally released, pursuant to chapter 207 of title 18, United States Code, in another district where a warrant, information, or indictment issued, the Federal magistrate shall take into account the decision previously made and the reasons set forth therefor, if any, but will not be bound by that decision. If the Federal magistrate amends the release or detention decision or alters the conditions of release, he shall set forth the reasons for his action in writing.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 209(c), 98 Stat. 1986.)

Amendment of Rule

Pub. L. 98-473, title II, §§ 215(d), 235(a)(1), Oct. 12, 1984, 98 Stat. 2016, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subdivision (d)(1) of this rule is amended by substituting "3605" for "3653".

1984 Amendment

Subd. (f). Pub. L. 98-473 substituted "Release or Detention" for "Bail" as the subdivision heading and, in text, substituted "If a person was previously detained or conditionally released, pursuant to chapter 207 of title 18, United States Code," for "If bail was previously fixed", "decision previously made" for "amount of bail previously fixed", "by that decision" for "by the amount of bail previously fixed", and "amends the release or detention decision or alters the conditions of release" for "fixes bail different from that previously fixed".

X. GENERAL PROVISIONS

Rule 46. Release From Custody

(a) Release Prior to Trial. Eligibility for release prior to trial shall be in accordance with 18 U.S.C. §§ 3142 and 3144.

[*See main edition for text of* (b)]

(c) Pending Sentence and Notice of Appeal. Eligibility for release pending sentence or pending notice of appeal or expiration of the time allowed for filing notice of appeal, shall be in accordance with 18 U.S.C. § 3143. The burden of establishing that the defendant will not flee or pose a danger to any other person or to the community rests with the defendant.

[*See main edition for text of* (d)]

(e) Forfeiture.

[*See main edition for text of* (1)]

(2) *Setting aside.* The court may direct that a forfeiture be set aside in whole or in part, upon such conditions as the court may impose, if a person released upon execution of an appearance bond with a surety is subsequently surrendered by the surety into custody or if it otherwise appears that justice does not require the forfeiture.

[*See main edition for text of* (3) *and* (4); (f) *and* (g)]

(h) Forfeiture of Property. Nothing in this rule or in chapter 207 of title 18, United States Code, shall prevent the court from disposing of any charge by entering an order directing forfeiture of property pursuant to 18 U.S.C. 3142(c)(2)(K) if the value of the property is an amount that would be an appropriate sentence after conviction of the offense charged and if such forfeiture is authorized by statute or regulation.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 209(d), 98 Stat. 1987.)

1984 AMENDMENT

Subd. (a). Pub. L. 98-473, § 209(d)(1), substituted "§§ 3142 and 3144" for "§ 3146, § 3148, or § 3149".

Subd. (c). Pub. L. 98-473, § 209(d)(2), substituted "3143" for "3148".

Subd. (e)(2). Pub. L. 98-473, § 209(d)(3), substituted "be set aside in whole or in part upon such conditions as the court may impose, if a person released upon execution of an appearance bond with a surety is subsequently surrendered by the surety into custody or if it otherwise appears that justice does not require the forfeiture" for "set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture".

Subd. (h). Pub. L. 98-473, § 209(d)(4), added subd. (h).

Rule 54. Application and Exception

[*See main edition for text of* (*a*)]

(b) PROCEEDINGS.

[*See main edition for text of* (*1*) *and* (*2*)]

(3) *Peace Bonds.* These rules do not alter the power of judges of the United States or of United States magistrates to hold to security of the peace and for good behavior under Revised Statutes, § 4069, 50 U.S.C. § 23, but in such cases the procedure shall conform to these rules so far as they are applicable.

[*See main edition for text of* (*4*) *and* (*5*), (*c*)]

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 209(e), 98 Stat. 1987.)

AMENDMENT OF RULE

Pub. L. 98-473, title II, §§ 215(e), 235(a)(1), Oct. 12, 1984, 98 Stat. 2016, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subdivision (c) of this rule is amended by amending the definition of "Petty offense" to read as follows: " 'Petty offense' means a class B or C misdemeanor or an infraction."

1984 AMENDMENT

Subd. (b)(3). Pub. L. 98-473 struck out "under 18 U.S.C. § 3043, and" after "for good behavior".

Rule 55. Records

The clerk of the district court and each United States magistrate shall keep records in criminal proceedings in such form as the Director of the Administrative Office of the United States Courts may prescribe. The clerk shall enter in the records each order or judgment of the court and the date such entry is made.

(As amended Apr. 28, 1983, eff. Aug. 1, 1983.)

NOTES OF ADVISORY COMMITTEE ON RULES—1983 AMENDMENT

The Advisory Committee Note to original Rule 55 observes that, in light of the authority which the Director and Judicial Conference have over the activities of clerks, "it seems best not to prescribe the records to be kept by clerks." Because of current experimentation with automated record-keeping, this approach is more appropriate than ever before. The amendment will make it possible for the Director to permit use of more sophisticated record-keeping techniques, including those which may obviate the need for a "criminal docket" book. The reference to the Judicial Conference has been stricken as unnecessary. See 28 U.S.C. § 604.

[Rule 58. Forms.] (Abrogated Apr. 28, 1983, eff. Aug. 1, 1983)

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 58 and the Appendix of Forms are unnecessary and have been abrogated. Forms of indictment and information are made available to United States Attorneys' offices by the Department of Justice. Forms used by the courts are made available by the Director of the Administrative Office of the United States Courts.

[APPENDIX OF FORMS] (Abrogated Apr. 28, 1983, eff. Aug. 1, 1983)

NOTES OF ADVISORY COMMITTEE ON RULES

Rule 58 and the Appendix of Forms are unnecessary and have been abrogated. Forms of indictment and information are made available to United States Attorneys' offices by the Department of Justice. Forms used by the courts are made available by the Director of the Administrative Office of the United States Courts.

RULES OF PROCEDURE FOR THE TRIAL OF MISDEMEANORS BEFORE UNITED STATES MAGISTRATES

(Effective June 1, 1980, as amended to January 1, 1985)

Rule
9. Definition.

Rule 9. Definition

As used in these rules, "petty offense" means a Class B or C misdemeanor or an infraction.

(Added Oct. 12, 1984, Pub. L. 98-473, title II, § 216(a), 98 Stat. 2017.)

EFFECTIVE DATE

Rule effective on the first day of the first calendar month beginning 24 months after Oct. 12, 1984 (Nov. 1, 1986), see section 235(a)(1) of Pub. L. 98-473, set out as a note under section 3551 of this title.

TITLE 19—CUSTOMS DUTIES

Chap.		Sec.
15.	Caribbean Basin Economic Recovery...	2701
16.	Wine Trade..	2801

CHAPTER 1—COLLECTION DISTRICTS, PORTS, AND OFFICERS

Sec.
58b. User fee for customs services at certain small airports.
  (a) Designated airports.
  (b) Payment by user; amount of fee.
  (c) Conditions and number of designated airports.
  (d) Offense; penalty.
  (e) Small airport account; expenditures for services.

§ 2. Rearrangement and limitation of districts; changing locations

COLUMBIA-SNAKE CUSTOMS DISTRICT

Pub. L. 98-573, title II, § 238, Oct. 30, 1984, 98 Stat. 2993, provided that: "The Commissioner of the United States Customs Service shall establish a customs district that shall—

"(1) be known as the Columbia-Snake Customs District;

"(2) have headquarters at Portland, Oregon; and

"(3) consist of the following areas:

"(A) The State of Oregon.

"(B) That part of the State of Idaho below 47 latitude.

"(C) The following counties in the State of Washington:

"Adams,
"Asotin,
"Benton,
"Clark,
"Columbia,
"Cowlitz,
"Franklin,
"Garfield,
"Klickitat,
"Skamania,
"Wahkiakum,
"Walla Walla, and
"Whitman.

"(D) That area of Pacific County, State of Washington, south of a line that would be in effect if the northern boundary of Wahkiakum County were extended westward to the Pacific Ocean.

The ports of entry for Columbia-Snake Customs District are those ports of entry that were within the areas described in paragraph (3) on the date of the enactment of this Act; except that Boise, Idaho, is an additional port of entry for that District."

ANNEX A TO TARIFF SCHEDULES OF THE UNITED STATES

Schedule D—Classification of United States Customs Districts and Ports for U.S. Foreign Trade Statistics

[The italicized port of each district is the headquarters port of that district]

Code Number, Customs District, and Port

01. PORTLAND, MAINE
  01. *Portland*
  02. Bangor (Including Brewer)
  03. Eastport (Including Cutler, Lubec)
  04. Jackman
  05. Vanceboro
  06. Houlton
  07. Fort Fairfield
  08. Van Buren
  09. Madawaska
  10. Fort Kent
  11. Bath
  12. Bar Harbor
  15. Calais (Including Robbinston)
  18. Limestone
  21. Rockland
  22. Jonesport
  27. Bridgewater
  31. Portsmouth, NH
  32. Belfast (Including Bucksport, Sandy Point, Winterport)
  52. Searsport

02. ST. ALBANS, VERMONT
  01. *St. Albans*
  03. Richford
  06. Beecher Falls
  07. Burlington
  09. Derby Line
  11. Norton
  12. Highgate Springs/Alburg

Code Number, Customs District, and Port

04. BOSTON, MASSACHUSETTS
  01. *Boston* (Including Chelsea, Revere, Braintree, Weymouth, Quincy, Everett)
  02. Springfield
  03. Worcester
  04. Gloucester
  05. New Bedford
  06. Plymouth
  07. Fall River
  08. Salem
  09. Provincetown
  16. Lawrence
  17. Logan Airport

05. PROVIDENCE, RHODE ISLAND
  01. Newport
  02. *Providence*
  03. Mellville (Including Portsmouth)

06. BRIDGEPORT, CONNECTICUT
  01. *Bridgeport*
  02. Hartford
  03. New Haven
  04. New London (Including Groton)

07. OGDENSBURG, NEW YORK
  01. *Ogdensburg*
  04. Massena
  05. Fort Covington
  06. Cape Vincent
  08. Alexandria Bay

Schedule D—Classification of United States Customs Districts and Ports for U.S. Foreign Trade Statistics—Continued

Code Number, Customs District, and Port

11. Chateaugay
12. Champlain-Rouses Point
14. Clayton
15. Trout River

09. BUFFALO, NEW YORK
01. *Buffalo-Niagara Falls*
03. Rochester
04. Oswego
05. Sodus Point
06. Syracuse
07. Utica

10. NEW YORK CITY, NEW YORK
01. *New York*
02. Albany
03 or 46-01. Newark, NJ [1]
04 or 46-02. Perth Amboy, NJ [1]
12 or 47-01. John F. Kennedy International Airport [1]

11. PHILADELPHIA, PENNSYLVANIA
01. *Philadelphia*
02. Chester
03. Wilmington, DE (Including Claymont, Delaware City, Edgemoor, Pigeon Point, Reedy Point)
04. Pittsburgh
05. Paulsboro, NJ (Including Billingsport, Eagle Point, Mantua Creek, Thompson Point, Westville)
06. Wilkes-Barre/Scranton
07. Camden, NJ (Including Petty Island, Delair)
09. Harrisburg
13. Gloucester City, NJ
18. Marcus Hook

13. BALTIMORE, MARYLAND
01. Annapolis
02. Cambridge
03. *Baltimore*
04. Crisfield

14. NORFOLK, VIRGINIA
01. *Norfolk* (Including Portsmouth)
02. Newport News (Including York River)
04. Richmond-Petersburg (Including Appomattox and James Rivers)
06. Cape Charles
07. Reedville
08. Hopewell
09. Charleston, WV

15. WILMINGTON, NORTH CAROLINA
01. *Wilmington*
02. Winston-Salem
03. Durham
06. Reidsville
11. Beaufort-Morehead City
12. Charlotte

16. CHARLESTON, SOUTH CAROLINA
01. *Charleston*
02. Georgetown
03. Greenville-Spartanburg

17. SAVANNAH, GEORGIA
01. Brunswick
03. *Savannah*
04. Atlanta

18. TAMPA, FLORIDA
01. Tampa (Including Port Tampa)
03. Jacksonville
05. Fernandina Beach
06. Carrabelle, FL
07. Boca Grande
08. Orlando
14. St. Petersburg
16. Port Canaveral
17. Apalachicola, FL
18. Panama City, FL
19. Pensacola, FL
20. Port St. Joe, FL

19. MOBILE, ALABAMA
01. *Mobile* (Including Theodore)
02. Gulfport, MS
03. Pascagoula, MS
04. Birmingham
10. Huntsville, AL

20. NEW ORLEANS, LOUISIANA
01. Morgan City
02. New Orleans (Including Belle Chasse, Concession, Gretna, Harvey, Inner Harbor Navigation Canal, Marrero, Seatrain Landing, Southport, Westwego)
03. Little Rock-North Little Rock, AR
04. Baton Rouge
05. Port Sulphur
06. Memphis, TN
07. Nashville, TN
08. Chattanooga, TN
09. Destrehan (Including Luling)
10. Gramercy
11. Greenville, MS
12. Avondale
13. St. Rose

Code Number, Customs District, and Port

14. Good Hope
15. Vicksburg, MS
16. Knoxville, TN
17. Lake Charles, LA

21. PORT ARTHUR, TEXAS
01. *Port Arthur*
02. Sabine
03. Orange
04. Beaumont (Including Port Neches)

23. LAREDO, TEXAS
01. Brownsville-Cameron County (Including Port Isabel)
02. Del Rio
03. Eagle Pass
04. *Laredo*
05. Hidalgo
07. Rio Grande City
08. San Antonio
09. Progresso
10. Roma

24. EL PASO, TEXAS
02. *El Paso* (Including Ysleta)
03. Presidio
04. Fabens
06. Columbus, NM
07. Albuquerque, NM

25. SAN DIEGO, CALIFORNIA
01. *San Diego*
02. Andrade
03. Calexico
04. San Ysidro
05. Tecate

26. NOGALES, ARIZONA
01. Douglas
02. Lukeville
03. Naco
04. *Nogales*
05. Phoenix
06. Sasabe
08. San Luis

27. LOS ANGELES, CALIFORNIA
04. *Los Angeles*
07. Port San Luis (Including San Luis Obispo)
09. Long Beach (Including Huntington Beach, Newport Bay)
11. El Segundo
12. Ventura
13. Port Hueneme
15. Capitan
19. Morro (Including Estero Bay)
20. Los Angeles International Airport
22. Las Vegas, NV

28. SAN FRANCISO, CALIFORNIA
01. San Francisco International Airport
02. Eureka
03. Fresno
05. Monterey
09. *San Francisco*
10. Stockton
11. Oakland
12. Richmond
13. Alameda
15. Crockett
16. Sacramento
20. Martinez
21. Redwood City
27. Selby
28. San Joaquin River (Including Antioch, Mayberry Slough, Pittsburg; excluding Stockton)
29. San Pablo Bay (Including San Pablo, Mare Island Strait, Oleum, Vallejo)
30. Carquinez Strait (Including Benicia, Port Costa; excluding Crockett, Martinez, Selby)
31. Suisun Bay (Including Avon, Suisun Slough, Sacramento Point)
33. Reno, NV

29. PORTLAND, OREGON
01. Astoria
02. Newport (Including Toledo)
03. Coos Bay (Including North Bend and all points on Coos Bay in Oregon; Empire, Coos Bay, Millington, North Bend)
04. *Portland* (Including Linnton)
05. Longview, WA
08. Vancouver, WA
09. Kalama, WA

30. SEATTLE, WASHINGTON
01. *Seattle* (Including Point Wells)
02. Tacoma
03. Aberdeen-Hoquiam (Including Grays Harbor)
04. Blaine
05. Bellingham
06. Everett
07. Port Angeles
08. Port Townsend

Schedule D—Classification of United States Customs Districts and Ports for U.S. Foreign Trade Statistics—Continued

Code Number, Customs District, and Port

09. Sumas
10. Anacortes
11. Nighthawk
12. Danville
13. Ferry
14. Friday Harbor
15. Boundary
16. Laurier
17. Point Roberts
18. Kenmore Air Harbor
19. Oroville
20. Frontier
22. Spokane
23. Lynden
25. Metaline Falls
26. Olympia
27. Neah Bay
29. Seattle-Tacoma International Airport

31. ANCHORAGE, ALASKA
01. Juneau
02. Ketchikan (Including Ward Cove and Herring Bay)
03. Skagway
04. Alcan
05. Wrangell
06. Dalton Cache
07. Valdez
11. Fairbanks
12. Petersburg
15. Sitka
24. Pelican
25. Sand Point
26. *Anchorage*
27. Kodiak

32. HONOLULU, HAWAII
01. *Honolulu* (Including Pearl Harbor)
02. Hilo
03. Kahului
04. Nawiliwili-Port Allen
05. Honolulu International Airport

33. GREAT FALLS, MONTANA
01. Raymond
02. Eastport, ID
03. Salt Lake City, UT
04. *Great Falls*
05. Butte
06. Turner
07. Denver, CO
08. Porthill, ID
09. Scobey
10. Sweetgrass
12. Whitetail
16. Piegan
17. Opheim
18. Roosville
19. Morgan
21. Whitlash
22. Del Bonita

34. PEMBINA, NORTH DAKOTA
01. *Pembina*
02. Noyes, MN
03. Portal
04. Neche
05. St. John
06. Northgate
07. Walhalla
08. Hannah
09. Sarles
10. Ambrose
13. Antler
14. Sherwood
15. Hansboro
16. Maida
17. Fortuna
19. Westhope
20. Noonan
21. Carbury
22. Dunseith
23. Warroad, MN (Including Oak Island)
24. Baudette, MN
25. Pinecreek, MN
26. Roseau, MN

35. MINNEAPOLIS, MINNESOTA
01. *Minneapolis-St. Paul*

36. DULUTH, MINNESOTA
01. *Duluth*
02. Ashland, WI
04. International Falls-Ranier
08. Superior, WI
13. Grand Portage
14. Silver Bay (Including Taconite)

37. MILWAUKEE, WISCONSIN
01. *Milwaukee*
02. Marinette (Including Menominee, MI)
03. Green Bay (Including Depere)
06. Manitowoc
07. Sheboygan
08. Racine (Including Kenosha)

38. DETROIT, MICHIGAN
01. *Detroit* (Including Ecorse, Riverview, River Rouge, Trenton and Wyandotte)
02. Port Huron (Including Black River, Marysville and St. Clair)
03. Sault Ste. Marie (Including Port Inland, Munising)
04. Saginaw-Bay City-Flint (Including Bangor, Carrollton, Essexville)
05. Battle Creek
06. Grand Rapids
08. Escanaba
09. Marquette
14. Algonac (Including Roberts Landing)
15. Muskegon (Including Manistee)
16. Grand Haven
18. Rogers City (Including Calcite)
19. Detour
20. Mackinac Island
42. Presque Isle
43. Alpena (Including Stoneport, Bay Shore)
44. Ferrysburg

39. CHICAGO, ILLINOIS
01. *Chicago* (Including Waukegan Harbor, Calumet Harbor, and Chicago River to Lockport)
02. Peoria
03. Omaha, NE
04. East Chicago, IN
05. Gary, IN (Including Michigan City Harbor)
06. O'Hare International Airport
07. Des Moines, IA

41. CLEVELAND, OHIO
01. *Cleveland*
02. Cincinnati-Lawrenceburg
03. Columbus
04. Dayton
05. Toledo-Sandusky
06. Erie, PA
08 or 41-22. Ashtabula, OH [1]
09 or 41-22. Conneaut, OH [1]
10. Indianapolis, IN
11. Fairport
12. Akron
15. Louisville, KY
16. Owensboro-Evansville
17. Huron
21. Lorain

42. ST. LOUIS, MISSOURI
01. Kansas City
02. St. Joseph
03. *St. Louis*
04. Wichita, KS
05. Springfield, MO

49. SAN JUAN, PUERTO RICO
01. Aguadilla
04. Fajardo
05. Guanica
06. Humacao
07. Mayaguez
08. Ponce
09. *San Juan*
11. Jobos
12. Guayanilla
13. San Juan International Airport

51. VIRGIN ISLANDS OF THE UNITED STATES
01. *Charlotte Amalie*
02. Cruz Bay
03. Coral Bay
04. Christiansted
05. Frederiksted

52. MIAMI, FLORIDA
01. Miami
02. Key West
03. Port Everglades (Including Ft. Lauderdale, Hollywood and Dania)
04. West Palm Beach
05. Fort Pierce
06. Miami International Airport

53. HOUSTON-GALVESTON, TEXAS
01. *Houston* (Including Baytown)
06. Texas City
09. Houston Intercontinental Airport
10. Galveston
11. Freeport
12. Corpus Christi (Including Port Aransas, Ingleside Terminal)
13. Port Lavaca

54. WASHINGTON, DC
01. *Washington*
02. Alexandria, VA

Schedule D—Classification of United States Customs Districts and Ports for U.S. Foreign Trade Statistics—Continued

Code Number, Customs District, and Port	Code Number, Customs District, and Port
55. DALLAS-FORT WORTH, TEXAS 01. *Dallas-Fort Worth* 02. Amarillo 03. Lubbock 04. Oklahoma City 05. Tulsa 06. Austin	60. Vessels under their own power or afloat (imports and exports) 70. Shipments individually valued under $251 for imports and under $501 for exports 80. Mail shipments (exports only)

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[1] The first code shown is currently used by the Bureau of the Census in the compilation of the foreign trade statistics; the second code, assigned for Customs Service operations, may be used on import entries and export declarations filed for transactions through the specified ports. In Bureau of the Census statistical reports, New York City Customs District totals represent a summarization for the five ports. Newark and Perth Amboy are included in the New York port (10-1) in the shipping statistics presented in reports such as FT 985, SM 305, and SM 705.

§ 6. Designation of customs officers for foreign service; status; rejection of designated customs officer; applicability of civil service laws

CROSS REFERENCES

Extra pay for overtime services in connection with vessels, see section 2111 of Title 46, Shipping.

§ 58b. User fee for customs services at certain small airports

(a) Designated airports

The Secretary of the Treasury shall make customs services available and charge a fee for the use of such customs services at—

(1) the airport located at Lebanon, New Hampshire, and

(2) any other airport designated by the Secretary of the Treasury under subsection (c) of this section.

(b) Payment by user; amount of fee

The fee which is charged under subsection (a) of this section shall be paid by each person using the customs services at the airport and shall be in an amount equal to the expenses incurred by the Secretary of the Treasury in providing the customs services which are rendered to such person at such airport (including the salary and expenses of individuals employed by the Secretary of the Treasury to provide such customs services).

(c) Conditions and number of designated airports

The Secretary of the Treasury may designate 4 airports under this subsection. An airport may be designated under this subsection only if—

(1) the Secretary of the Treasury has made a determination that the volume or value of business cleared through such airport is insufficient to justify the availability of customs services at such airport, and

(2) the governor of the State in which such airport is located approves such designation.

(d) Offense; penalty

Any person who, after notice and demand for payment of any fee charged under subsection (a) of this section, fails to pay such fee shall be guilty of a misdemeanor and if convicted thereof shall pay a fine that does not exceed an amount equal to 200 percent of such fee.

(e) Small airport account; expenditures for services

Fees collected by the Secretary of the Treasury under subsection (a) of this section with respect to the provision of services at an airport shall be deposited in an account within the Treasury of the United States that is specially designated for such airport. The funds in such account shall only be available, as provided by appropriation Acts, for expenditures relating to the provision of customs services at such airport (including expenditures for the salaries and expenses of individuals employed to provide such services).

(Pub. L. 98-573, title II, § 236, Oct. 30, 1984, 98 Stat. 2992.)

EFFECTIVE DATE

Section effective the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

CHAPTER 1A—FOREIGN TRADE ZONES

§ 81c. Admission of foreign merchandise; treatment; shipment to customs territory; appraisal; reshipment to zone; exemption

(a) Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this chapter, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this chapter, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: *Provided*, That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the appropriate customs officer shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: *Provided further,* That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid, if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the appropriate customs officer, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: *Provided further,* That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: *Provided further,* That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of—

(1) the draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

(2) the statutes and bonds exacted for the payment of draw-back, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of section 1201 of this title: *Provided further,* That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807, chapter 15, chapter 16, chapter 17, chapter 21, chapter 23, chapter 24, chapter 25, chapter 26, or chapter 32 of the Internal Revenue Code if performed in customs territory, or involving the manufacture of any article provided for in paragraphs 367 or 368 of section 1001 of this title, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this chapter prior to July 1, 1949: *Provided further,* That articles produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section may, on such importation, be entered as American goods returned.

(b) The exemption from the customs laws of the United States provided under subsection (a) of this section shall not be available before June 30, 1986, to bicycle component parts unless such parts are reexported from the United States, whether in the original package, as components of a completely assembled bicycle, or otherwise.

(As amended Oct. 30, 1984, Pub. L. 98–573, title II, § 231(a)(2), 98 Stat. 2990.)

References in Text

The Tariff Act of 1930, as amended, referred to in subsec. (a)(1), is act June 17, 1930, ch. 497, 46 Stat. 590, as amended, which is classified generally to chapter 4 (§ 1202 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

Sections 1001 and 1201 of this title, referred to in subsec. (a), which comprised the dutiable and free lists for articles imported into the United States, were repealed by Pub. L. 87–456, title I, § 101(a), May 24, 1962, 76 Stat. 72, which act also revised the Tariff Schedules of the United States. The Tariff Schedules of the United States are not set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

References in subsec. (a) to section and chapters of the Internal Revenue Code are references to section and chapters of the Internal Revenue Code, 1939, which was repealed by section 7851 of Title 26, I.R.C. 1954. Corresponding sections of I.R.C. 1954 to section and chapters of I.R.C. 1939 referred to in the text are set out below. For provision deeming a reference in other laws to a provision of I.R.C. 1939, also as a reference to corresponding provision of I.R.C. 1954, see section 7852(b) of Title 26, I.R.C. 1954.

Amendments

1984—Subsec. (a). Pub. L. 98–573 designated existing provisions as subsec. (a), redesignated former pars. (a) and (b) as pars. (1) and (2), respectively, of subsec. (a), and added subsec. (b).

Effective Date of 1984 Amendment

Section 231(a)(3) of Pub. L. 98-573 provided that: "The amendments made by paragraph (2) [amending this section] shall take effect on the fifteenth day after the date of the enactment of this Act [Oct. 30, 1984]."

§ 81o. Residents of zone

[See main edition for text of (a) to (d)]

(e) Exemption from State and local ad valorem taxation of tangible personal property

Tangible personal property imported from outside the United States and held in a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, shall be exempt from State and local ad valorem taxation.

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 231(b)(1), 98 Stat. 2991.)

Amendments

1984—Subsec. (e). Pub. L. 98-573 added subsec. (e).

Effective Date of 1984 Amendment

Section 231(b)(2) of Pub. L. 98-573 provided that: "The amendment made by paragraph (1) [amending this section] shall take effect on January 1, 1983."

CHAPTER 3—THE TARIFF AND RELATED PROVISIONS

SUBTITLE IV—CUSTOMS ADMINISTRATION

Administrative Provisions

PART 1—DEFINITIONS

§ 232. "Port" defined

References in Text

This title, referred to in text, means title 34 (§§ 2517 to 3129) of the Revised Statutes, which is classified to sections 5, 6, 8, 9 to 11, 31, 32, 37, 129, 232, 233, 240, 257, 258, 282, 283, 286 to 294, 338 to 341, 391, 482, 507, 508, 528, 574 of this title, and sections 110 to 112, 123, 124 of Title 46, Appendix, Shipping. For complete classification of sections 2517 to 3129 of the Revised Statutes to the Code, see Tables.

§ 233. Departure from prescribed forms

References in Text

This title, referred to in text, means title 34 (§§ 2517 to 3129) of the Revised Statutes, which is classified to sections 5, 6, 8, 9 to 11, 31, 32, 37, 129, 232, 233, 240, 257, 258, 282, 283, 286 to 294, 338 to 341, 391, 482, 507, 508, 528, 574 of this title, and sections 110 to 112, 123, 124 of Title 46, Appendix, Shipping. For complete classification of sections 2517 to 3129 of the Revised Statutes to the Code, see Tables.

PART 5—ENFORCEMENT PROVISIONS

§ 507. Officers to make character known

References in Text

This title, referred to in text, means title 34 (§§ 2517 to 3129) of the Revised Statutes, which is classified to sections 5, 6, 8, 9 to 11, 31, 32, 37, 129, 232, 233, 240, 257, 258, 282, 283, 286 to 294, 338 to 341, 391, 482, 507, 508, 528, 574 of this title, and sections 110 to 112, 123, 124 of Title 46, Appendix, Shipping. For complete classification of sections 2517 to 3129 of the Revised Statutes to the Code, see Tables.

PART 6—GENERAL PROVISIONS

§ 574. Exemption from taking other oaths

References in Text

This title, referred to in text, means title 34 (§§ 2517 to 3129) of the Revised Statutes, which is classified to sections 5, 6, 8, 9 to 11, 31, 32, 37, 129, 232, 233, 240, 257, 258, 282, 283, 286 to 294, 338 to 341, 391, 482, 507, 508, 528, 574 of this title, and sections 110 to 112, 123, 124 of Title 46, Appendix, Shipping. For complete classification of sections 2517 to 3129 of the Revised Statutes to the Code, see Tables.

CHAPTER 4—TARIFF ACT OF 1930

SUBTITLE II—SPECIAL PROVISIONS

Part II—United States International Trade Commission

Sec.
1339. Trade Remedy Assistance Office.
  (a) Establishment; public information.
  (b) Procedural assistance.
  (c) Definitions.

SUBTITLE III—ADMINISTRATIVE PROVISIONS

Part III—Ascertainment, Collection, and Recovery of Duties

1484a. Articles returned from space not to be construed as importation.

Part V—Enforcement Provisions

1589. Arrest authority of customs officers.
1589a. Enforcement authority of customs officers.
1600. Application of the customs laws to other seizures by customs officers.
1613a. Customs Forfeiture Fund.
  (a) Establishment; purposes of fund.
  (b) Disposition of property with value of less than $1,000.
  (c) Reimbursement of Coast Guard.
  (d) Deposits into fund.
  (e) Disposition of funds not currently needed.
  (f) Annual report to Congress.
  (g) Effective date.
  (h) Authorization of appropriations; termination of fund.
1613b. Customs Forfeiture Fund.
  (a) Establishment; purposes of fund.
  (b) Payments; reimbursement of Coast Guard.
  (c) Deposits into fund.
  (d) Disposition of funds not currently needed.
  (e) Annual report to Congress.
  (f) Authorization of appropriations; termination of fund.
1616. Disposition of forfeited property.
  (a) Retention or transfer.
  (b) State or local proceedings.
  (c) Transfer of custody to State or local officials.
  (d) Notice of discontinuance of Federal proceedings.
1616a. Transfer of forfeited property.
  (a) State proceedings.
  (b) Transfer of seized property; notice.
  (c) Transfer of forfeited property.

Sec.
    (d) Liability of United States after transfer.
1627. Unlawful importation or exportation of certain vehicles and equipment; inspections.
    (a) Violations; penalties; seizures and forfeitures.
    (b) Regulations; violations; penalties.
    (c) Definitions.
    (d) Cooperation of law enforcement and governmental authorities.
1627a. Unlawful importation or exportation of certain vehicles; inspections.
    (a) Violations; penalties; seizures and forfeitures.
    (b) Regulations; violations; penalties.
    (c) Definitions.
    (d) Cooperation of law enforcement and governmental authorities.

PART VI—MISCELLANEOUS PROVISIONS

1641. Customs brokers.
    (a) Definitions.
    (b) Customs broker's licenses.
    (c) Customs broker's permits.
    (d) Disciplinary proceedings.
    (e) Judicial appeal.
    (f) Regulations by the Secretary.
    (g) Triennial reports by customs brokers.
    (h) Fees and charges.
1644. Application of section 1509 of title 49, Appendix, and section 1518(d) of title 33.

SUBTITLE IV—COUNTERVAILING AND ANTIDUMPING DUTIES

PART I—IMPOSITION OF COUNTERVAILING DUTIES

1671g. Export-Import Bank financing.
1671h. Conditional payment of countervailing duties.
    (a) In general.
    (b) Importer requirements.

PART II—IMPOSITION OF ANTIDUMPING DUTIES

1673h, 1673i. Repealed.

PART III—REVIEWS; OTHER ACTIONS REGARDING AGREEMENTS

SUBPART A—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

1675. Administrative review of determinations.
    (a) Periodic review of amount of duty.
    (b) Review upon information or request.
    (c) Revocation of countervailing duty order or antidumping duty order.
    (d) Hearings.
    (e) Determination that basis for suspension no longer exists.

SUBPART B—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

1676. Required consultations.
    (a) Agreements in response to subsidies.
    (b) Modification of agreements on basis of consultations.
    (c) Special rule regarding agreements under section 1671c(c)(3) of this title.
1676a. Required determinations.
    (a) In general.
    (b) Determinations.
    (c) Hearings.

PART IV—GENERAL PROVISIONS

1677-1. Upstream subsidies.
    (a) Definition.
    (b) Determination of competitive benefit.
    (c) Inclusion of amount of subsidy.
1677f-1. Sampling and averaging.
    (a) In general.
    (b) Selection of samples and averages.
1677h. Drawbacks.

SUBTITLE I—TARIFF SCHEDULES OF THE UNITED STATES

§ 1202. Revised Tariff Schedules

[28 F.R. 8625]

GENERAL HEADNOTES AND RULES OF INTERPRETATION

[See main edition for text of 1 and 2]

3. *Rates of Duty*—The rates of duty in the "Rates of Duty" columns numbered 1 and 2 and the column designated LDDC of the schedules apply to articles imported into the customs territory of the United States as hereinafter provided in this headnote:

(a) *Products of Insular Possessions:*

(i) Except as provided in headnote 6 of subpart E of part 2 of schedule 7, and except as provided in headnote 3 of subpart A of part 7 of schedule 7, articles imported from insular possessions of the United States which are outside the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the customs territory of the United States, or of both, which do not contain foreign materials to the value of more than 70 percent of their total value (or more than 50 percent of their total value with respect to articles described in section 213(b) of the Caribbean Basin Economic Recovery Act [19 U.S.C. 2703(b)]), coming to the customs territory of the United States directly from any such possession, and all articles previously imported into the customs territory of the United States with payment of all applicable duties and taxes imposed upon or by reason of importation which were shipped from the United States, without remission, refund, or drawback of such duties or taxes, directly to the possession from which they are being returned by direct shipment, are exempt from duty.

(ii) In determining whether an article produced or manufactured in any such insular possession contains foreign materials to the value of more than 70 percent, no material shall be considered foreign which either—

(A) at the time such article is entered, or

(B) at the time such material is imported into the insular possession,

may be imported into the customs territory from a foreign country, other than Cuba or the Philippine Republic, and entered free of duty; except that no article containing material to which (B) of this subdivision applies shall be exempt from duty under subdivision (i) unless adequate documentation is supplied to show that the material has been incorporated into such article during the 18-month period after the date on which such material is imported into the insular possession.

[*See main edition for text of* (*iii*)]

(iv) Subject to the provisions in section 213 of the Caribbean Basin Economic Recovery Act [19 U.S.C. 2703], articles which are imported from insular possessions of the United States shall receive duty treatment no less favorable than the treatment afforded such articles when they are imported from a beneficiary country under such Act [19 U.S.C. 2701 et seq.].

[*See main edition for text of* (*b*)]

(c) *Products of Countries Designated Beneficiary Developing Countries for Purposes of the Generalized System of Preferences* (*GSP*):

(i) The following countries, territories, and associations of countries eligible for treatment as one country (pursuant to section 502(a)(3) of the Trade Act of 1974 (19 U.S.C. 2462(a)(3))) are designated beneficiary developing countries for the purposes of the Generalized System of Preferences, provided for in Title V of the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*):

(a) *Independent Countries*[1]—Angola, Antigua and Barbuda, Argentina, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Brunei, Burma, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Costa Rica, Cyprus, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Fiji, Gambia, Ghana, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Honduras, India, Indonesia, Israel, Ivory Coast, Jamaica, Jordan, Kenya, Kiribati, Korea, Republic of, Lebanon, Lesotho, Liberia, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Mozambique, Nauru, Nepal, Nicaragua, Niger, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Portugal, Romania, Rwanda, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, Sri Lanka, Sudan, Suriname, Swaziland, Syria, Taiwan, Tanzania, Thailand, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, Upper Volta, Uruguay, Vanuatu, Venezuela, Western Samoa, Yemen (Sanaa), Yugoslavia, Zaire, Zambia, Zimbabwe.

(b) *Non-Independent Countries and Territories*—Anguilla, Bermuda, British Indian Ocean Territory, Cayman Islands, Christmas Island (Australia), Cocos (Keeling) Islands, Cook Islands, Falkland Islands (Islas Malvinas), French Polynesia, Gibraltar, Heard Island and McDonald Islands, Hong Kong, Macau, Montserrat, Netherlands Antilles, New Caledonia, Niue, Norfolk Island, Pitcairn Islands, Saint Christopher-Nevis, Saint Helena, Tokelau, Trust Territory of the Pacific Islands, Turks and Caicos Islands, Virgin Islands, British, Wallis and Futuna, Western Sahara.

Associations of Countries (*treated as one country*)

Member Countries of the Cartagena Agreement (*Andean Group*) Consisting of: Bolivia, Colombia, Ecuador, Peru, Venezuela.

Association of South East Asian Nations (*ASEAN*) Consisting of: Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand.

Member Countries of the Caribbean Common Market (*CARICOM*) Consisting of: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Christopher-Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad, and Tobago.

[*See main edition for text of* (*ii*)]

(iii) The following designated eligible articles provided for in TSUS item numbers preceded by the designation "A*", if imported from a beneficiary developing country set opposite the TSUS item numbers listed below, are not entitled to the duty-free treatment provided for in subdivision (c)(ii) of this headnote:

TSUS Item No.	*Country or Territory*[1]
107.48	Brazil
107.80	Argentina
113.01	Thailand
114.06	Republic of Korea
121.55	India
121.61	Argentina
121.64	India
121.65	Argentina
135.51	Mexico
135.90	Mexico
135.95	Mexico
136.00	Dominican Republic
136.20	Mexico
136.22	Mexico
136.30	Mexico
136.61	Mexico
136.80	Mexico
137.02	Dominican Republic
137.10	Mexico
137.40	Mexico
137.50	Mexico
137.63	Mexico
137.71	Mexico
137.75	Costa Rica
137.79	Mexico
137.89	Dominican Republic
138.05	Mexico
138.35	Costa Rica
140.21	Mexico
141.77	Mexico

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[1] Pursuant to section 4(b)(1) of the Taiwan Relations Act (22 U.S.C. 3303(b)(1)) the reference to countries includes Taiwan.

TSUS Item No.	Country or Territory [1]
146.22	Turkey
146.44	Philippines
146.76	Mexico
148.03	Mexico
148.12	Mexico
148.17	Mexico
148.25	Mexico
148.65	Taiwan
148.72	Chile
149.50	Mexico
149.60	Thailand
152.54	Brazil
154.53	Taiwan
155.20	Brazil Dominican Republic Philippines
155.35	Dominican Republic
161.83	India
167.05	Mexico
176.15	India
192.21	Columbia
192.85	Mexico
200.91	Honduras
202.62	Mexico
204.40	Taiwan
206.47	Taiwan
206.60	Mexico
206.98	Taiwan
220.20	Portugal
220.25	Portugal
220.48	Portugal
222.10	Hong Kong
222.50	Taiwan
240.38	Philippines
245.30	Brazil
256.60	Republic of Korea
256.87	Mexico
305.28	India
319.01	India
319.03	India
319.05	India
337.40	Hong Kong Republic of Korea
355.81	Taiwan
365.84	Philippines
366.84	Philippines
389.61	Hong Kong Taiwan
406.20	Israel
407.16	Venezuela
416.10	Turkey
422.76	Mexico
425.84	Netherlands Antilles
428.58	Brazil
445.42	Taiwan
452.44	Brazil
473.52	Mexico
473.56	Mexico
522.21	Mexico
532.22	Republic of Korea
532.31	Mexico
534.81	Taiwan
534.91	Taiwan
534.94	Taiwan
535.31	Mexico
536.11	Israel
545.53	Mexico
545.65	Mexico
545.85	Taiwan
545.87	Taiwan
601.33	Mexico
602.10	Peru
603.40	Chile
606.36	Brazil
606.37	Brazil
606.44	Brazil
610.65	Republic of Korea
610.70	Taiwan
610.74	Republic of Korea Taiwan
610.82	Republic of Korea
610.88	Taiwan
612.03	Chile
612.06	Chile
618.02	Venezuela
642.14	Republic of Korea
642.16	Republic of Korea
642.17	Republic of Korea
646.32	Republic of Korea
646.90	Mexico
648.55	Taiwan
648.91	Taiwan
648.97	Taiwan
649.37	Taiwan
650.89	Hong Kong Taiwan
651.21	Taiwan
651.33	Hong Kong
651.37	Taiwan
651.46	Republic of Korea Taiwan
651.49	Taiwan
651.53	Taiwan
652.03	Republic of Korea
652.60	Taiwan
652.84	Mexico
653.39	Taiwan
653.47	Taiwan
653.48	Taiwan
653.85	Taiwan
653.93	Taiwan
653.94	Republic of Korea
653.99	Taiwan
654.08	Taiwan
654.30	Republic of Korea Taiwan
654.40	Taiwan
654.55	Taiwan
654.60	Hong Kong
654.65	Brazil
657.24	Taiwan
657.25	Taiwan
660.42	Brazil
660.48	Brazil Mexico
661.06	Hong Kong Taiwan
661.09	Singapore
661.65	Israel
661.94	Hong Kong Taiwan
662.35	Mexico
664.10	Taiwan
672.16	Taiwan
674.31	Taiwan
674.35	Taiwan
676.20	Taiwan
676.30	Taiwan
676.52	Hong Kong Mexico Republic of Korea Singapore Taiwan
678.50	Hong Kong Mexico Republic of Korea Taiwan
682.35	Mexico
682.60	Hong Kong Mexico Taiwan
683.05	Republic of Korea Taiwan
683.15	Mexico
683.70	Hong Kong Taiwan
683.80	Hong Kong
684.10	Taiwan
684.15	Singapore
684.25	Republic of Korea
684.48	Hong Kong
684.53	Taiwan
684.55	Mexico
684.62	Hong Kong Taiwan
684.70	Republic of Korea Taiwan
685.24	Hong Kong Republic of Korea Singapore Taiwan
685.29	Hong Kong Republic of Korea Taiwan

TSUS Item No.	*Country or Territory*[3]
685.40	Republic of Korea
	Taiwan
685.90	Mexico
	Taiwan
686.30	Taiwan
688.10	Taiwan
688.12	Mexico
	Taiwan
688.15	Mexico
688.43	Hong Kong
	Taiwan
690.15	Mexico
692.29	Mexico
692.32	Brazil
	Mexico
	Taiwan
692.60	Taiwan
696.10	Taiwan
696.35	Taiwan
696.40	Taiwan
696.60	Republic of Korea
700.90	Mexico
703.14	Mexico
706.45	Hong Kong
706.61	Hong Kong
	Taiwan
708.45	Taiwan
708.47	Hong Kong
709.40	Hong Kong
709.54	Trinidad and Tobago
711.38	Mexico
713.15	Mexico
713.17	Hong Kong
722.08	Hong Kong
	Republic of Korea
	Taiwan
722.11	Hong Kong
	Republic of Korea
	Taiwan
722.14	Taiwan
725.01	Republic of Korea
725.03	Republic of Korea
725.32	Taiwan
725.50	Taiwan
726.25	Taiwan
727.06	Mexico
727.23	Taiwan
727.29	Taiwan
727.35	Taiwan
727.70	Taiwan
728.22	Taiwan
730.94	Republic of Korea
732.60	Taiwan
734.10	Taiwan
734.15	Taiwan
734.20	Hong Kong
	Taiwan
734.25	Hong Kong
734.51	Taiwan
734.54	Taiwan
734.56	Haiti
734.70	Republic of Korea
734.72	Taiwan
734.86	Taiwan
734.87	Taiwan
734.90	Taiwan
735.07	Republic of Korea
735.09	Taiwan
735.12	Taiwan
735.20	Taiwan
737.07	Hong Kong
737.15	Hong Kong
737.21	Hong Kong
737.23	Taiwan
737.26	Taiwan
737.28	Republic of Korea
737.30	Republic of Korea
737.40	Republic of Korea
737.43	Hong Kong
737.49	Hong Kong
	Taiwan
737.51	Republic of Korea
737.60	Hong Kong
737.65	Taiwan
737.80	Hong Kong
737.95	Hong Kong
	Taiwan
740.11	Hong Kong
	Israel
	Peru
740.12	Hong Kong
740.13	Hong Kong
740.14	Hong Kong
740.15	Hong Kong
740.30	Hong Kong
740.34	Hong Kong
741.25	Hong Kong
748.21	Taiwan
750.20	Taiwan
750.22	Taiwan
750.25	Hong Kong
750.35	Taiwan
750.40	Hong Kong
750.45	Republic of Korea
750.50	Republic of Korea
751.05	Taiwan
751.11	Taiwan
751.20	Taiwan
755.25	Hong Kong
771.43	Taiwan
771.45	Taiwan
772.35	Taiwan
772.51	Republic of Korea
772.60	Republic of Korea
772.70	Taiwan
773.05	Taiwan
774.45	Hong Kong
774.55	Taiwan
790.03	Taiwan
790.10	Taiwan
790.39	Taiwan
790.70	Republic of Korea
791.15	Republic of Korea
792.50	Philippines
792.60	Hong Kong
792.75	Hong Kong

[3] Pursuant to section 4(b)(1) of the Taiwan Relations Act (22 U.S.C. 3303(b)(1)) the reference to countries includes Taiwan.

[*See main edition for text of* (*d*) *and* (*e*)]

(f) *Products of Communist Countries*—Notwithstanding any of the foregoing provisions of this headnote, the rates of duty shown in column numbered 2 shall apply to products, whether imported directly or indirectly, of the following countries and areas pursuant to section 401 of the Tariff Classification Act of 1962, to section 231 or 257(e)(2) of the Trade Expansion Act of 1962, or to action taken by the President thereunder or pursuant to Presidential Proclamation 4991, dated October 27, 1982:[4]

Albania,
Bulgaria,
Cuba,[5]

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[4] In Proclamation 4697, dated October 23, 1979, the President, acting under authority of section 404(a) of the Trade Act of 1974 (88 Stat. 1978) amended general headnote 3(f) by deleting "China (any part of which may be under Communist domination or control)" and "Tibet", effective February 1, 1980, the date on which written notices of acceptance were exchanged, following adoption on January 24, 1980 by the Congress of a concurrent resolution of approval extending nondiscriminatory treatment to the products of the People's Republic of China.

[5] In Proclamation 3447, dated February 3, 1962, the President, acting under authority of section 620(a) of the Foreign Assistance Act of 1961 (75 Stat. 445), as amended, prohibited the importation into the United States of all goods of Cuban origin and all goods imported from or through Cuba, subject to such exceptions as the Secretary of the Treasury determines to be consistent with the effective operation of the embargo.

Czechoslovakia,
Estonia,
German Democratic Republic and East Berlin,
Indochina (any part of Cambodia, Laos, or Vietnam which may be under Communist domination or control),
Korea (any part of which may be under Communist domination or control),
Kurile Islands,
Latvia,
Lithuania,
Outer Mongolia,
Polish People's Republic,
Southern Sakhalin,
Tanna Tuva,
Union of Soviet Socialist Republics and the area in East Prussia under the provisional administration of the Union of Soviet Socialist Republics.

(g) *Products of Countries Designated as Beneficiary Countries for Purposes of the Caribbean Basin Economic Recovery Act (CBERA) [19 U.S.C. 2701 et seq.]*.

(i) The following countries and territories or successor political entities are designated beneficiary countries for the purposes of the CBERA, pursuant to section 212 of that Act (19 U.S.C. 2702):

Antigua and Barbuda
Bahamas
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Haiti
Honduras
Jamaica
Montserrat
Netherlands Antilles
Panama
Saint Christopher-Nevis
Saint Lucia
Saint Vincent and the Grenadines
Trinidad and Tabago
Virgin Islands, British

(ii)(A) Unless otherwise excluded from eligibility by the provisions of subdivision (g)(iii) of this headnote, any article which is the growth, product, or manufacture of a beneficiary country shall receive duty-free treatment if—

(1) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(2) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered. For purposes of determining the percentage referred to in subparagraph (2) above, the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 per centum of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (2).

(B) Pursuant to section 213(a)(2) of the CBERA [19 U.S.C. 2703], the Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out subdivision (g) of this headnote including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under the CBERA, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country, and must be stated as such in a declaration by the appropriate party; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone—

(1) simple combining or packaging operations, or

(2) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(C) As used in subdivision (g)(ii) of this headnote, the phrase "direct costs of processing operations" includes, but is not limited to—

(1) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

(2) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

(iii) The duty-free treatment provided under the CBERA shall not apply to—

(A) tuna, prepared or preserved in any manner, in airtight containers, provided for in items 112.30, 112.34 or 112.90;

(B) sugars, sirups, and molasses, provided for in items 155.20 or 155.30, to the extent that importation and duty-free treatment of such articles are limited by headnote 4, subpart A, part 10, schedule 1;

(C)(1) textile and apparel articles provided for in the following items:

300.60-303.20
307.30
307.50-307.52
307.62-307.68
309.02-310.91
315.05-315.15
316.40
316.55-316.58
319.21-332.40
335.55-335.60
336.10-336.64
337.50-337.55
337.68
338.10-339.05
345.30
345.50
346.05-346.45
346.52
346.60
346.70
346.82
346.90
347.10-347.15
347.26
347.33
347.40
347.55-347.70
349.15
351.05
351.30
352.50
355.02
355.15-355.18
355.25
355.35
355.50
355.60
355.70
355.81
355.82
356.20
356.30
356.40
357.10-357.20
357.35
357.45
358.08-358.09
358.14
358.30-358.35
358.50
359.10
359.30
359.50
360.06
360.20-360.30
360.42-360.43
360.65-360.76
360.78
360.81
360.83
361.07-361.18
361.24
361.42
361.45-361.50
361.80
363.01
363.10-363.20
363.30
363.65-363.75
363.85
364.07
364.13
364.20
364.23
364.30
365.00
365.11
365.20
365.68
365.74
365.77-365.78
365.86
366.03-366.09
366.18-366.27
366.42-366.47
366.60-366.69
366.75-366.79
367.05-367.25
367.34
367.50-367.60
370.04-370.08
370.16
370.21
370.24-370.68
370.88
372.04-372.06
372.15
372.25-372.45
372.70-372.75
373.15
373.25-373.27
374.20-374.30
374.50
374.60
376.08
376.54
378.20-378.25
378.35-378.45
378.60-378.65
379.02-379.08
379.13-379.33
379.39-379.43
379.46-379.52
379.55-379.58
379.62-379.64
379.71-379.79
379.83-379.84
379.89-379.92
379.95-379.96
383.02-383.08
383.12-383.23
383.27-383.32
383.34-383.43
383.47-383.50
383.55-383.66
383.70-383.75
383.80-383.86
383.90-383.92
385.20-385.40
385.53
385.61
385.85
386.04-386.06
386.11
386.15-386.50
388.10-388.40
389.40-389.62
702.06
702.54-702.80
703.05-703.16
704.20-704.32
704.55-704.70
704.85-704.90
727.82
748.45-748.50
791.74

except that beneficiary country exports of handloom fabrics of the cottage industry, or hand-made cottage industry products made of such handloom fabrics, or traditional folklore handicraft textiles products, if such products are properly certified under an arrangement established between the United States and such beneficiary country, are eligible for the duty-free treatment provided under the CBERA;

(2) textile and apparel articles—

(i) in chief value of cotton, wool, man-made fibers, or blends thereof in which those fibers, in the aggregate, exceed in value each other single component fiber thereof, or

(ii) in which either the cotton content or the man-made fiber content equals or exceeds 50 percent by weight of all component fibers thereof, or

(iii) in which the wool content exceeds 17 percent by weight of all component fibers thereof, or

(iv) containing blends of cotton, wool, or man-made fibers, which fibers, in the aggregate, amount to 50 percent or more by weight of all component fibers thereof,

and which are provided for in the following items:

305.04-305.50
308.60-308.90
315.25-315.40
315.45
315.55
315.75-316.30
316.50
316.70
335.70-335.95
337.60
337.80-337.90
339.10
345.10
345.35
345.60
346.50
346.56
346.65
346.80
346.86
346.95
347.20
347.28-347.30
347.35
347.45-347.50
347.72-349.10
349.25-350.00
351.10-351.25
351.40-352.40
352.80-353.50
355.04
355.20
355.42-355.45
355.55
355.65
355.75
355.85-356.15
356.25
356.35
356.45
356.70-357.05
357.30
357.40
357.60-357.90
357.95
358.02
358.05-358.06
358.11
358.16-358.26
358.40
358.60
359.20
359.40
359.60
360.04
360.10-360.15
360.35-360.36
360.40
360.44-360.48
360.77
360.79
360.82
360.84-361.05
361.21-361.23
361.26
361.43
361.53-361.56
361.85
363.02-363.05
363.25
363.35-363.60
363.80
363.90
364.09
364.14-364.18
364.21
364.25
364.35
365.05
365.14-365.15
365.25-365.50
365.80-365.84
365.91
366.12-366.15
366.30-366.39
366.48-366.57
366.72
366.81-366.84
367.28
367.31
367.35-367.45
367.65
370.12
370.17-370.19
370.22
370.72-370.84
370.92
372.08-372.10
372.20
372.50-372.65
372.80-373.10
373.20-373.22
373.30
374.05-374.15
374.35-374.45
374.55
374.65
376.04
376.12-376.28
376.56
378.05-378.15
378.30
378.50-378.55
378.70
379.00
379.11
379.35
379.37
379.45
379.54
379.60
379.66-379.69
379.81
379.86-379.87
379.94
379.98
383.00
383.10
383.25
383.33
383.45
383.52-383.53
383.68
383.77-383.78
383.88
383.95
385.15
385.50
385.55-385.60
385.63-385.80
385.90
386.07
386.13
387.10-387.37
389.10-389.30
389.70
696.15
702.08
702.12
702.14
702.20
702.85-702.95
703.65
703.72-704.15
704.34-704.50
704.75-704.80
704.95
705.35-705.78
705.83-705.90
706.33
706.37
706.39
727.86
735.20
737.21
737.51
748.55
772.30-772.35
791.45-791.48
791.70
791.80
791.90

except that beneficiary country exports of handloom fabrics of the cottage industry, or hand-made cottage industry products made of such handloom fabrics, or traditional folklore handicraft textiles products, if such products are properly certified under an arrangement established between the United States and such beneficiary country, are eligible for the duty-free treatment provided under the CBERA;

(D) petroleum, or any product derived from petroleum, provided for in items 475.05, 475.10, or 475.25–475.65;

(E) footwear, work gloves, luggage, handbags, flat goods, and leather wearing apparel provided for in items 700.05–700.27, 700.29–700.53, 700.56–700.83, 700.95, 705.35, 705.85, 705.86, 706.05–706.16, 706.21–706.32, 706.34, 706.36, 706.38, 706.41, 706.43, 706.55, 706.62, or 791.76;

(F) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which column 2 rates of duty apply; or

(G) the articles subject to the provisions of subpart A of part 2 of the Appendix, to the extent that such provisions have not been modified or terminated by the President pursuant to subsection 213(e)(5) of the CBERA.

(h) *Products of All Other Countries*—Products of all countries not previously mentioned in this headnote imported into the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules.

[*See main edition for text of 4*]

5. *Intangibles*—For the purposes of headnote 1—

[*See main edition for text of* (*a*) *to* (*d*)]

(e) records, diagrams, and other data with regard to any business, engineering, or exploration operation whether on paper, cards, photographs, blueprints, tapes, or other media,

(f) articles returned from space within the purview of section 484a of the Tariff Act of 1930 [19 U.S.C. 1484a]; [6] and

(g) vessels which are not "yachts or pleasure boats" within the purview of subpart D, part 6, of schedule 6,

are not articles subject to the provisions of these schedules.

[*See main edition for text of 6 to 8*]

9. *Definitions*—For the purposes of the schedules, unless the context otherwise requires—

(a) the term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States;

[*See main edition for text of* (*b*) *to* (*f*); *10 to 12*]

References in Text

The Caribbean Basin Economic Recovery Act (CBERA), referred to in par. 3(a)(iv) and (g), is title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to chapter 15 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

Codification

Paragraph (f) of general headnote 3 is set out in this supplement to correct a typographical error appearing in the main edition.

Amendments

General headnote 3, intro. par., amended by Proc. No. 4707, Dec. 11, 1979, 44 F.R. 72348.

General headnote 3(a)(i), amended by Pub. L. 89–805, § 1(a), Nov. 10, 1966, 80 Stat. 1521; Pub. L. 89–806, § 2(b), Nov. 10, 1966, 80 Stat. 1523; Pub. L. 94–88, title I, § 1, Aug. 9, 1975, 89 Stat. 433; Pub. L. 96–39, title XI, § 1107(a)(1), July 26, 1979, 93 Stat. 313; Pub. L. 97–446, title I, § 110(a), Jan. 12, 1983, 96 Stat. 2331; Pub. L. 98–67, title II, § 214(a)(1), Aug. 5, 1983, 97 Stat. 392; Pub. L. 98–573, title I, § 191(e), Oct. 30, 1984, 98 Stat. 2971.

General headnote 3(a)(ii), amended by Pub. L. 96–609, § 102, Dec. 28, 1980, 94 Stat. 3555; Pub. L. 98–67, title II, § 214(a)(2), Aug. 5, 1983, 97 Stat. 393.

General headnote 3(a)(iii), added by Pub. L. 93–618, title V, § 502(d), Jan. 3, 1975, 88 Stat. 2068.

General headnote 3(a)(iv) added by Pub. L. 98–67, title II, § 212(d), Aug. 5, 1983, 97 Stat. 387.

General headnote 3(c), amended by Ex. Ord. No. 11888, Nov. 24, 1975, 40 F.R. 55276.

General headnote 3(c)(i), amended by Ex. Ord. No. 11934, Aug. 30, 1976, 41 F.R. 171; Ex. Ord. No. 12124, Feb. 28, 1979, 44 F.R. 11729; Ex. Ord. No. 12204, Mar. 27, 1980, 45 F.R. 20740; Ex. Ord. No. 12302, Apr. 1, 1981, 46 F.R. 19925; Ex. Ord. No. 12354, Mar. 30, 1982, 47 F.R. 13477; Ex. Ord. No. 12413, Mar. 30, 1983, 48 F.R. 13921; Ex. Ord. No. 12471, Mar. 30, 1984, 49 F.R. 13102.

General headnote 3(c)(ii), amended by Ex. Ord. No. 12180, Dec. 11, 1979, 42 F.R. 72077.

General headnote 3(c)(iii), amended by Ex. Ord. No. 11906, Feb. 26, 1976, 41 F.R. 8758; Ex. Ord. No. 11934, Aug. 30, 1976, 41 F.R. 171; Ex. Ord. No. 11974, Feb. 25, 1977, 42 F.R. 11230A; Ex. Ord. No. 12032, Dec. 27, 1977, 42 F.R. 64851; Ex. Ord. No. 12041, Feb. 25, 1978, 43 F.R. 8099; Proc. No. 4561, Apr. 7, 1978, 43 F.R. 15127; Ex. Ord. No. 12124, Feb. 28, 1979, 44 F.R. 11729; Ex. Ord. No. 12180, Dec. 11, 1979, 44 F.R. 72077; Ex. Ord. No. 12181, Dec. 11, 1979, 44 F.R. 72083; Ex. Ord. No. 12204, Mar. 27, 1980, 45 F.R. 20740; Ex. Ord. No. 12222, June 28, 1980, 45 F.R. 45233; Ex. Ord. No. 12267, Jan. 15, 1981, 46 F.R. 4669; Ex. Ord. No. 12302, Apr. 1, 1981, 46 F.R. 19921; Ex. Ord. No. 12311, June 29, 1981, 46 F.R. 34305; Ex. Ord. No. 12354, Mar. 30, 1982, 47 F.R. 13477; Ex. Ord. No. 12371, July 12, 1982, 47 F.R. 30449; Ex. Ord. No. 12389, Oct. 25, 1982, 47 F.R. 47529; Ex. Ord. No. 12413, Mar. 30, 1983, 48 F.R. 13921; Ex. Ord. No. 12441, Sept. 20, 1983, 48 F.R. 43157; Ex. Ord. No. 12459, Jan. 16, 1984, 49 F.R. 2089; Ex. Ord. No. 12471, Mar. 30, 1984, 49 F.R. 13101; Ex. Ord. No. 12483, June 25, 1984, 49 F.R. 26155.

General headnotes 3(d) to 3(g). Headnotes 3(d), (e), and (f), were redesignated as headnotes 3(e), (f), and (g), respectively, and a new headnote 3(d) was added, by Pub. L. 89–283, § 403, Oct. 21, 1965, 79 Stat. 1022. Subsequently, headnote 3(g) was deleted, headnotes 3(d), (e), and (f), were redesignated as headnotes 3(e), (f), and (g), respectively, and a new headnote 3(d) was added, by Proc. No. 4707, Dec. 11, 1979, 44 F.R. 72348, as modified by Proc. No. 4792, Sept. 15, 1980, 45 F.R. 61589. Subsequently, headnote 3(g) was redesignated 3(h), and a new headnote 3(g) was added, by Proc. No. 5133, Nov. 30, 1983, 48 F.R. 54453.

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[6] So in original. The semicolon probably should be a comma.

Provisions relating to products of least developed developing countries, contained in general headnote 3(d), amended by Ex. Ord. No. 12204, Mar. 27, 1980, 45 F.R. 20740.

Provisions relating to products of communist countries, contained in general headnote 3(f), amended by Proc. No. 4369, Apr. 24, 1975, 40 F.R. 18389; Proc. No. 4560, Apr. 7, 1978, 43 F.R. 15125; Pub. L. 96-39, title XI, § 1107(a)(2), July 26, 1979, 93 Stat. 313; Proc. No. 4697, Oct. 23, 1979, 44 F.R. 61161; Proc. No. 4991, Oct. 27, 1982, 47 F.R. 50459.

Provisions relating to products of countries designated as beneficiary countries for purposes of CBERA, contained in general headnote 3(g), amended by Proc. No. 5142, Dec. 29, 1983, 49 F.R. 341; Proc. No. 5308, Mar. 14, 1985, 50 F.R. 10927.

General headnote 5(e) was added and former headnote 5(e) was redesignated 5(f) by Pub. L. 97-446, title II, § 201(a), Jan. 12, 1983, 96 Stat. 2349. Subsequently headnote 5(f) was added and former headnote 5(f) was redesignated 5(g) by Pub. L. 98-573, title II, § 209(b), Oct. 30, 1984, 98 Stat. 2977.

General headnote 6(b)(i), amended by Pub. L. 89-241, § 4, Oct. 7, 1965, 79 Stat. 934; Pub. L. 96-39, title II, § 202(b)(1), July 26, 1979, 93 Stat. 202, effective pursuant to Proc. No. 4768, § 2(a), June 28, 1980, 45 F.R. 45135.

General headnote 9(a) amended by Pub. L. 98-573, title I, § 191(a)(1), Oct. 30, 1984, 98 Stat. 2970.

Section Referred to in Other Sections

This section is referred to in sections 1321, 1337, 2135, 2253, 2431 to 2434, 2437, 2439, 2463, 2481, 2483 of this title; title 7 section 1444; title 10 section 374; title 15 sections 1274, 2066; title 16 section 1606a; title 26 section 9504; title 28 section 7652; title 50 section 98h-4.

SUBTITLE II—SPECIAL PROVISIONS

Part I—Miscellaneous

§ 1303. Countervailing duties

Section Referred to in Other Sections

This section is referred to in sections 1315, 1337, 1514, 1516a, 1671, 1675, 1677, 1677a, 1677g, 2192, 2194 of this title.

§ 1304. Marking of imported articles and containers

[*See main edition for text of* (a) *and* (b)]

(c) Marking of certain pipe and fittings

No exception may be made under subsection (a)(3) of this section with respect to pipes of iron, steel, or stainless steel, to pipe fittings of steel, stainless steel, chrome-moly steel, or cast and malleable iron each of which shall be marked with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, or engraving.

(d) Marking of compressed gas cylinders

No exception may be made under subsection (a)(3) of this section with respect to compressed gas cylinders designed to be used for the transport and storage of compressed gases whether or not certified prior to exportation to have been made in accordance with the safety requirements of sections 178.36 through 178.68 of title 49, Code of Federal Regulations, each of which shall be marked with the English name of the country of origin by means of die stamping, molding, etching, raised lettering, or an equally permanent method of marking.

(e) Marking of certain manhole rings or frames, covers, and assemblies thereof

No exception may be made under subsection (a)(3) of this section with respect to manhole rings or frames, covers, and assemblies thereof each of which shall be marked on the top surface with the English name of the country of origin by means of die stamping, cast-in-mold lettering, etching, or engraving.

(f) Additional duties for failure to mark

If at the time of importation any article (or its container, as provided in subsection (b) of this section) is not marked in accordance with the requirements of this section, and if such article is not exported or destroyed or the article (or its container, as provided in subsection (b) of this section) marked after importation in accordance with the requirements of this section (such exportation, destruction, or marking to be accomplished under customs supervision prior to the liquidation of the entry covering the article, and to be allowed whether or not the article has remained in continuous customs custody), there shall be levied, collected, and paid upon such article a duty of 10 per centum ad valorem, which shall be deemed to have accrued at the time of importation, shall not be construed to be penal, and shall not be remitted wholly or in part nor shall payment thereof be avoidable for any cause. Such duty shall be levied, collected, and paid in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary customs duties. The compensation and expenses of customs officers and employees assigned to supervise the exportation, destruction, or marking to exempt articles from the application of the duty provided for in this subsection shall be reimbursed to the Government by the importer.

(g) Delivery withheld until marked

No imported article held in customs custody for inspection, examination, or appraisement shall be delivered until such article and every other article of the importation (or their containers), whether or not released from customs custody, shall have been marked in accordance with the requirements of this section or until the amount of duty estimated to be payable under subsection (f) of this section has been deposited. Nothing in this section shall be construed as excepting any article (or its container) from the particular requirements of marking provided for in any other provision of law.

(h) Penalties

If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, cover, obscure, or obliterate any mark required under the provisions of this chapter, he shall, upon conviction, be fined not more than $5,000 or imprisoned not more than one year, or both.

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 207, 98 Stat. 2976.)

Amendments

1984—Subsecs. (c) to (h). Pub. L. 98-573 added subsecs. (c) to (e), redesignated former subsecs. (c) to (e) as (f) to (h), respectively, and in subsec. (g), as redesignated, substituted "subsection (f) of this section" for "subsection (c) of this section".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 214 of title II of Pub. L. 98-573 provided that:

"(a) For purposes of this section, the term '15th day' means the 15th day after the date of the enactment of this Act [Oct. 30, 1984].

"(b) Except as provided in subsections (c), (d), and (e), the amendments made by this title [enacting sections 58b, 1339, and 1627a of this title, amending sections 81c, 81o, 1313, 1330, 1431, 1498, 1555, 2192, 2251, 2253, and 2703 of this title, section 925 of Title 18, Crimes and Criminal Procedure, and section 162 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 2, 81c, 81o, and 1339 of this title, and section 162 of Title 26] shall take effect on the 15th day.

"(c)(1) The amendment made by section 204 [amending section 1441 of this title] shall apply with respect to vessels returning from the British Virgin Islands on or after the 15th day.

"(2) The amendments made by section 207 [amending this section] shall apply with respect to articles entered, or withdrawn from warehouse for consumption, on or after the 15th day; except for such of those articles that, on or before the 15th day, had been taken on board for transit to the customs territory of the United States.

"(3)(A) The amendment made by section 208 [amending section 1466 of this title] shall apply with respect to entries made in connection with arrivals of vessels on or after the 15th day.

"(B) Upon request therefor filed with the customs officer concerned on or before the 90th day after the date of the enactment of this Act [Oct. 30, 1984], any entry in connection with the arrival of a vessel used primarily for transporting passengers or property—

"(i) made before the 15th day but not liquidated as of January 1, 1983, or

"(ii) made before the 15th day but which is the subject of an action in a court of competent jurisdiction on September 19, 1983, and

"(iii) with respect to which there would have been no duty if the amendment made by section 208 applied to such entry,

shall, notwithstanding the provisions of section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) or any other provision of law, be liquidated or reliquidated as though such entry had been made on the 15th day.

"(4) The amendments made by section 209 [enacting section 1484a of this title and amending section 1202 of this title] shall apply with respect to articles launched into space from the customs territory of the United States on or after January 1, 1985.

"(5)(A) The amendment made by section 210(a) [amending section 1505 of this title] shall take effect on the 30th day after the date of the enactment of this Act [Oct. 30, 1984].

"(B) The amendment made by section 210(b) [amending section 1520 of this title] shall apply with respect to determinations made or ordered on or after the date of the enactment of this Act [Oct. 30, 1984].

"(d)(1) The amendments made by section 212 [amending sections 1520, 1564, and 1641 of this title and sections 1581, 1582, 2631, 2636, 2640, and 2643 of Title 28, Judiciary and Judicial Procedure] shall take effect upon the close of the 180th day following the date of the enactment of this Act [Oct. 30, 1984] with the following exceptions:

"(A) Section 641(c)(1)(B) and section 641(c)(2) of the Tariff Act of 1930, as added by such section [19 U.S.C. 1641(c)(1)(B), (2)], shall take effect three years after the date of the enactment of this Act [Oct. 30, 1984].

"(B) The amendments made to the Tariff Act of 1930 by subsection (c) of section 212 [no subsec. (c) of section 212 was enacted] shall take effect on such date of enactment [Oct. 30, 1984].

"(2) A license in effect on the date of enactment of this Act [Oct. 30, 1984] under section 641 of the Tariff Act of 1930 (as in effect before such date of enactment) shall continue in force as a license to transact customs business as a customs broker, subject to all the provisions of section 212 and such licenses shall be accepted as permits for the district or districts covered by that license.

"(3) Any proceeding for revocation or suspension of a license instituted under section 641 of the Tariff Act of 1930 before the date of the enactment of this Act [Oct. 30, 1984] shall continue and be governed by the law in effect at the time the proceeding was instituted.

"(4) If any provision of section 212 or its application to any person or circumstances is held invalid, it shall not affect the validity of the remaining provisions or their application to any other person or circumstances.

"(e) The amendments made by section 213 [enacting sections 1589a, 1613b, and 1616a of this title, amending sections 1602, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1618, and 1619 of this title and repealing section 7607 of Title 26, Internal Revenue Code] shall take effect October 15, 1984."

§ 1311. Bonded manufacturing warehouses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1352, 2703 of this title; title 18 section 2341; title 26 section 5214.

§ 1312. Bonded smelting and refining warehouses

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Supervision and cost of labor under this section

Labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer. The Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

[*See main edition for credits*]

CODIFICATION

Subsec. (g) is set out in this supplement to correct a typographical error appearing in the main edition.

§ 1313. Drawback and refunds

[*See main edition for text of* (*a*) *to* (*i*)]

(j) Same condition drawback

[*See main edition for text of* (*1*)]

(2) Redesignated (4)

(3) If there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic) that—

(A) is fungible with such imported merchandise;

(B) is, before the close of the three-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under Customs supervision;

(C) before such exportation or destruction—

(i) is not used within the United States, and

(ii) is in the possession of the party claiming drawback under this paragraph; and

(D) is in the same condition at the time of exportation or destruction as was the imported merchandise at the time of its importation;

then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

(4)[1] Packaging material that is imported for use in packaging or repackaging imported merchandise to which paragraph (1) applies shall be eligible under the same conditions provided in such paragraph for refund, as drawback, of 99 per centum of any duty, tax, or fee imposed under Federal law on the importation of such material.

(4)[1] The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on the imported merchandise itself, not amounting to manufacture or production for drawback purposes under the preceding provisions of this section, shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B).

(k) Use of domestic merchandise acquired in exchange for imported merchandise of same kind and quality

For purposes of subsections (a) and (b) of this section, the use of any domestic merchandise acquired in exchange for imported merchandise of the same kind and quality shall be treated as the use of such imported merchandise if no certificate of delivery is issued with respect to such imported merchandise.

(*l*) Regulations

Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 1309(b) of this title shall be filed and completed, and the designation of the person to whom any refund or payment of drawback shall be made.

(m) Source of payment

Any drawback of duties that may be authorized under the provisions of this chapter shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico.

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 202, 98 Stat. 2973.)

AMENDMENTS

1984—Subsec. (j)(2) to (4). Pub. L. 98-573, § 202(1), redesignated par. (2), relating to the performing of incidental operations, as (4), and inserted after par. (1) new pars. (3) and (4).

Subsecs. (k) to (m). Pub. L. 98-573, § 202(2), (3), added subsec. (k) and redesignated former subsecs. (k) and (*l*) as (*l*) and (m), respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of this title.

§ 1319. Duty on coffee imported into Puerto Rico

ACTIONS UNDER CARIBBEAN BASIN ECONOMIC RECOVERY PROGRAM NOT TO AFFECT PUERTO RICAN DUTIES ON IMPORTED COFFEE

Pub. L. 98-67, title II, § 214(e), Aug. 5, 1983, 97 Stat. 393, provided that: "No action pursuant to this title [19 U.S.C. 2701 et seq.] may affect any tariff duty imposed by the Legislature of Puerto Rico pursuant to section 319 of the Tariff Act of 1930 (19 U.S.C. 1319) on coffee imported into Puerto Rico."

§ 1322. International traffic and rescue work; United States-Mexico Boundary Treaty of 1970

(a) Vehicles and other instruments of international traffic except communications satellites

Vehicles and other instruments of international traffic, of any class specified by the Secretary of the Treasury, shall be excepted from the application of the customs laws to such extent and subject to such terms and conditions as may be prescribed in regulations or instructions of the Secretary of the Treasury. The authority delegated to the Secretary by this subsection shall not extend to communications satellites and components and parts thereof.

[*See main edition for text of* (b)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title I, §§ 124(c), 127(b), 98 Stat. 2959.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573, § 127(b), substituted "excepted" for "granted the customary exceptions".

Pub. L. 98-573, § 124(c), inserted "The authority delegated to the Secretary by this subsection shall not extend to communications satellites and components and parts thereof."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 195(a), (b), (d) of Pub. L. 98-573 provided that:

"(a) Except as provided in section 126 and in subsections (b) and (c), the amendments made by subtitles B, C, and D [amending sections 1202, 1322, and 1504 of this title] shall apply with respect to articles entered on or after the 15th day after the date of the enactment of this Act [Oct. 30, 1984].

"(b)(1) The amendment made by sections 117 and 124 [amending this section] shall apply with respect to articles entered on or after January 1, 1985.

"(2) The amendments made by section 127 [amending this section] shall apply with respect to articles entered on or after a date to be proclaimed by the President which shall be consonant with the entering into force for the United States of the Customs Convention on Containers, 1972.

"(d) For purposes of this section—

"(1) The term 'entered' means entered, or withdrawn from warehouse for consumption in the customs territory of the United States.

"(2) The term 'entry' includes any withdrawal from warehouse."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 46 App. section 883.

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[1] So in original. There are two pars. designated (4).

PART II—UNITED STATES INTERNATIONAL TRADE COMMISSION

§ 1330. Organization of Commission

[See main edition for text of (a) to (c)]

(d) Effect of divided vote in certain cases

[See main edition for text of (1) to (3)]

(4) In a case to which paragraph (2)(B)(ii) applies, for purposes of section 2253(c)(1) of this title, notwithstanding section 2192(a)(1)(A) of this title, the second blank space in the joint resolution described in such section 2192(a)(1)(A) of this title shall be filled with the appropriate date and the following: "The action which shall take effect under section 203(c)(1) of the Trade Act of 1974 is the finding or recommendation agreed upon by Commissioners __________, __________, and __________." The three blank spaces shall be filled with the names of the appropriate Commissioners.

[See main edition for text of (5)]

(e) Authorization of appropriations

[See main edition for text of (1)]

(2) There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) for fiscal year 1985 not to exceed $28,410,000; of which not to exceed $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses. No part of any sum that is appropriated under the authority of this paragraph may be used by the Commission for the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.

[See main edition for text of (3)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 248(c), title VII, § 701, 98 Stat. 2998, 3043.)

AMENDMENTS

1984—Subsec. (d)(4). Pub. L. 98-573, § 248(c), substituted "the joint resolution described in such section 2192(a)(1)(A)" for "the concurrent resolution described in such section 2192".

Subsec. (e)(2). Pub. L. 98-573, § 701, substituted authorization of appropriation of not more than $28,410,000 for fiscal year 1985 for necessary expenses, including the rental of conference rooms in the District of Columbia and elsewhere for provision authorizing appropriation of not more than $19,737,000 for necessary expenses for fiscal year 1983, and added provision that not more than $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 248(c) of Pub. L. 98-573 effective the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of this title.

§ 1337. Unfair practices in import trade

[See main edition for text of (a) and (b)]

(c) Determinations; review

The Commission shall determine, with respect to each investigation conducted by it under this section, whether or not there is a violation of this section. Each determination under subsection (d) or (e) of this section shall be made on the record after notice and opportunity for a hearing in conformity with the provisions of subchapter II of chapter 5 of title 5. All legal and equitable defenses may be presented in all cases. Any person adversely affected by a final determination of the Commission under subsection (d), (e), or (f) of this section may appeal such determination, within 60 days after the determination becomes final, to the United States Court of Appeals for the Federal Circuit for review in accordance with chapter 7 of title 5. Notwithstanding the foregoing provisions of this subsection, Commission determinations under subsections (d), (e), and (f) of this section with respect to its findings on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, the amount and nature of bond, or the appropriate remedy shall be reviewable in accordance with section 706 of title 5.

[See main edition for text of (d) to (j)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 413, 98 Stat. 3362.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-620 inserted ", within 60 days after the determination becomes final," after "appeal such determination".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1332, 1337a, 1339, 1514, 2251 of this title; title 17 section 910; title 28 section 1295.

§ 1339. Trade Remedy Assistance Office

(a) Establishment; public information

There is established in the Commission a Trade Remedy Assistance Office which shall provide full information to the public, upon request, concerning—

(1) remedies and benefits available under the trade laws, and

(2) the petition and application procedures, and the appropriate filing dates, with respect to such remedies and benefits.

(b) Procedural assistance

Each agency responsible for administering a trade law shall provide technical assistance to eligible small businesses to enable them to prepare and file petitions and applications (other than those which, in the opinion of the agency, are frivolous) to obtain the remedies and benefits that may be available under that law.

(c) Definitions

For purposes of this section—

(1) The term "eligible small business" means any business concern which, in the agency's judgment, due to its small size, has neither adequate internal resources nor fi-

nancial ability to obtain qualified outside assistance in preparing and filing petitions and applications for remedies and benefits under trade laws. In determining whether a business concern is an "eligible small business", the agency may consult with the Small Business Administration, and shall consult with any other agency that has provided assistance under subsection (b) of this section to that business concern. An agency decision regarding whether a business concern is an eligible small business for purposes of this section is not reviewable by any other agency or by any court.

(2) The term "trade laws" means—

(A) chapter 1 of title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq., relating to relief caused by import competition);

(B) chapters 2 and 3 of such title II [19 U.S.C. 2271 et seq., 2341 et seq.] (relating to adjustment assistance for workers and firms);

(C) chapter 1 of title III of the Trade Act of 1974 (19 U.S.C. 2411 et seq., relating to relief from foreign import restrictions and export subsidies);

(D) subtitle IV of this chapter (relating to the imposition of countervailing duties and antidumping duties);

(E) section 1862 of this title (relating to the safeguarding of national security); and

(F) section 1337 of this title (relating to unfair practices in import trade).

(June 17, 1930, ch. 497, title III, § 339, as added Oct. 30, 1984, Pub. L. 98-573, title II, § 221, 98 Stat. 2989.)

References in Text

The Trade Act of 1974, referred to in subsec. (c)(2)(A) to (C), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapters 1, 2, and 3 of title II of the Trade Act of 1974 are classified generally to parts 1 (§ 2251 et seq.), 2 (§ 2271 et seq.), and 3 (§ 2341 et seq.) of subchapter II of chapter 12 of this title, respectively. Chapter 1 of title III of the Trade Act of 1974 is classified generally to subchapter III (§ 2411 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

Prior Provisions

A prior section 339 of act June 17, 1930, ch. 497, title III, 46 Stat. 706, which related to effect of repeal and reenactment of laws relating to Tariff Commission upon status of appropriations, employees, and privileges, was classified to this section and was repealed by Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 648.

Effective Date

Section 221(b) of Pub. L. 98-573 provided that: "Section 339 of the Tariff Act of 1930 (as added by subsection (a)) [this section] shall take effect on the 90th day after the date of the enactment of this Act [Oct. 30, 1984]."

Part III—Promotion of Foreign Trade

§ 1356k. Importation of coffee under International Coffee Agreement, 1983; Presidential powers and duties

On and after the entry into force of the International Coffee Agreement, 1983, and before October 1, 1986, the President is authorized, in order to carry out and enforce the provisions of that agreement—

[*See main edition for text of (1) to (4)*]

(As amended Pub. L. 98-120, § 1, Oct. 12, 1983, 97 Stat. 809.)

References in Text

The International Coffee Agreement, 1983, referred to in text, was entered into force for the United States provisionally Oct. 1, 1983, but not definitively.

Amendments

1983—Pub. L. 98-120 in provisions preceding par. (1) substituted ", 1983" for "1976" and "before October 1, 1986" for "for such period prior to October 1, 1983 as the agreement remains in effect".

§ 1356*l*. "Coffee" defined

As used in sections 1356k to 1356n of this title, the term "coffee" means coffee as defined in article 3 of the International Coffee Agreement, 1983.

(As amended Pub. L. 98-120, § 1(1), Oct. 12, 1983, 97 Stat. 809.)

Amendments

1983—Pub. L. 98-120 substituted ", 1983" for "1976".

§ 1356n. Report to the Congress

The President shall submit to the Congress an annual report on the International Coffee Agreement, 1983. Such report shall contain full information on the operation of such agreement, including full information with respect to the general level of prices of coffee and matters pertaining to the transportation of coffee from exporting countries to the United States. The report shall also include a summary of the actions the United States and the International Coffee Organization have taken to protect the interest of United States consumers.

(As amended Pub. L. 98-120, § 1(1), Oct. 12, 1983, 97 Stat. 809.)

Amendments

1983—Pub. L. 98-120 substituted ", 1983" for "1976".

SUBTITLE III—ADMINISTRATIVE PROVISIONS

Part I—Definitions

§ 1401. Miscellaneous

Section Referred to in Other Sections

This section is referred to in section 1589 of this title; title 10 section 374; title 18 section 553; title 21 section 955b; title 46 App. section 1155.

Part II—Report, Entry, and Unlading of Vessels and Vehicles

§ 1431. Manifests

(a) Requirement, form, and contents

The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain:

[See main edition for text of pars. First and Second]

Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag; and the names of the shippers of such merchandise.

[See main edition for text of pars. Fourth to Sixth; (b)]

(c) Public disclosure of certain manifest information

(1) Except as provided in subparagraph (2), the following information, when contained in such manifest, shall be available for public disclosure:

(A) The name and address of each importer or consignee and the name and address of the shipper to such importer or consignee, unless the importer or consignee has made a biennial certification, in accordance with procedures adopted by the Secretary of the Treasury, claiming confidential treatment of such information.

(B) The general character of the cargo.

(C) The number of packages and gross weight.

(D) The name of the vessel or carrier.

(E) The port of loading.

(F) The port of discharge.

(G) The country or origin of the shipment.

(2) The information listed in paragraph (1) shall not be available for public disclosure if—

(A) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or

(B) the information is exempt under the provisions of section 552(b)(1) of title 5.

(3) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in paragraph (1), shall establish procedures to provide access to manifests. Such procedures shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests.

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 203, 98 Stat. 2974.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573, § 203(1), inserted "; and the names of the shippers of such merchandise" in par. Third.

Subsec. (c). Pub. L. 98-573, § 203(2), added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of this title.

§ 1441. Vessels not required to enter

The following vessels shall not be required to make entry at the customhouse:

[See main edition for text of (1) and (2)]

(3) Vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, and licensed yachts or undocumented American pleasure vessels not engaged in trade: *Provided,* That such vessels do not in any way violate the customs or navigation laws of the United States and have not visited any hovering vessel: *Provided further,* That the master of any such vessel which has on board any article required by law to be entered shall be required to report such article to the appropriate customs officer within twenty-four hours after arrival.[1]

[See main edition for text of (4) and (5)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 204, 98 Stat. 2974.)

AMENDMENTS

1984—Par. (3). Pub. L. 98-573 amended par. (3) generally, thereby adding provision referring to vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 applicable with respect to vessels returning from the British Virgin Islands on or after the 15th day after Oct. 30, 1984, see section 214(a), (c)(1) of Pub. L. 98-573, set out as a note under section 1304 of this title.

§ 1466. Equipment and repairs of vessels

[See main edition for text of (a) to (d)]

(e) Exclusions for arrivals two or more years after last departure

(1) In the case of any vessel referred to in subsection (a) of this section that arrives in a port of the United States two years or more after its last departure from a port in the United States, the duties imposed by this section shall apply only with respect to—

(A) fish nets and netting, and

(B) other equipments and parts thereof, repair parts and materials purchased, or repairs made, during the first six months after the last departure of such vessel from a port of the United States.

(2) If such vessel is designed and used primarily for transporting passengers or property, paragraph (1) shall not apply if the vessel departed from the United States for the sole purpose of obtaining such equipments, parts, materials, or repairs.

[See main edition for text of (f) and (g)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 208, 98 Stat. 2976.)

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[1] So in original. The period probably should be a semicolon.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-573 designated existing provisions as par. (1), in par. (1) as so designated substituted reference to any vessel referred to in subsec. (a) for reference to any vessel designed and used primarily for purposes other than transporting passengers or property in the foreign or coasting trade, redesignated former cls. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 applicable with respect to entries made in connection with arrivals of vessels on or after the 15th day after Oct. 30, 1984, with certain exceptions for vessels transporting passengers or property, see section 214(a), (c)(3) of Pub. L. 98-573, set out as a note under section 1304 of this title.

CROSS REFERENCES

Definitions with respect to vessel documentation, see section 12101 of Title 46, Shipping.

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

§ 1484a. Articles returned from space not to be construed as importation

The return of articles from space shall not be considered an importation, and an entry of such articles shall not be required, if:

(1) such articles were previously launched into space from the customs territory of the United States aboard a spacecraft operated by, or under the control of, United States persons and owned—

(A) wholly by United States persons, or

(B) in substantial part by United States persons, or

(C) by the United States;

(2) such articles were maintained or utilized while in space solely on board such spacecraft or aboard another spacecraft which meets the requirements of paragraph (1)(A) through (C) of this section; and

(3) such articles were returned to the customs territory directly from space aboard such spacecraft or aboard another spacecraft which meets the requirements of paragraph (1)(A) through (C) of this section;

without regard to whether such articles have been advanced in value or improved in condition by any process of manufacture or other means while in space.

(June 17, 1930, ch. 497, title IV, § 484a, as added Oct. 30, 1984, Pub. L. 98-573, title II, § 209(a), 98 Stat. 2976.)

EFFECTIVE DATE

Section applicable with respect to articles launched into space from the customs territory of the United States on or after Jan. 1, 1985, see section 214(c)(4) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1202 of this title.

§ 1498. Entry under regulations

(a) Authorized for certain merchandise

The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—

(1) Merchandise, imported in the mails or otherwise, when the aggregate value of the shipment does not exceed such amount, not greater than $1,250 as the Secretary of the Treasury shall specify in the regulations, and the specified amount may vary for different classes or kinds of merchandise or different classes of transactions, except that this paragraph does not apply to articles valued in excess of $250 classified in—

(A) schedule 3,

(B) parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and

(C) parts 2 and 3 of the Appendix,

of the Tariff Schedules of the United States, or to any other article for which formal entry is required without regard to value.; [3]

[*See main edition for text of* (*2*) *to* (*12*); (*b*)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 206, 98 Stat. 2975.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in subsec. (a)(1), are not set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-573 substituted "$1,250" for "$250" and added provision that this paragraph does not apply to articles valued in excess of $250 classified in schedule 3, parts 1, 4A, 7B, 12A, 12D, and 13B of schedule 7, and parts 2 and 3 of the Appendix, of the Tariff Schedules, or to any other article for which formal entry is required without regard to value.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of this title.

§ 1504. Limitation on liquidation

(a) Liquidation

Except as provided in subsection (b) of this section, an entry of merchandise not liquidated within one year from:

[*See main edition for text of* (*1*) *to* (*3*)]

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer of record. Notwithstanding section 1500(e) of this title, notice of liquidation need not be given of an entry deemed liquidated.

(b) Extension

The Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer of record in such form and manner as the Secretary shall prescribe in regulations, if—

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[3] So in original. The period probably should not appear.

[*See main edition for text of* (*1*) *and* (*2*)]

(3) the importer of record requests such extension and shows good cause therefor.

(c) Notice of suspension

If the liquidation of any entry is suspended, the Secretary shall, by regulation, require that notice of such suspension be provided to the importer of record concerned and to any authorized agent and surety of such importer of record.

(d) Limitation

Any entry of merchandise not liquidated at the expiration of four years from the applicable date specified in subsection (a) of this section, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record, unless liquidation continues to be suspended as required by statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom.

(As amended Oct. 30, 1984, Pub. L. 98-573, title I, § 191(d), 98 Stat. 2971.)

Amendments

1984—Subsec. (a). Pub. L. 98-573, § 191(d)(1), substituted "importer of record" for "importer, his consignee, or agent" in provisions following par. (3).

Subsec. (b). Pub. L. 98-573, § 191(d)(2), substituted "importer of record" for "importer, his consignee, or agent" in provisions preceding par. (1), and substituted "importer of record" for "importer, consignee, or his agent" in par. (3).

Subsec. (c). Pub. L. 98-573, § 191(d)(3), substituted "importer of record" for "importer or consignee" in two places.

Subsec. (d). Pub. L. 98-573, § 191(d)(4), substituted "importer of record" for "importer, his consignee, or agent".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 applicable with respect to articles entered on or after the 15th day after Oct. 30, 1984, see section 195(a) of Pub. L. 98-573, set out as a note under section 1322 of this title.

§ 1505. Payment of duties

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Duties due upon liquidation or reliquidation; delinquency; interest

Duties determined to be due upon liquidation or reliquidation shall be due 15 days after the date of that liquidation or reliquidation, and unless payment of the duties is received by the appropriate customs officer within 30 days after that date, shall be considered delinquent and bear interest from the 15th day after the date of liquidation or reliquidation at a rate determined by the Secretary of the Treasury.

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 210(a), 98 Stat. 2977.)

Amendments

1984—Subsec. (c). Pub. L. 98-573 added subsec. (c).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective the 30th day after Oct. 30, 1984, see section 214(c)(5)(A) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1315, 1504, 1520, 1557 of this title.

§ 1514. Protests against decisions of appropriate customs officers

(a) Finality of decisions; return of papers

Except as provided in subsection (b) of this section, section 1501 of this title (relating to voluntary reliquidations), section 1516 of this title (relating to petitions by domestic interested parties as defined in section 1677(9)(C), (D), (E), and (F) of this title), section 1520 of this title (relating to refunds and errors), and section 1521 of this title (relating to reliquidations on account of fraud), decisions of the appropriate customs officer, including the legality of all orders and findings entering into the same, as to—

[*See main edition for text of* (*1*) *to* (*7*)]

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 within the time prescribed by section 2636 of that title. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the appropriate customs officer, who shall take action accordingly.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 612(b)(1), 98 Stat. 3034.)

Amendments

1984—Subsec. (a). Pub. L. 98-573 substituted "section 1677(9)(C), (D), (E), and (F) of this title" for "section 1677(9)(C), (D), and (E) of this title" in provisions preceding par. (1).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of subtitle IV of this chapter, on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98-573, set out as a note under section 1671 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1515, 1520, 1557, 1592, 2013 of this title; title 28 sections 2631, 2638.

§ 1516a. Judicial review in countervailing duty and antidumping duty proceedings

(a) Review of determination

(1) Review of certain determinations

Within 30 days after the date of publication in the Federal Register of—

(A) a determination by the administering authority, under 1671a(c)[4] or 1673a(c) of this title, not to initiate an investigation,

(B) a determination by the Commission, under section 1675(b) of this title, not to review a determination based upon changed circumstances, or

(C) a negative determination by the Commission, under section 1671b(a) or 1673b(a) of this title, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation,

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) Review of determinations on record

(A) In general

Within thirty days after—

(i) the date of publication in the Federal Register of—

(I) notice of any determination described in clause (ii), (iii), (iv), or (v) of subparagraph (B), or

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(ii) the date of mailing of a determination described in clause (vi) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(B) Reviewable determinations

The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the administering authority and by the Commission under section 1671d or 1673d of this title, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by the administering authority or the Commission under section 1671d or 1673d of this title, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than a determination reviewable under paragraph (1), by the administering authority or the Commission under section 1675 of this title.

(iv) A determination by the administering authority, under section 1671c or 1673c of this title, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

(v) An injurious effect determination by the Commission under section 1671c(h) or 1673c(h) of this title.

(vi) A determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or countervailing duty order.

(3) Exception

Notwithstanding the limitation imposed by paragraph (2)(A)(ii) of this subsection, a final affirmative determination by the administering authority under section 1671d or 1673d of this title may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date of publication in the Federal Register of a final negative determination by the Commission under section 1671d or 1673d of this title.

(4) Procedures and fees

The procedures and fees set forth in chapter 169 of title 28 apply to an action under this section.

[*See main edition for text of* (*b*) *to* (*f*)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 623(a), 98 Stat. 3040.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-573, § 623(a)(1), amended par. (1) generally, and thereby struck out the designation "(A)" preceding "Within 30 days", redesignated former cls. (i) to (iii) as subpars. (A) to (C), respectively, in subpar. (A) as so redesignated struck out references to the Secretary and to section 1303(a)(3) of this title, in subpar. (B) as so redesignated struck out reference to the administering authority and to review of agreements based on changed circumstances, and struck out former subpar. (B), relating to a right of judicial review of certain determinations of the administering authority within 10 days after publication of notice of the determination in the Federal Register.

Subsec. (a)(2)(A). Pub. L. 98-573, § 623(a)(2), inserted the designation "(i)" preceding "the date of publication in the Federal Register of", redesignated cls. (i) and (ii) as subcls. (I) and (II), respectively, and added cl. (ii).

Subsec. (a)(2)(B)(i). Pub. L. 98-573, § 623(a)(3), amended cl. (i) generally and thereby struck out provisions referring to final affirmative determinations by the Secretary and by the Commission under section 1303 of this title, and added reference to any negative part of decisions under section 1671d or 1673d of this title.

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[4] So in original. Probably should be preceded by "section".

Subsec. (a)(2)(B)(ii). Pub. L. 98-573, § 623(a)(3), amended cl. (ii) generally and thereby struck out references to the Secretary and to section 1303 of this title and added provision relating to any part of a final affirmative determination which specifically excludes any company or product.

Subsec. (a)(2)(B)(iii). Pub. L. 98-573, § 623(a)(3), amended cl. (iii) generally and thereby substituted provisions relating to final determinations by the administering authority or the Commission for provisions relating to determinations by the Secretary, the administering authority, or the Commission.

Subsec. (a)(2)(B)(iv). Pub. L. 98-573, § 623(a)(3), amended cl. (iv) generally and thereby added provision relating to any final determination resulting from a continued investigation which changes the size of the dumping margin or net subsidy calculated, or the reasoning underlying such calculations, at the time the suspension agreement was concluded.

Subsec. (a)(2)(B)(vi). Pub. L. 98-573, § 623(a)(3), added cl. (vi).

Subsec. (a)(3), (4). Pub. L. 98-573, § 623(a)(4), added par. (3) and redesignated former par. (3) as (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 applicable with respect to civil actions pending on, or filed on or after, Oct. 30, 1984, see section 626(b)(2) of Pub. L. 98-573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1514, 1676a of this title; title 28 sections 1581, 2631, 2632, 2635, 2636, 2639, 2640.

§ 1520. Refunds and errors

(a) Cases in which refunds authorized

The Secretary of the Treasury is authorized to refund duties or other receipts in the following cases:

[*See main edition for text of (1) to (3)*]

(4) *Prior to liquidation.*—Prior to the liquidation of an entry, whenever it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid by reason of clerical error.

[*See main edition for text of (b) and (c)*]

(d) Interest rates; calculation

If a determination is made to reliquidate an entry as a result of a protest filed under section 1514 of this title or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount paid as increased or additional duties under section 1505(c) of this title at the annual rate established pursuant to that section and determined as of the 15th day after the date of liquidation or reliquidation. The interest shall be calculated from the date of payment to the date of (1) the refund, or (2) the filing of a summons under section 2632 of title 28, whichever occurs first.

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, §§ 210(b), 212(b)(7)(B), 98 Stat. 2977, 2984.)

AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98-573, § 212(b)(7)(B), added par. (4).

Subsec. (d). Pub. L. 98-573, § 210(b), added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 210(b) of Pub. L. 98-573 applicable with respect to determinations made or ordered on or after Oct. 30, 1984, see section 214(c)(5)(B) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Amendment by section 212 of Pub. L. 98-573 effective on the close of the 180th day after Oct. 30, 1984, see section 214(d) of Pub. L. 98-573, set out as a note under section 1304 of this title.

§ 1524. Deposit of reimbursable charges

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1613b, 1755 of this title.

PART IV—TRANSPORTATION IN BOND AND WAREHOUSING OF MERCHANDISE

§ 1554. Transportation through contiguous countries

With the consent of the proper authorities, imported merchandise, in bond or duty-paid, and products and manufactures of the United States may be transported from one port to another in the United States through contiguous countries, under such regulations as the Secretary of the Treasury shall prescribe, unless such transportation is in violation of section 4347 of the Revised Statutes, as amended, section 883 of title 46, Appendix, or section 1588 of this title.

(June 17, 1930, ch. 497, title IV, § 554, 46 Stat. 743.)

REFERENCES IN TEXT

Section 4347 of the Revised Statutes, as amended, referred to in text, was not classified to this Code. It was superseded by act Feb. 17, 1898, ch. 26, § 1, 30 Stat. 248, which was classified to section 290 of former Title 46, Shipping. See section 883 of Title 46, Appendix.

§ 1555. Bonded warehouses

(a) Designation; preconditions; bonding requirements; supervision

Subject to subsection (b) of this section, buildings or parts of buildings and other enclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the appropriate customs officer, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the Government by the proprietor of such warehouse.

(b) Duty-free sales enterprise; withdrawal of merchandise from bonded warehouse and transfer to facility

If a State or local governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free sales enterprise under which merchandise is delivered to such facility for exportation, merchandise incident to such operation may not be withdrawn from a bonded warehouse and transferred to such facility unless the operator of the duty-free sales enterprise demonstrates to the Secretary of the Treasury that the concession or approval required for the enterprise has been obtained. For purposes of this subsection, the term "duty-free sales enterprise" means an entity that sells, in less than wholesale quantities, duty-free or tax-free merchandise that is delivered from a bonded warehouse to an airport, seaport, or point of exit from the United States for exportation by, or on behalf of, individuals departing from the United States.

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 211, 98 Stat. 2977.)

AMENDMENTS

1984—Pub. L. 98-573 designated existing provisions as subsec. (a), in subsec. (a) as so designated substituted "Subject to subsection (b) of this section, buildings" for "Buildings", and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of this title.

§ 1558. No remission or refund after release of merchandise

REFERENCES IN TEXT

Subsection (c) of section 1304 of this title, referred to in subsec. (b), was redesignated subsection (f) and a new subsection (c) of section 1304 was added by Pub. L. 98-573, title II, § 207(1), (2), Oct. 30, 1984, 98 Stat. 2976.

§ 1564. Liens

Whenever a customs officer shall be notified in writing of the existence of a lien for freight, charges, or contribution in general average upon any imported merchandise sent to the appraiser's store for examination, entered for warehousing or taken possession of by him, he shall refuse to permit delivery thereof from public store or bonded warehouse until proof shall be produced that the said lien has been satisfied or discharged. The rights of the United States shall not be prejudiced or affected by the filing of such lien, nor shall the United States or its officers be liable for losses or damages consequent upon such refusal to permit delivery. If merchandise, regarding which such notice of lien has been filed, shall be forfeited or abandoned and sold, the freight, charges, or contribution in general average due thereon shall be paid from the proceeds of such sale in the same manner as other lawful charges and expenses are paid therefrom. The provisions of this section shall apply to licensed customs brokers who otherwise possess a lien for the purposes stated above upon the merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any State.

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 212(b)(7)(A), 98 Stat. 2984.)

AMENDMENTS

1984—Pub. L. 98-573 added provision making this section applicable to licensed customs brokers who otherwise possess a lien for the purposes stated above upon the merchandise under the statutes or common law, or by order of any court of competent jurisdiction, of any State.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective on the close of the 180th day following Oct. 30, 1984, see section 214(d) of Pub. L. 98-573, set out as a note under section 1304 of this title.

PART V—ENFORCEMENT PROVISIONS

§ 1584. Falsity or lack of manifest; penalties

REFERENCES IN TEXT

Sections 802(17) and 802(15) of title 21, referred to in subsec. (a)(2), were redesignated sections 802(18) and 802(16) of title 21, respectively, by Pub. L. 98-473, title II, § 507(a), Oct. 12, 1984, 98 Stat. 2071.

§ 1589. Arrest authority of customs officers

Subject to the direction of the Secretary of the Treasury, an officer of the Customs Service as defined in section 1401(i) of this title may—

(1) carry a firearm;

(2) execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States;

(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and

(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.

(June 17, 1930, ch. 497, title IV, § 589, as added Oct. 12, 1984, Pub. L. 98–473, title II, § 320, 98 Stat. 2056.)

CODIFICATION

Another section 589 of the Tariff Act of 1930 was added by Pub. L. 98-573, title II, § 213(a)(17), Oct. 30, 1984, 98 Stat. 2988, and is classified to section 1589a of this title.

PRIOR PROVISIONS

A prior section 589 of act June 17, 1930, ch. 497, title IV, 46 Stat. 750, which related to unlawful relanding, was classified to this section and was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 544 of Title 18, Crimes and Criminal Procedure.

§ 1589a. Enforcement authority of customs officers

Subject to the direction of the Secretary of the Treasury, an officer of the customs may—

(1) carry a firearm;

(2) execute and serve any order, warrant, subpena, summons, or other process issued under the authority of the United States;

(3) make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and

(4) perform any other law enforcement duty that the Secretary of the Treasury may designate.

(June 17, 1930, ch. 497, title IV, § 589, as added Oct. 30, 1984, Pub. L. 98–573, title II, § 213(a)(17), 98 Stat. 2988.)

CODIFICATION

Another section 589 of the Tariff Act of 1930 was added by Pub. L. 98-473, title II, § 320, Oct. 12, 1984, 98 Stat. 2056, and is classified to section 1589 of this title.

EFFECTIVE DATE

Section effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

§ 1600. Application of the customs laws to other seizures by customs officers

The procedures set forth in sections 1602 through 1619 of this title shall apply to seizures of any property effected by customs officers under any law enforced or administered by the Customs Service unless such law specifies different procedures.

(June 17, 1930, ch. 497, title IV, § 600, as added Oct. 12, 1984, Pub. L. 98–473, title II, § 323, 98 Stat. 2057.)

PRIOR PROVISIONS

A prior section 600 of act June 17, 1930, ch. 497, title IV, 46 Stat. 753, which related to gratuities, was classified to this section and was repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 213 of Title 18, Crimes and Criminal Procedure.

§ 1602. Seizure; report to customs officer

It shall be the duty of any officer, agent, or other person authorized by law to make seizures of merchandise or baggage subject to seizure for violation of the customs laws, to report every such seizure immediately to the appropriate customs officer for the district in which such violation occurred, and to turn over and deliver to such customs officer any vessel, vehicle, aircraft, merchandise, or baggage seized by him, and to report immediately to such customs officer every violation of the customs laws.

(As amended Oct. 12, 1984, Pub. L. 98–473, title II, § 321, 98 Stat. 2056; Oct. 30, 1984, Pub. L. 98–573, title II, § 213(a)(1), 98 Stat. 2984.)

AMENDMENTS

1984—Pub. L. 98-573 and Pub. L. 98-473 added reference to aircraft.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1603. Seizure; customs officer's reports

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1604. Seizure; prosecution

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1605. Seizure; custody; storage

All vessels, vehicles, aircraft, merchandise, and baggage seized under the provisions of the customs laws, or laws relating to the navigation, registering, enrolling or licensing, or entry or clearance, of vessels, unless otherwise provided by law, shall be placed and remain in the custody of the appropriate customs officer for the district in which the seizure was made to await disposition according to law.

[*See main edition for text of second par.*]

(As amended Oct. 12, 1984, Pub. L. 98–473, title II, § 321, 98 Stat. 2056; Oct. 30, 1984, Pub. L. 98–573, title II, § 213(a)(2), 98 Stat. 2984.)

AMENDMENTS

1984—Pub. L. 98-573 and Pub. L. 98-473 added reference to aircraft in first par.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1606. Seizure; appraisement

The appropriate customs officer shall determine the domestic value, at the time and place of appraisement, of any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 321, 98 Stat. 2056; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(3), 98 Stat. 2984.)

Amendments

1984—Pub. L. 98-573 and Pub. L. 98-473 added reference to aircraft.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1600, 1614 of this title.

§ 1607. Seizure; value $100,000 or less, prohibited merchandise, transporting conveyances

(a) If—

(1) the value of such seized vessel, vehicle, aircraft, merchandise, or baggage does not exceed $100,000;

(2) such seized merchandise is merchandise the importation of which is prohibited; or

(3) such seized vessel, vehicle, or aircraft was used to import, export, transport, or store any controlled substance;

the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notice of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

(b) As used in this section, the term "controlled substance" has the meaning given that term in section 802 of title 21.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 311, 98 Stat. 2053; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(4), 98 Stat. 2984.)

Amendments

1984—Pub. L. 98-573 amended section generally. See explanation below for amendment by Pub. L. 98-473.

Pub. L. 98-473 amended section generally in manner substantially identical to amendment by Pub. L. 98-573. Prior to amendment, section read: "If such value of such vessel, vehicle, merchandise, or baggage does not exceed $10,000, the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 1610 and 1612 of this title merchandise the importation of which is prohibited shall be held not to exceed $10,000 in value."

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1600, 1610, 1612 of this title.

§ 1608. Seizure; claims; judicial condemnation

Any person claiming such vessel, vehicle, aircraft, merchandise, or baggage may at any time within twenty days from the date of the first publication of the notice of seizure file with the appropriate customs officer a claim stating his interest therein. Upon the filing of such claim, and the giving of a bond to the United States in the penal sum of $2,500 [1] or 10 percent of the value of the claimed property, whichever is lower, but not less than $250, with sureties to be approved by such customs officer, conditioned that in case of condemnation of the articles so claimed the obligor shall pay all the costs and expenses of the proceedings to obtain such condemnation, such customs officer shall transmit such claim and bond, with a duplicate list and description of the articles seized, to the United States attorney for the district in which seizure was made, who shall proceed to a condemnation of the merchandise or other property in the manner prescribed by law.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, §§ 312, 321, 98 Stat. 2054, 2056; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(5), 98 Stat. 2985.)

Amendments

1984—Pub. L. 98-573, § 213(a)(5)(B), inserted "$2,500 or 10 percent of the value of the claimed property, whichever is lower, but not less than" after "penal sum of".

Pub. L. 98-473, § 312, which directed the insertion of "$5,000 or 10 per centum of the value of the claimed property, whichever is lower, but not less than," after "penal sum of" was not executed to text in view of the later amendment by Pub. L. 98-573.

Pub. L. 98-573, § 213(a)(5)(A), and Pub. L. 98-473, § 321, added reference to aircraft.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Section Referred to in Other Sections

This section is referred to in section 1600 of this title.

§ 1609. Seizure; summary of forfeiture and sale

(a) If no such claim is filed or bond given within the twenty days hereinbefore specified, the appropriate customs officer shall declare the vessel, vehicle, aircraft, merchandise, or baggage forfeited, and shall sell the same at public auction in the same manner as merchandise abandoned to the United States is sold or otherwise dispose of the same according to law, and (except as provided in subsection (b) of this section) shall deposit the proceeds of sale, after deducting expenses enumerated in section 1613 of this title into the Customs Forfeiture Fund.

(b) During the period beginning on October 30, 1984, and ending on September 30, 1987, the appropriate customs officer shall deposit the proceeds of sale (after deducting such expenses) in the Customs Forfeiture Fund.

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[1] See 1984 Amendment notes below.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, §§ 313, 321, 98 Stat. 2054, 2056; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(6), 98 Stat. 2985.)

AMENDMENTS

1984—Pub. L. 98-573 designated existing provisions as subsec. (a), and in subsec. (a), as so designated, added reference to aircraft, inserted "(except as provided in subsection (b) of this section)" after "according to law, and", and added subsec. (b).

Pub. L. 98-473, § 321, inserted reference to aircraft.

Pub. L. 98-473, § 313, substituted "after deducting expenses enumerated in section 1613 of this title into the Customs Forfeiture Fund" for "after deducting the actual expenses of seizure, publication, and sale in the Treasury of the United States".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1610. Seizure; judicial forfeiture proceedings

If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title, the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 314, 98 Stat. 2054; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(7), 98 Stat. 2985.)

AMENDMENTS

1984—Pub. L. 98-573 substituted "If any vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title" for "If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than $10,000".

Pub. L. 98-473 amended section in manner substantially identical to amendment by Pub. L. 98-573.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1611. Seizure; sale unlawful

If the sale of any vessel, vehicle, aircraft, merchandise, or baggage forfeited under the customs laws in the district in which seizure thereof was made be prohibited by the laws of the State in which such district is located, or if a sale may be made more advantageously in any other district, the Secretary of the Treasury may order such vessel, vehicle, aircraft, merchandise, or baggage to be transferred for sale in any customs district in which the sale thereof may be permitted. Upon the request of the Secretary of the Treasury, any court may, in proceedings for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage under the customs laws, provide in its decree of forfeiture that the vessel, vehicle, aircraft, merchandise, or baggage, so forfeited, shall be delivered to the Secretary of the Treasury for disposition in accordance with the provisions of this section. If the Secretary of the Treasury is satisfied that the proceeds of any sale will not be sufficient to pay the costs thereof, he may order a destruction by the customs officers: *Provided*, That any merchandise forfeited under the customs laws, the sale or use of which is prohibited under any law of the United States or of any State, may, in the discretion of the Secretary of the Treasury, be destroyed, or remanufactured into an article that is not prohibited, the resulting article to be disposed of to the profit of the United States only.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 321, 98 Stat. 2056; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(8), 98 Stat. 2985.)

AMENDMENTS

1984—Pub. L. 98-573 and Pub. L. 98-473 added reference to aircraft in four places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1612. Seizure; summary sale

(a) Whenever it appears to the appropriate customs officer that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and, such vessel, vehicle, aircraft, merchandise, or baggage is subject to section 1607 of this title, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, such officer shall, proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 1607 of this title, such officer shall forthwith transmit the appraiser's return and his report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the customs officer or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.

(b) If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than $1,000, such officer may proceed forthwith to order destruction or other appropriate disposition of such property, under regulations prescribed by the Secretary of the Treasury.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 315, 98 Stat. 2054; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(9), 98 Stat. 2985.)

References in Text

The customs laws, referred to in subsec. (a), are classified generally to this title.

Amendments

1984—Subsec. (a). Pub. L. 98-573 designated existing provisions as subsec. (a), and in subsec. (a), as so designated, added reference to aircraft in six places and substituted "the value thereof, and such vessel" for "the value thereof, and the value of such vessel", "is subject to section 1607 of this title" for "as determined under section 1606 of this title, does not exceed $10,000", "If such vessel" for "If such value of such vessel", and "baggage is not subject to section 1607 of this title," for "baggage exceeds $10,000", and added subsec. (b).

Pub. L. 98-473 amended section in manner substantially identical to amendment by Pub. L. 98-573, but did not add a subsec. (b) or provisions similar thereto.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1600, 1613b of this title.

§ 1613. Disposition of proceeds of forfeited property

(a) Application for remission of forfeiture and restoration of proceeds of sale; disposition of proceeds when no application has been made

Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, aircraft, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this chapter, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, the proceeds of sale shall be disposed of as follows:

[*See main edition for text of (1) and (2)*]

(3) The residue shall be deposited in the general fund of the Treasury of the United States.[3]

(b) Disposition of proceeds in excess of penalty assessed under section 1592

If merchandise is forfeited under section 1592 of this title, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a)(1) and (2) of this section or subsection (a)(1), (a)(3), or (a)(4) of section 1613b of this title incurred in such sale shall be returned to the person against whom the penalty was assessed.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, §§ 316, 321, 98 Stat. 2054, 2056; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(10), 98 Stat. 2986.)

Amendments

1984—Subsec. (a). Pub. L. 98-573, § 213(a)(10)(A), and Pub. L. 98-473, § 321, added reference to aircraft in provisions preceding par. (1).

Subsec. (a)(3). Pub. L. 98-573, § 213(a)(10)(B), substituted "in the general fund of the Treasury of the United States" for "with the Treasurer of the United States as a customs or navigation fine".

Pub. L. 98-473, § 316, which directed the substitution of "The residue shall be deposited in the Customs Forfeiture Fund" for "The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine" was not executed to text in view of the later amendment by section 213(a)(10)(B) of Pub. L. 98-573.

Subsec. (b). Pub. L. 98-573, § 213(a)(10)(C), inserted "or subsection (a)(1), (a)(3), or (a)(4) of section 1613b of this title".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1600, 1609, 1613a, 1613b, 1614 of this title.

§ 1613a. Customs Forfeiture Fund

(a) Establishment; purposes of fund

There is hereby established in the Treasury of the United States a special fund for the United States Customs Service that shall be entitled the "Customs Forfeiture Fund" (hereinafter referred to in this section as the "fund"). This fund shall be available without fiscal year limitation in such amounts as may be specified in appropriations Acts for the following purposes of the United States Customs Service—

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[3] See 1984 Amendment note below.

(1) the payment of all proper expenses of the seizure or detention or the proceedings of forfeiture and sale (not otherwise recovered under section 1613(a) of this title) including but not limited to, expenses of inventory, security, maintaining the custody of the property, advertising and sale, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court;

(2) the payment of awards of compensation to informers under section 1619 of this title;

(3) for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the United States Customs Service; and

(4) purchases by the United States Customs Service for evidence (A) of smuggling of controlled substances, and (B) of violations of the currency and foreign transaction reporting requirements of chapter 53 of title 31 if there is a substantial probability that the violation of these requirements are related to the smuggling of controlled substances [4]

(b) Disposition of property with value of less than $1,000

If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than $1,000, such officer may proceed forthwith to order destruction or other appropriate disposition of such property, under regulations prescribed by the Secretary of the Treasury.

(c) Reimbursement of Coast Guard

Amounts under subsection (a) of this section shall be available, at the discretion of the Commissioner of Customs, to reimburse the applicable appropriation for expenses incurred by the Coast Guard for a purpose specified in such subsection.

(d) Deposits into fund

There shall be deposited in the fund all proceeds from the sale or other disposition of property forfeited under, and any currency or monetary instruments seized and forfeited under, the laws enforced or administered by the United States Customs Service.

(e) Disposition of funds not currently needed

Amounts in the fund which are not currently needed for the purposes of this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(f) Annual report to Congress

The Commissioner of Customs shall transmit to the Congress, not later than four months after the end of each fiscal year a detailed report on the amounts deposited in the fund and a description of expenditures made under this section.

(g) Effective date

The provisions of this section relating to deposits in the fund shall apply to all property in the custody of the United States Customs Service on or after the effective date of the Comprehensive Forfeiture Act of 1983.

(h) Authorization of appropriations; termination of fund

For the purposes described in subsection (a) of this section, there are authorized to be appropriated from the fund for fiscal year 1984 not more than $10,000,000, for fiscal year 1985 not more than $15,000,000, for fiscal year 1986, not more than $20,000,000, and for fiscal year 1987 not more than $20,000,000. Amounts in the fund in excess of the amounts appropriated at the end of each fiscal year shall be deposited in the General Fund of the Treasury of the United States. At the end of the last fiscal year for which appropriations from the fund are authorized by this chapter, the fund shall cease to exist and any amount then remaining in the fund shall be deposited in the General Fund of the Treasury of the United States.

(June 17, 1930, ch. 497, title IV, § 613a, as added and amended Oct. 12, 1984, Pub. L. 98–473, title II, §§ 317, 2304, 98 Stat. 2054, 2193.)

References in Text

The effective date of the Comprehensive Forfeiture Act of 1983, referred to in subsec. (g), probably means the date of enactment of the Comprehensive Forfeiture Act of 1984, which was approved Oct. 12, 1984.

Codification

A section 613A of the Tariff Act of 1930 was added by Pub. L. 98–573, title II, § 213(a)(11), Oct. 30, 1984, 98 Stat. 2986, and is classified to section 1613b of this title.

Section 2304 of Pub. L. 98–473 which purported to amend section 613(a) of the Tariff Act of 1930 [19 U.S.C. 1613(a)] could not be executed as directed to that section, and was executed instead to section 613a of that Act [this section] as the probable intent of Congress.

Amendments

1984—Subsec. (a)(3), (4). Pub. L. 98–473, § 2304(1)–(3), added pars. (3) and (4).

Subsecs. (b) to (h). Pub. L. 98–473, § 2304(4), (5), added subsecs. (b) and (c) and redesignated existing subsecs. (b) to (f) as (d) to (h), respectively.

Section Referred to in Other Sections

This section is referred to in section 1600 of this title.

§ 1613b. Customs Forfeiture Fund

(a) Establishment; purposes of fund

There is established in the Treasury of the United States a fund to be known as the Customs Forfeiture Fund (hereinafter in this section referred to as the "fund"), which shall be available to the United States Customs Service, subject to appropriation, during the period beginning on October 30, 1984, and ending on September 30, 1987. The fund shall be available with respect to seizures and forfeitures by the United States Customs Service under any law enforced or administered by it for payment (to the extent that such payment is not reimbursed under section 1524 of this title)—

(1) of all proper expenses of the seizure or the proceedings of forfeiture and sale (not otherwise recovered under section 1613(a) of this title), including, but not limited to, expenses of inventory, security, maintaining the

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[4] So in original. Probably should be followed by a period.

custody of the property, advertising and sale, and if condemned by the court and a bond for such costs was not given, the costs as taxed by the court;

(2) of awards of compensation to informers under section 1619 of this title;

(3) for satisfaction of—

(A) liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

(B) other liens against forfeited property;

(4) of amounts authorized by law with respect to remission and mitigation;

(5) for equipping for law enforcement functions of forfeited vessels, vehicles, and aircraft retained as provided by law for official use by the United States Customs Service; and

(6) of claims of parties in interest to property disposed of under section 1612(b) of this title, in the amounts applicable to such claims at the time of seizure.

In addition to the purposes described in paragraphs (1) through (6), the fund shall be available for purchases by the United States Customs Service of evidence of (A) smuggling of controlled substances, and (B) violations of the currency and foreign transaction reporting requirements of chapter 53 of title 31 if there is a substantial probability that the violations of these requirements are related to the smuggling of controlled substances.

(b) Payments; reimbursement of Coast Guard

(1) Payment under paragraphs (3) and (4) of subsection (a) of this section shall not exceed the value of the property at the time of the seizure.

(2) Amounts under subsection (a) of this section shall be available, at the discretion of the Commissioner of Customs, to reimburse the applicable appropriation for expenses incurred by the Coast Guard for a purpose specified in such subsection.

(c) Deposits into fund

There shall be deposited in the fund during the period beginning on October 30, 1984, and ending on September 30, 1987, all proceeds from forfeiture under any law enforced or administered by the United States Customs Service (after reimbursement of expenses under section 1524 of this title) and all earnings on amounts invested under subsection (d) of this section.

(d) Disposition of funds not currently needed

Amounts in the fund which are not currently needed for the purposes of this section shall be invested in obligations of, or guaranteed by, the United States.

(e) Annual report to Congress

Not later than four months after the end of each fiscal year, the Commissioner of Customs shall transmit to the Congress a report on receipts and disbursements with respect to the fund for such year.

(f) Authorization of appropriations; termination of fund

(1) There are authorized to be appropriated from the fund for each of the four fiscal years beginning with fiscal year 1984, not more than $10,000,000.

(2) At the end of each of the first three of such four fiscal years, any amount in the fund in excess of $10,000,000 shall be deposited in the general fund of the Treasury. At the end of the last of such four fiscal years, any amount in the fund shall be deposited in the general fund of the Treasury, and the fund shall cease to exist.

(June 17, 1930, ch. 497, title IV, § 613A, as added Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(11), 98 Stat. 2986.)

CODIFICATION

A section 613a of the Tariff Act of 1930 was added by Pub. L. 98-473, title II, § 317, Oct. 12, 1984, 98 Stat. 2054, and is classified to section 1613a of this title.

EFFECTIVE DATE

Section effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 1613 of this title.

§ 1614. Release of seized property

If any person claiming an interest in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter offers to pay the value of such vessel, vehicle, aircraft, merchandise, or baggage, as determined under section 1606 of this title, and it appears that such person has in fact a substantial interest therein, the appropriate customs officer may, subject to the approval of the Secretary of the Treasury if under the customs laws, or the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, accept such offer and release the vessel, vehicle, aircraft, merchandise, or baggage seized upon the payment of such value thereof, which shall be distributed in the order provided in section 1613 of this title.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 321, 98 Stat. 2056; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(12), 98 Stat. 2987.)

AMENDMENTS

1984—Pub. L. 98-573 and Pub. L. 98-473 added reference to aircraft in three places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title.

§ 1615. Burden of proof in forfeiture proceedings

In all suits or actions (other than those arising under section 1592 of this title) brought for the forfeiture of any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, aircraft, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a vessel, vehicle, or aircraft, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

[*See main edition for text of* (*2*) *and* (*3*)]

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 321, 98 Stat. 2056; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(13), 98 Stat. 2987.)

AMENDMENTS

1984—Pub. L. 98-573 and Pub. L. 98-473 added reference to aircraft in the provisions preceding par. (1) and in par. (1).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1600, 2610 of this title.

§ 1616. Disposition of forfeited property

(a) Retention or transfer

Notwithstanding any other provision of the law, the Commissioner is authorized to retain forfeited property, or to transfer such property on such terms and conditions as he may determine to—

(1) any other Federal agency; or

(2) any State or local law enforcement agency which participated directly in any of the acts which led to the seizure or forfeiture of the property.

The Secretary of the Treasury shall ensure the equitable transfer pursuant to paragraph (2) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Secretary pursuant to paragraph (2) shall not be subject to review. The United States shall not be liable in any action arising out of the use of any property the custody of which was transferred pursuant to this section to any non-Federal agency.

(b) State or local proceedings

The Secretary of the Treasury may order the discontinuance of any forfeiture proceedings under this chapter in favor of the institution of forfeiture proceedings by State or local authorities under an appropriate State or local statute. After the filing of a complaint for forfeiture under this chapter, the Attorney General may seek dismissal of the complaint in favor of forfeiture proceedings under State or local law.

(c) Transfer of custody to State or local officials

Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, the United States may transfer custody and possession of the seized property to the appropriate State or local official immediately upon the initiation of the proper actions by such officials.

(d) Notice of discontinuance of Federal proceedings

Whenever forfeiture proceedings are discontinued by the United States in favor of State or local proceedings, notice shall be sent to all known interested parties advising them of the discontinuance or dismissal. The United States shall not be liable in any action arising out of the seizure, detention, and transfer of seized property to State or local officials.

(June 17, 1930, ch. 497, title IV, § 616, as added Oct. 12, 1984, Pub. L. 98-473, title II, § 318, 98 Stat. 2055.)

CODIFICATION

Another section 616 of the Tariff Act of 1930 was added by Pub. L. 98-573, title II, § 213(a)(4), Oct. 30, 1984, 98 Stat. 2987, and is classified to section 1616a of this title.

PRIOR PROVISIONS

A prior section 1616 of act June 17, 1930, ch. 497, title IV, § 616, 46 Stat. 757, which related to prohibition against compromising Government claims was classified to this section and was repealed by act June 25, 1948, ch. 645, § 24, 62 Stat. 682, eff. Sept. 1, 1948. See section 1915 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1600 of this title; title 21 section 881.

§ 1616a. Transfer of forfeited property

(a) State proceedings

The Secretary of the Treasury may discontinue forfeiture proceedings under this chapter in favor of forfeiture under State law. If a complaint for forfeiture is filed under this chapter, the Attorney General may seek dismissal of the complaint in favor of forfeiture under State law.

(b) Transfer of seized property; notice

If forfeiture proceedings are discontinued or dismissed under this section—

(1) the United States may transfer the seized property to the appropriate State or local official; and

(2) notice of the discontinuance or dismissal shall be provided to all known interested parties.

READEX FICHE

(c) Transfer of forfeited property

The Secretary of the Treasury may transfer any property forfeited under this chapter to any State or local law enforcement agency which participated directly in the seizure or forfeiture of the property.

(d) Liability of United States after transfer

The United States shall not be liable in any action relating to property transferred under this section if such action is based on an act or omission occurring after the transfer.

(June 17, 1930, ch. 497, title IV, § 616, as added Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(14), 98 Stat. 2987.)

Codification

Another section 616 of the Tariff Act of 1930 was added by Pub. L. 98-473, title II, § 318, Oct. 12, 1984, 98 Stat. 2055, and is classified to section 1616 of this title.

Effective Date

Section effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

Section Referred to in Other Sections

This section is referred to in section 1600 of this title.

§ 1617. Compromise of Government claims by Secretary of Treasury

Section Referred to in Other Sections

This section is referred to in section 1600 of this title.

§ 1618. Remission or mitigation of penalties

Whenever any person interested in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder, files with the Secretary of the Treasury if under the customs laws, and with the Commandant of the Coast Guard or the Commissioner of Customs, as the case may be, if under the navigation laws, before the sale of such vessel, vehicle, aircraft, merchandise, or baggage a petition for the remission or mitigation of such fine, penalty, or forfeiture, the Secretary of the Treasury, the Commandant of the Coast Guard, or the Commissioner of Customs, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto. In order to enable him to ascertain the facts, the Secretary of the Treasury may issue a commission to any customs officer to take testimony upon such petition: *Provided*, That nothing in this section shall be construed to deprive any person of an award of compensation made before the filing of such petition.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 321, 98 Stat. 2056; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(16), 98 Stat. 2988.)

Amendments

1984—Pub. L. 98-573 and Pub. L. 98-473 added reference to aircraft in two places.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1592, 1600, 1641 of this title.

§ 1619. Award of compensation to informers

Any person not an officer of the United States who detects and seizes any vessel, vehicle, aircraft, merchandise, or baggage subject to seizure and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer of the customs, or who furnishes to a United States attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws, perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed $250,000[6] in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, aircraft, merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed $250,000[6] in any case. In no event shall the Secretary delegate the authority to pay an award under this section in excess of $10,000 to an official below the level of the Commissioner of Customs.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, §§ 319, 321, 98 Stat. 2056; Oct. 30, 1984, Pub. L. 98-573, title II, § 213(a)(15), 98 Stat. 2988.)

Amendments

1984—Pub. L. 98-573, § 213(a)(15)(A), and Pub. L. 98-473, § 321, inserted reference to aircraft in two places.

Pub. L. 98-573, § 213(a)(15)(B), substituted "$250,000" for "$50,000" in two places.

Pub. L. 98-473, § 319(a), which directed the substitution of "$150,000" for "$50,000" in two places was not executed to text in view of the later amendment by section 213(a)(15)(B) of Pub. L. 98-573.

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[6] See 1984 Amendment note below.

Pub. L. 98-473, § 319(b), added "In no event shall the Secretary delegate the authority to pay an award under this section in excess of $10,000 to an official below the level of the Commissioner of Customs."

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1600, 1613a, 1613b of this title.

§ 1621. Limitation of actions

Section Referred to in Other Sections

This section is referred to in section 1641 of this title.

§ 1627. Unlawful importation or exportation of certain vehicles and equipment; inspections

(a) Violations; penalties; seizures and forfeitures

(1) Whoever knowingly imports, exports, or attempts to import or export—

(A) any motor vehicle, off-highway mobile equipment, vessel, aircraft, or part of any motor vehicle, off-highway mobile equipment, vessel or aircraft, knowing the same to have been stolen; or

(B) any motor vehicle or off-highway mobile equipment, or part of any motor vehicle or off-highway mobile equipment, knowing that the identification number has been removed, obliterated, tampered with, or altered;

shall be subject to a civil penalty in an amount determined by the Secretary, not to exceed $10,000 for each violation.

(2) Any violation of this subsection shall make such motor vehicle, off-highway mobile equipment, vessel, aircraft, or part thereof subject to seizure and forfeiture under this chapter.

(3) The provisions of paragraph (1)(B) shall not apply in the case of any vehicle, equipment, or part, if the removal, obliteration, tampering with, or alteration of the identification number for such vehicle, equipment, or part—

(A) was caused by any collision or fire which results in damage to that portion of such vehicle, equipment, or part on which such identification number is displayed; or

(B) was carried out in accordance with the provisions of section 511(b) of title 18.

(b) Regulations; violations; penalties

The Secretary shall prescribe regulations under which a person attempting to export any used motor vehicle or any used off-highway mobile equipment shall present to the appropriate customs officer both the vehicle or equipment, as the case may be, and a document describing such vehicle or equipment, as the case may be, which includes the vehicle or equipment identification number, as the case may be, before lading if the vehicle or equipment, as the case may be, is to be transported by vessel or aircraft, or before export if the vehicle or equipment, as the case may be, is to be transported by rail, highway, or under its own power. Failure to comply with such regulations of the Secretary shall subject such person to a civil penalty of not more than $500 for each violation.

(c) Definitions

For purposes of this section—

(1) the term "motor vehicle" includes any automobile, truck, bus, motorcycle, or motor home, but such term does not include any off-highway mobile equipment;

(2) the term "off-highway mobile equipment" means self-propelled agricultural equipment, self-propelled construction equipment, and self-propelled special use equipment, used or designed for running on land but not on rail or highway;

(3) the term "aircraft" has the meaning given it in section 1301(5) of title 49, Appendix;

(4) the term "used" refers to any motor vehicle or off-highway mobile equipment the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser;

(5) the term "ultimate purchaser" means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a motor vehicle or off-highway mobile equipment for purposes other than resale; and

(6) the term "identification number" has the meaning given such term in section 553(b)(5) of title 18.

(d) Cooperation of law enforcement and governmental authorities

Customs officers may cooperate and exchange information concerning motor vehicles, off-highway mobile equipment, vessels, or aircraft, either before exportation or after exportation or importation, with such Federal, State, local, and foreign law enforcement or governmental authorities, and with such organizations engaged in theft prevention activities, as may be designated by the Secretary.

(June 17, 1930, ch. 497, title IV, § 627, as added Oct. 25, 1984, Pub. L. 98-547, title III, § 302, 98 Stat. 2771.)

References in Text

Section 511 of title 18, referred to in subsec. (a)(3)(B), probably means the section 511 of Title 18, Crimes and Criminal Procedure, relating to altering or removing motor vehicle identification numbers which was enacted by Pub. L. 98-547, title II, § 201(a), Oct. 25, 1984, 98 Stat. 2768.

Codification

Another section 627 of the Tariff Act of 1930 was added by Pub. L. 98-573, title II, § 205, Oct. 30, 1984, 98 Stat. 2974, and is classified to section 1627a of this title.

Section Referred to in Other Sections

This section is referred to in title 15 section 2034.

§ 1627a. Unlawful importation or exportation of certain vehicles; inspections

(a) Violations; penalties; seizures and forfeitures

(1) Whoever knowingly imports, exports, or attempts to import or export—

(A) Any[7] stolen self-propelled vehicle, vessel, aircraft, or part of a self-propelled vehicle, vessel, or aircraft; or

(B) any self-propelled vehicle or part of a self-propelled vehicle from which the identification number has been removed, obliterated, tampered with, or altered;

shall be subject to a civil penalty in an amount determined by the Secretary, not to exceed $10,000 for each violation.

(2) Any violation of this subsection shall make such self-propelled vehicle, vessel, aircraft, or part thereof subject to seizure and forfeiture under this chapter.

(b) Regulations; violations; penalties

A person attempting to export a used self-propelled vehicle shall present, pursuant to regulations prescribed by the Secretary, to the appropriate customs officer both the vehicle and a document describing such vehicle which includes the vehicle identification number, before lading if the vehicle is to be transported by vessel or aircraft, or before export if the vehicle is to be transported by rail, highway, or under its own power. Failure to comply with the regulations of the Secretary shall subject such person to a civil penalty of not more than $500 for each violation.

(c) Definitions

For purposes of this section—

(1) the term "self-propelled vehicle" includes any automobile, truck, tractor, bus, motorcycle, motor home, self-propelled agricultural machinery, self-propelled construction equipment, self-propelled special use equipment, and any other self-propelled vehicle used or designed for running on land but not on rail;

(2) the term "aircraft" has the meaning given it in section 1301(5) of title 49, Appendix;

(3) the term "used" refers to any self-propelled vehicle the equitable or legal title to which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser; and

(4) the term "ultimate purchaser" means the first person, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a self-propelled vehicle for purposes other than resale.

(d) Cooperation of law enforcement and governmental authorities

Customs officers may cooperate and exchange information concerning motor vehicles, off-highway mobile equipment, vessels, or aircraft, either before exportation or after exportation or importation, with such Federal, State, local, and foreign law enforcement or governmental authorities, and with such organizations engaged in theft prevention activities, as may be designated by the Secretary.

(June 17, 1930, ch. 497, title IV, § 627, as added Oct. 30, 1984, Pub. L. 98-573, title II, § 205, 98 Stat. 2974.)

CODIFICATION

Another section 627 of the Tariff Act of 1930 was added by Pub. L. 98-547, title III, § 302, Oct. 25, 1984, 98 Stat. 2771, and is classified to section 1627 of this title.

EFFECTIVE DATE

Section effective the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1304 of this title.

PART VI—MISCELLANEOUS PROVISIONS

§ 1641. Customs brokers

(a) Definitions

As used in this section:

(1) The term "customs broker" means any person granted a customs broker's license by the Secretary under subsection (b) of this section.

(2) The term "customs business" means those activities involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof.

(3) The term "Secretary" means the Secretary of the Treasury.

(b) Customs broker's licenses

(1) In general

No person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker's license issued by the Secretary under paragraph (2) or (3).

(2) Licenses for individuals

The Secretary may grant an individual a customs broker's license only if that individual is a citizen of the United States. Before granting the license, the Secretary may require an applicant to show any facts deemed necessary to establish that the applicant is of good moral character and qualified to render valuable service to others in the conduct of customs business. In assessing the qualifications of an applicant, the Secretary may conduct an examination to determine the applicant's knowledge of customs and related laws, regulations and procedures, bookkeeping, accounting, and all other appropriate matters.

(3) Licenses for corporations, etc.

The Secretary may grant a customs broker's license to any corporation, association, or partnership that is organized or existing under the laws of any of the several States of the United States if at least one officer of the corporation or association, or one member of the partnership, holds a valid customs broker's license granted under paragraph (2).

(4) Duties

A customs broker shall exercise responsible supervision and control over the customs business that it conducts.

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[7] So in original. Probably should not be capitalized.

(5) Lapse of license

The failure of a customs broker that is licensed as a corporation, association, or partnership under paragraph (3) to have, for any continuous period of 120 days, at least one officer of the corporation or association, or at least one member of the partnership, validly licensed under paragraph (2) shall, in addition to causing the broker to be subject to any other sanction under this section (including paragraph (6)), result in the revocation by operation of law of its license.

(6) Prohibited acts

Any person who intentionally transacts customs business, other than solely on the behalf of that person, without holding a valid customs broker's license granted to that person under this subsection shall be liable to the United States for a monetary penalty not to exceed $10,000 for each such transaction as well as for each violation of any other provision of this section. This penalty shall be assessed in the same manner and under the same procedures as the monetary penalties provided for in subsection (d)(2)(A) of this section.

(c) Customs broker's permits

(1) In general

Each person granted a customs broker's license under subsection (b) of this section shall—

(A) be issued a permit, in accordance with regulations prescribed under this section, for each customs district in which that person conducts customs business; and

(B) except as provided in paragraph (2), regularly employ in each customs district for which a permit is so issued at least one individual who is licensed under subsection (b)(2) of this section to exercise responsible supervision and control over the customs business conducted by that person in that district.

(2) Exception

If a person granted a customs broker's license under subsection (b) of this section can demonstrate to the satisfaction of the Secretary that—

(A) he regularly employs in the region in which that district is located at least one individual who is licensed under subsection (b)(2) of this section, and

(B) that sufficient procedures exist within the company for the person employed in that region to exercise responsible supervision and control over the customs business conducted by that person in that district,

the Secretary may waive the requirement in paragraph (1)(B).

(3) Lapse of permit

The failure of a customs broker granted a permit under paragraph (1) to employ, for any continuous period of 180 days, at least one individual who is licensed under subsection (b)(2) of this section within the district or region (if paragraph (2) applies) for which a permit was issued shall, in addition to causing the broker to be subject to any other sanction under this section (including any in subsection (d) of this section), result in the revocation by operation of law of the permit.

(d) Disciplinary proceedings

(1) General rule

The Secretary may impose a monetary penalty in all cases with the exception of the infractions described in clause (iii) of subparagraph (B) of this subsection, or revoke or suspend a license or permit of any customs broker, if it is shown that the broker—

(A) has made or caused to be made in any application for any license or permit under this section, or report filed with the Customs Service, any statement which was, at the time and in light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such application or report any material fact which was required to be stated therein;

(B) has been convicted at any time after the filing of an application for license under subsection (b) of this section of any felony or misdemeanor which the Secretary finds—

(i) involved the importation or exportation of merchandise;

(ii) arose out of the conduct of its customs business; or

(iii) involved larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds;

(C) has violated any provision of any law enforced by the Customs Service or the rules or regulations issued under any such provision;

(D) has counseled, commanded, induced, procured, or knowingly aided or abetted the violations by any other person of any provision of any law enforced by the Customs Service, or the rules or regulations issued under any such provision;

(E) has knowingly employed, or continues to employ, any person who has been convicted of a felony, without written approval of such employment from the Secretary; or

(F) has, in the course of its customs business, with intent to defraud, in any manner willfully and knowingly deceived, misled or threatened any client or prospective client.

(2) Procedures

(A) Monetary penalty

Unless action has been taken under subparagraph (B), the appropriate customs officer shall serve notice in writing upon any customs broker to show cause why the broker should not be subject to a monetary penalty not to exceed $30,000 in total for a violation or violations of this section. The notice shall advise the customs broker of the allegations or complaints against him and shall explain that the broker has a right to respond to the allegations or complaints in writing within 30 days of the date of the notice. Before imposing a monetary penalty, the customs officer shall consider the allegations or complaints and any timely response made by the customs broker and issue a written decision. A customs broker against whom a monetary penalty has been issued under this section shall have a reasonable opportunity under section 1618 of this title to make representations seeking remission or mitigation of the monetary penalty. Following the conclusion of any proceeding under section 1618 of this title, the appropriate customs officer shall provide to the customs broker a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(B) Revocation or suspension

The appropriate customs officer may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under this section should not be revoked or suspended. The notice shall be in the form of a statement specifically setting forth the grounds of the complaint, and shall allow the customs broker 30 days to respond. If no response is filed, or the appropriate customs officer determines that the revocation or suspension is still warranted, he shall notify the customs broker in writing of a hearing to be held within 15 days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105 of title 5 who shall serve as the hearing officer. If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties. At the hearing, the customs broker may be represented by counsel, and all proceedings, including the proof of the charges and the response thereto shall be presented with testimony taken under oath and the right of cross-examination accorded to both parties. A transcript of the hearing shall be made and a copy will be provided to the appropriate customs officer and the customs broker; they shall thereafter be provided reasonable opportunity to file a post-hearing brief. Following the conclusion of the hearing, the hearing officer shall transmit promptly the record of the hearing along with his findings of fact and recommendations to the Secretary for decision. The Secretary will issue a written decision, based solely on the record, setting forth his findings of fact and the reasons for his decision. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed $30,000, than was contained in the notice to show cause.

(3) Settlement and compromise

The Secretary may settle and compromise any disciplinary proceeding which has been instituted under this subsection according to the terms and conditions agreed to by the parties, including but not limited to the reduction of any proposed suspension or revocation to a monetary penalty.

(4) Limitation of actions

Notwithstanding section 1621 of this title, no proceeding under this subsection or subsection (b)(6) of this section shall be commenced unless such proceeding is instituted by the appropriate service of written notice within 5 years from the date the alleged violation was committed; except that if the alleged violation consists of fraud, the 5-year period of limitation shall commence running from the time such alleged violation was discovered.

(e) Judicial appeal

(1) In general

A customs broker, applicant, or other person directly affected may appeal any decision of the Secretary denying or revoking a license or permit under subsection (b) or (c) of this section, or revoking or suspending a license or permit or imposing a monetary penalty in lieu thereof under subsection (d)(2)(B) of this section, by filing in the Court of International Trade, within 60 days after the issuance of the decision or order, a written petition requesting that the decision or order be modified or set aside in whole or in part. A copy of the petition shall be transmitted promptly by the clerk of the court to the Secretary or his designee. In cases involving revocation or suspension of a license or permit or imposition of a monetary penalty in lieu thereof under subsection (d)(2)(B) of this section, after receipt of the petition, the Secretary shall file in court the record upon which the decision or order complained of was entered, as provided in section 2635(d) of title 28.

(2) Consideration of objections

The court shall not consider any objection to the decision or order of the Secretary, or to the introduction of evidence or testimony, unless that objection was raised before the hearing officer in suspension or revocation proceedings unless there were reasonable grounds for failure to do so.

(3) Conclusiveness of findings

The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive.

(4) Additional evidence

If any party applies to the court for leave to present additional evidence and the court is satisfied that the additional evidence is material and that reasonable grounds existed for the failure to present the evidence in the proceedings before the hearing officer, the court may order the additional evidence to be taken before the hearing officer and to be presented in a manner and upon the terms and conditions prescribed by the court. The Secretary may modify the findings of facts on the basis of the additional evidence presented. The Secretary shall then file with the court any new or modified findings of fact which shall be conclusive if supported by substantial evidence, together with a recommendation, if any, for the modification or setting aside of the original decision or order.

(5) Effect of proceedings

The commencement of proceedings under this subsection shall, unless specifically ordered by the court, operate as a stay of the decision of the Secretary except in the case of a denial of a license or permit.

(6) Failure to appeal

If an appeal is not filed within the time limits specified in this section, the decision by the Secretary shall be final and conclusive. In the case of a monetary penalty imposed under subsection (d)(2)(B) of this section, if the amount is not tendered within 60 days after the decision becomes final, the license shall automatically be suspended until payment is made to the Customs Service.

(f) Regulations by the Secretary

The Secretary may prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary considers necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations governing the licensing of or issuance of permits to customs brokers, the keeping of books, accounts, and records by customs brokers, and documents and correspondence, and the furnishing by customs brokers of any other information relating to their customs business to any duly accredited officer or employee of the United States Customs Service.

(g) Triennial reports by customs brokers

(1) In general

On February 1, 1985, and on February 1 of each third year thereafter, each person who is licensed under subsection (b) of this section shall file with the Secretary of the Treasury a report as to—

(A) whether such person is actively engaged in business as a customs broker; and

(B) the name under, and the address at, which such business is being transacted.

(2) Suspension and revocation

If a person licensed under subsection (b) of this section fails to file the required report by March 1 of the reporting year, the license is suspended, and may be thereafter revoked subject to the following procedures:

(A) The Secretary shall transmit written notice of suspension to the licensee no later than March 31 of the reporting year.

(B) If the licensee files the required report within 60 days of receipt of the Secretary's notice, the license shall be reinstated.

(C) In the event the required report is not filed within the 60-day period, the license shall be revoked without prejudice to the filing of an application for a new license.

(h) Fees and charges

The Secretary may prescribe reasonable fees and charges to defray the costs of the Customs Service in carrying out the provisions of this section, including, but not limited to, a fee for licenses issued under subsection (b) of this section and fees for any test administered by him or under his direction; except that no separate fees shall be imposed to defray the costs of an individual audit or of individual disciplinary proceedings of any nature.

(As amended Oct. 30, 1984, Pub. L. 98-573, title II, § 212(a), 98 Stat. 2978.)

AMENDMENTS

1984—Pub. L. 98-573 amended section generally, thereby substituting provisions relating to customs broker's licenses and permits for provisions relating to licensing of customhouse brokers.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective on the close of the 180th day following Oct. 30, 1984, with certain exceptions, except that subsec. (c)(1)(B), (2) of this section shall take effect three years after Oct. 30, 1984, see section 214(d) of Pub. L. 98-573, set out as a note under section 1304 of this title.

§ 1644. Application of section 1509 of title 49, Appendix, and section 1518(d) of title 33

(a) The authority vested by section 1509 of title 49, Appendix, in the Secretary of the Treasury, by regulation to provide for the application to civil air navigation of the laws and regulations relating to the administration of customs, and of the laws and regulations relating to the entry and clearance of vessels, shall extend to the application in like manner of any of the provisions of this chapter, or of the Anti-Smuggling Act of 1935 [19 U.S.C. 1701 et seq.], or of any regulations promulgated hereunder.

(b) For purposes of section 1518(d) of title 33, the term "customs laws administered by the Secretary of the Treasury" shall mean this chapter and any other provisions of law classified to this title.

(As amended Oct. 12, 1984, Pub. L. 98-473, title II, § 322, 98 Stat. 2056.)

REFERENCES IN TEXT

The Anti-Smuggling Act of 1935, referred to in subsec. (a), probably means the Anti-Smuggling Act which is act Aug. 5, 1935, ch. 438, 49 Stat. 517, as amended, which is classified principally to chapter 5 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see section 1711 of this title and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473 substituted reference to section 1509 of title 49, Apppendix, for reference to section 177 of former title 49, struck out reference to the Commissioner of Customs, and inserted reference to the Anti-Smuggling Act of 1935.

Subsec. (b). Pub. L. 98-473 reenacted subsec. (b) without change.

§ 1645. Transportation and interment of remains of deceased employees in foreign countries; travel or shipping expenses incurred on foreign ships

[*See main edition for text of* (*a*)]

(b) Transportation on foreign ships

Notwithstanding the provisions of section 601 of the Merchant Marine Act, 1928, or of any other law, any allowance, within the limitations prescribed by law, for travel or shipping expenses incurred on a foreign ship by any officer or employee of the Bureau of Customs or the Customs Service, shall be credited if the Secretary of the Treasury certifies to the Comptroller General that transportation on such foreign ship was necessary to protect the revenue.

[*See main edition for credits*]

REFERENCES IN TEXT

Section 601 of the Merchant Marine Act, 1928 [46 U.S.C. 891r], referred to in text, was repealed by the Merchant Marine Act, 1936 (approved June 29, 1936, ch. 858, § 903(c), 49 Stat. 2016), but was reenacted in substance by section 901 of that Act, which is classified to section 1241 of Title 46, Appendix, Shipping.

§ 1651. Repeals

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Certain acts not affected

Nothing in this chapter shall be construed to amend or repeal any of the following provisions of law:

(1) Sections 128, 130, and 131 of this title and section 146 of title 46, Appendix;

[*See main edition for text of* (*2*) *to* (*5*); *credits*]

CODIFICATION

Subsec. (d)(1) is set out in this supplement to reflect the transfer of sections 128, 130, 131, and 146 of title 46, referred to in text, to title 46, Appendix.

§ 1654. Short title

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-573, § 1, Oct. 30, 1984, 98 Stat. 2948, provided in part that this Act (see Tables for classification) may be cited as the "Trade and Tariff Act of 1984".

SUBTITLE IV—COUNTERVAILING AND ANTIDUMPING DUTIES

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1303, 1339, 1401a, 1514, 1516a of this title; title 28 section 2635.

PART I—IMPOSITION OF COUNTERVAILING DUTIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1677, 1677a, 1677c, 2251 of this title.

§ 1671. Countervailing duties imposed

(a) General rule

If—

(1) the administering authority determines that—

[*See main edition for text of* (*A*) *and* (*B*)]

is providing, directly or indirectly, a subsidy with respect to the manufacture, production, or exportation of a class or kind of merchandise imported, or sold (or likely to be sold) for importation, into the United States, and

(2) the Commission determines that—

[*See main edition for text of* (*A*) *and* (*B*)]

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise a countervailing duty, in addition to any other duty imposed, equal to the amount of the net subsidy. For purposes of this subsection and section 1671d(b)(1) of this title, a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

[*See main edition for text of* (*b*) *and* (*c*)]

(g) Upstream subsidies [1]

Whenever the administering authority has reasonable grounds to believe or suspect that an upstream subsidy, as defined in section 1677-1(a)(1) [2] of this title, is being paid or bestowed, the administering authority shall investigate whether an upstream subsidy has in fact been paid or bestowed, and if so, shall include the amount of the upstream subsidy as provided in section 1677-1(a)(3) [3] of this title.

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, §§ 602(a)(1), 613(b), 98 Stat. 3024, 3035.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573, § 602(a)(1)(C), added, following par. (2), provision that for purposes of this subsection and section 1671d(b)(1) of this title, a reference to the sale of merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

Subsec. (a)(1). Pub. L. 98-573, § 602(a)(1)(A), inserted ", or sold (or likely to be sold) for importation," in provisions following subpar. (B).

Subsec. (a)(2). Pub. L. 98-573, § 602(a)(1)(B), inserted "or by reason of sales (or the likelihood of sales) of that merchandise for importation" in provisions following subpar. (B).

Subsec. (g). Pub. L. 98-573, § 613(b), added subsec. (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 626 of title VI of Pub. L. 98-573 provided that:

"(a) Except as provided in subsections (b) and (c), this Act [probably should be "this title"], and the amendments made by it [enacting sections 1671h, 1677-1, and 1677h of this title; amending sections 1671, 1671b to 1671e, 1673c, 1673d, 1677a to 1677f, and 1677g of this title; and repealing sections 1673h and 1673i of this title], shall take effect on the date of the enactment of this Act [Oct. 30, 1984].

"(b)(1) The amendments made by sections 602, 609, 611, 612, and 620 [enacting sections 1676, 1676a, and

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[1] So in original. No subsecs. (d) to (f) of this section have been enacted.

[2] So in original. Probably should be "section 1677-1(a)".

[3] So in original. Probably should be "section 1677-1(c)".

1677f-1 of this title and amending sections 1514, 1671, 1671c, 1671d, 1673, 1673a, 1673c, 1673d, 1675, 1677, and 1677b of this title, section 2631 of Title 28, Judiciary and Judicial Procedure, and provisions set out as a note under section 1671 of this title] shall apply with respect to investigations initiated by petition or by the administering authority under subtitles A and B of title VII of the Tariff Act of 1930 [parts I and II of this subtitle] on or after such effective date.

"(2) The amendments made by section 623 [amending section 1516a of this title and sections 2636 and 2647 of Title 28] shall apply with respect to civil actions pending on, or filed on or after, the date of the enactment of this Act [Oct. 30, 1984].

"(c)(1) No provision of title VII of the Tariff Act of 1930 [this subtitle] shall be interpreted to prevent the refiling of a petition under section 702 or 732 of that title [sections 1671a and 1673a of this title] that was filed before the date of the enactment of this title, if the purpose of such refiling is to avail the petitioner of the amendment made by section 612(a)(1) [amending section 1677(4)(A) of this title].

"(2) The amendment made by section 612(a)(1) shall not apply with respect to petitions filed (or refiled under paragraph (1)) under section 702 or 732 of the Tariff Act of 1930 after September 30, 1986."

TRANSITION RULES FOR COUNTERVAILING DUTY ORDERS

Section 104 of Pub. L. 96-39, as amended by Pub. L. 98-573, title VI, § 611(c), Oct. 30, 1984, 98 Stat. 3033, provided that:

[See main edition for text of (a)]

"(b) OTHER COUNTERVAILING DUTY ORDERS.—

[See main edition for text of (1)]

"(2) DETERMINATION BY THE COMMISSION.—In a case described in paragraph (1) with respect to which it has received a request for review, the Commission shall commence an investigation to determine whether—

[See main edition for text of (A) and (B)]

by reason of imports of the merchandise covered by the countervailing duty order if the order were to be revoked. A negative determination by the Commission under this paragraph shall not be based, in whole or in part, on any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

[See main edition for text of (3) and (4); (c) to (e)]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1337, 1671a, 1671e, 1677 of this title.

§ 1671a. Procedures for initiating a countervailing duty investigation

[See main edition for text of (a)]

(b) Initiation by petition

[See main edition for text of (1) and (2)]

(3) Petition based upon a derogation of an international undertaking on official export credits

If the sole basis of a petition filed under subsection (b)(1) of this section is the derogation of an international undertaking on official export credits, the Administering Authority shall immediately notify the Secretary of the Treasury who shall, in consultation with the Administering Authority, within twenty days determine the existence and estimated value of the derogation, if any, and shall publish such determination in the Federal Register.

[See main edition for text of (c) and (d)]

(As amended Nov. 30, 1983, Pub. L. 98-181, title VI, § 650(a), 97 Stat. 1266.)

AMENDMENTS

1983—Subsec. (b)(3). Pub. L. 98-181 added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1671b, 1671c of this title.

§ 1671b. Preliminary determinations

[See main edition for text of (a)]

(b) Preliminary determination by administering authority; expedited determinations; waiver of verification

(1) Within 85 days after the date on which a petition is filed under section 1671a(b) of this title, or an investigation is commenced under section 1671a(a) of this title, but not before an affirmative determination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the best information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that a subsidy is being provided with respect to the merchandise which is the subject of the investigation. If the determination of the administering authority under this subsection is affirmative, the determination shall include an estimate of the net subsidy.

(2) Notwithstanding subsection (b)(1) of this section, when the petition is one subject to section 1671a(b)(3) of this title, the Administering Authority shall, taking into account the nature of the subsidy concerned, make the determination required by subsection (b)(1) of this section on an expedited basis and within 85 days after the date on which the petition is filed under section 1671a(b) of this title unless the provisions of subsection (c) of this section apply.

(3) Within 55 days after the initiation of an investigation the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 50 days of the investigation, and, if there appears to be sufficient information available upon which the determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 1677f of this title. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), or (F) of section 1677(9) of this title to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a determination made on

the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), or (F) of section 1677(9) of this title to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made on an expedited basis on the basis of the record established during the first 50 days after the investigation was initiated.

[*See main edition for text of (c) to (f)*]

(h) [4] **Time period where upstream subsidization is involved**

(1) In general

Whenever the administering authority concludes prior to a preliminary determination under subsection (b) of this section, that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed, the time period within which a preliminary determination must be made shall be extended to 250 days after the filing of a petition under section 1671a(b) of this title or commencement of an investigation under section 1671a(a) of this title (310 days in cases declared extraordinarily complicated under subsection (c) of this section), if the administering authority concludes that such additional time is necessary to make the required determination concerning upstream subsidization.

(2) Exceptions

Whenever the administering authority concludes, after a preliminary determination under subsection (b) of this section, that there is a reasonable basis to believe or suspect that an upstream subsidy is being bestowed—

(A) in cases in which the preliminary determination was negative, the time period within which a final determination must be made shall be extended to 165 days under section 1671d(a)(1) of this title or 225 days under section 1671d(a)(2) of this title, as appropriate; or

(B) in cases in which the preliminary determination is affirmative, the determination concerning upstream subsidization—

(i) need not be made until the conclusion of the first annual review under section 1675 of this title of any eventual Countervailing Duty Order, or, at the option of the petitioner, or

(ii) will be made in the investigation and the time period within which a final determination must be made shall be extended to 165 days under section 1671d(a)(2) of this title, as appropriate, except that the suspension of liquidation ordered in the preliminary determination shall terminate at the end of 120 days from the date of publication of that determination and not be resumed unless and until the publication of a Countervailing Duty Order under section 1671e(a) of this title.

There may be an extension of time for the making of a final determination under this subsection only if the administering authority determines that such additional time is necessary to make the required determination concerning upstream subsidization.

(As amended Nov. 30, 1983, Pub. L. 98-181, title VI, § 650(b), 97 Stat. 1266; Oct. 30, 1984, Pub. L. 98-573, title VI, §§ 603, 613(c), 98 Stat. 3024, 3036.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98-573, § 603, added par. (3).

Subsec. (h). Pub. L. 98-573, § 613(c), added subsec. (h).

1983—Subsec. (b). Pub. L. 98-181 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1516a, 1671c, 1671d, 1671e, 1671f, 1671g, 1673d, 1677 of this title.

§ 1671c. Termination or suspension of investigation

(a) Termination of investigation upon withdrawal of petition

(1) In general

Except as provided in paragraphs (2) and (3), an investigation under this part may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 1671a(a) of this title.

(2) Special rules for quantitative restriction agreements

(A) In general

Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting, with the government of the country in which the subsidy practice is alleged to occur, an understanding or other kind of agreement to limit the volume of imports into the United States of the merchandise that is subject to the investigation unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors

In making a decision under subparagraph (A) regarding the public interest, the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of countervailing duties;

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[4] So in original. No subsec. (g) of this section has been enacted.

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations

Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by Commission

The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 1671b(b) of this title.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Additional rules and conditions

(1) Public interest; monitoring

The administering authority shall not accept an agreement under subsection (b) or (c) of this section unless—

(A) it is satisfied that suspension of the investigation is in the public interest, and

(B) effective monitoring of the agreement by the United States is practicable.

In applying subparagraph (A) with respect to any quantitative restriction agreement under subsection (c) of this section, the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsection (a)(2)(B)(i), (ii), and (iii) of this section as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsection (a)(2)(C)(i) and (ii) of this section.

(2) Regulations governing entry or withdrawals

In order to carry out an agreement concluded under subsection (b) or (c) of this section, the administering authority is authorized to prescribe regulations governing the entry, or withdrawal from warehouse, for consumption of merchandise covered by such agreement.

(e) Suspension of investigation procedure

Before an investigation may be suspended under subsection (b) or (c) of this section the administering authority shall—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) permit all interested parties described in section 1677(9) of this title to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A) of this section.

[*See main edition for text of* (*f*)]

(g) Investigation to be continued upon request

If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

(1) the government of the country in which the subsidy practice is alleged to occur, or

(2) an interested party described in subparagraph[5] (C), (D), (E), and (F) of section 1677(9) of this title which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) Review of suspension

(1) In general

Within 20 days after the suspension of an investigation under subsection (c) of this section, an interested party which is a party to the investigation and which is described in subparagraph[5] (C), (D), (E), and (F) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

[*See main edition for text of* (*2*) *and* (*3*)]

(i) Violation of agreement

(1) In general

If the administering authority determines that an agreement accepted under subsection (b) or (c) of this section is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1) of this section, of elimination of injury) and subsection (d) of this section, then, on the date of publication of its determination, it shall—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) if the investigation was completed under subsection (g) of this section, issue a countervailing duty order under section 1671e(a) of this title effective with respect to entries of merchandise the liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

[*See main edition for text of* (*2*); (*j*)]

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[5] So in original. Probably should be "subparagraphs".

(k) Termination of investigations initiated by administering authority

The administering authority may terminate any investigation initiated by the administering authority under section 1671a(a) of this title after providing notice of such termination to all parties to the investigation.

(As amended Oct. 30, 1984, Pub. L. 98–573, title VI, §§ 604(a), 612(b)(2), 98 Stat. 3025, 3034.)

Amendments

1984—Subsec. (a). Pub. L. 98–573, § 604(a)(1), amended subsec. (a) generally. Prior to amendment subsec. (a) read: "An investigation under this part may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 1671b(b) of this title."

Subsec. (d)(1). Pub. L. 98–573, § 604(a)(2)(A), added provision, following subpar. (B), that in applying subpar. (A) with respect to any quantitative restriction agreement under subsec. (c) of this section, the administering authority shall take into account, in addition to such other factors as are considered necessary or appropriate, the factors set forth in subsec. (a)(2)(B)(i), (ii), and (iii) of this section as they apply to the proposed suspension and agreement, after consulting with the appropriate consuming industries, producers, and workers referred to in subsec. (a)(2)(C)(i) and (ii) of this section.

Subsec. (d)(2), (3). Pub. L. 98–573, § 604(a)(2)(B), (C), redesignated par. (3) as (2) and struck out former par. (2) which had provided that exports of merchandise to the United States were not to increase during the interim period.

Subsec. (e)(3). Pub. L. 98–573, § 604(a)(3), substituted "all interested parties described in section 1677(9) of this title" for "all parties to the investigation".

Subsecs. (g)(2), (h)(1). Pub. L. 98–573, § 612(b)(2), substituted reference to subpar. "(C), (D), (E), and (F)" for "(C), (D), or (E)" of section 1677(9) of this title.

Subsec. (i)(1)(D), (E). Pub. L. 98–573, § 604(a)(4)(A)–(C), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (k). Pub. L. 98–573, § 604(a)(5), added subsec. (k).

Effective Date of 1984 Amendment

Amendment by section 604 of Pub. L. 98–573 effective Oct. 30, 1984, and amendment by section 612 of Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, on or after Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98–573, set out as a note under section 1671 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1303, 1516a, 1675, 1676, 1676a of this title; title 28 section 1582.

§ 1671d. Final determinations

(a) Final determination by administering authority

(1) In general

Within 75 days after the date of the preliminary determination under section 1671b(b) of this title, the administering authority shall make a final determination of whether or not a subsidy is being provided with respect to the merchandise; except that when an investigation under this part is initiated simultaneously with an investigation under part II of this subtitle, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under part II of this subtitle.

(2) Critical circumstances determinations

If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 1671b(e) of this title, shall also contain a finding as to whether—

(A) the subsidy is inconsistent with the Agreement, and

(B) there have been massive imports of the class or kind of merchandise involved over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 1671b(e)(1) of this title was negative.

(b) Final determination by Commission

(1) In general

The Commission shall make a final determination of whether—

[See main edition for text of (A) and (B)]

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) of this section.

[See main edition for text of (2) to (4)]

(c) Effect of final determinations

[See main edition for text of (1) and (2)]

(3) Effect of negative determinations under subsections (a)(2) and (b)(4)(A) of this section

If the determination of the administering authority or the Commission under subsection (a)(2) and (b)(4)(A) of this section, respectively, is negative, then the administering authority shall—

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 1671b(e)(2) of this title, and

[See main edition for text of (B)]

(4) Effect of affirmative determination under subsection (a)(2) of this section

If the determination of the administering authority under subsection (a)(2) of this section is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 1671b(b) and 1671b(e)(1) of this title were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 1671b(e)(2) of this title;

(B) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was affirmative, but the preliminary determination under section 1671b(e)(1) of this title was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 1671b(d) of this title to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 1671b(b) of this title was negative, shall apply any suspension of liquidation and security requirement ordered under subsection (c)(1)(B) of this section to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

[*See main edition for text of* (*d*)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, §§ 602(a)(2), 605(a), 606, 98 Stat. 3024, 3028, 3029.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-573, § 606, added provision that when an investigation under this part is initiated simultaneously with an investigation under part II of this subtitle, which involves imports of the same class or kind of merchandise from the same or other countries, the administering authority, if requested by the petitioner, shall extend the date of the final determination under this paragraph to the date of the final determination of the administering authority in such investigation initiated under part II of this subtitle.

Subsec. (a)(2). Pub. L. 98-573, § 605(a)(1), added provision after subpar. (B) that such findings may be affirmative even though the preliminary determination under section 1671b(e)(1) of this title was negative.

Subsec. (b)(1). Pub. L. 98-573, § 602(a)(2), inserted ", or sales (or the likelihood of sales for importation," in provision after subpar. (B).

Subsec. (c)(3)(A). Pub. L. 98-573, § 605(a)(3), added reference to par. (4).

Subsec. (c)(4). Pub. L. 98-573, § 605(a)(2), added par. (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 602 of Pub. L. 98-573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle, on or after Oct. 30, 1984, and amendment by sections 605 and 606 of Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98-573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1516a, 1671, 1671b, 1671c, 1671e, 1671f, 1675, 1676a, 1677, 1677c of this title.

§ 1671e. Assessment of duty

(a) Publication of countervailing duty order

Within 7 days after being notified by the Commission of an affirmative determination under section 1671d(b) of this title, the administering authority shall publish a countervailing duty order which—

[*See main edition for text of* (*1*)]

(2) shall presumptively apply to all merchandise of such class or kind exported from the country investigated, except that if—

(A) the administering authority determines there is a significant differential between companies receiving subsidy benefits, or

(B) a State-owned enterprise is involved,

the order may provide for differing countervailing duties,

(3) includes a description of the class or kind of merchandise to which it applies, in such detail as the administering authority deems necessary, and

(4) requires the deposit of estimated countervailing duties pending liquidation of entries of merchandise at the same time as estimated normal customs duties on that merchandise are deposited.

[*See main edition for text of* (*b*)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 607, 98 Stat. 3029.)

AMENDMENTS

1984—Subsec. (a)(2) to (4). Pub. L. 98-573 added par. (2) and redesignated pars. (2) and (3) as (3) and (4), respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1671b, 1671c, 1671d, 1671f, 1671g, 1676a, 1677 of this title.

§ 1671g. Export-Import Bank financing

Nothing in this subtitle shall be interpreted as superseding the provisions of section 635a-3 of title 12, except that in the event of an assessment of duty based on a derogation under section 1671e of this title or action under section 1671b(d)(2) of this title, the Secretary of the Treasury shall not authorize the Bank to provide guarantees, insurance and credits to competing United States sellers pursuant to section 635a-3 of title 12.

(June 17, 1930, ch. 497, title VII, § 708, as added Nov. 30, 1983, Pub. L. 98-181, title VI, § 650(c), 97 Stat. 1266.)

§ 1671h. Conditional payment of countervailing duties

(a) In general

For all entries, or withdrawals from warehouse, for consumption of merchandise subject to a countervailing duty order on or after the date of publication of such order, no customs officer may deliver merchandise of that class or kind to the person by whom or for whose account it was imported unless that person complies with the requirement of subsection (b) of this section and deposits with the appropriate customs officer an estimated countervailing duty in an amount determined by the administering authority.

(b) Importer requirements

In order to meet the requirements of this subsection, a person shall—

(1) furnish, or arrange to have furnished, to the appropriate customs officer such information as the administering authority deems necessary for ascertaining any countervailing duty to be imposed under this part,

(2) maintain and furnish to the customs officer such records concerning such merchandise as the administering authority, by regulation, requires, and

(3) pay, or agree to pay on demand, to the customs officer the amount of countervailing duty imposed under this part on that merchandise.

(June 17, 1930, ch. 497, title VII, § 709, as added Oct. 30, 1984, Pub. L. 98-573, title VI, § 608, 98 Stat. 3029.)

Effective Date

Section effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

Part II—Imposition of Antidumping Duties

Part Referred to in Other Sections

This part is referred to in sections 1337, 1671d, 1677, 1677c, 2033, 2251 of this title; title 28 section 1582.

§ 1673. Imposition of antidumping duties

If—

[*See main edition for text of (1)*]

(2) the Commission determines that—

[*See main edition for text of (A) and (B)*]

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the foreign market value exceeds the United States price for the merchandise. For purposes of this section and section 1673d(b)(1) of this title, a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 602(b), 98 Stat. 3024.)

Amendments

1984—Pub. L. 98-573 inserted "or by reason of sales (or the likelihood of sales) of that merchandise for importation" after "by reason of imports of that merchandise" in par. (2), and added at the end provision that for purposes of this section and section 1673d(b)(1) of this title, a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98-573, set out as a note under section 1671 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1337, 1673a, 1673d, 1673e, 1673g, 1673i, 1677 of this title.

§ 1673a. Procedures for initiating an antidumping duty investigation

(a) Initiation by administering authority

(1) In general

An antidumping duty investigation shall be commenced whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 1673 of this title exist.

(2) Cases involving persistent dumping

(A) Monitoring

The administering authority may establish a monitoring program with respect to imports of a class or kind of merchandise from any additional supplier country for a period not to exceed one year if—

(i) more than one antidumping order is in effect with respect to that class or kind of merchandise;

(ii) in the judgment of the administering authority there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping from one or more additional supplier countries; and

(iii) in the judgment of the administering authority this extraordinary pattern is causing a serious commercial problem for the domestic industry.

(B) Commencement of investigation

If during the period of monitoring referred to in subparagraph (A), the administering authority determines that there is sufficient information to commence a formal investigation under this subsection regarding an additional supplier country, the administering authority shall immediately commence such an investigation.

(C) Definition

For purposes of this paragraph, the term "additional supplier country" means a country regarding which no antidumping investigation is currently pending, and no antidumping duty order is currently in effect, with respect to imports of the class or kind of merchandise covered by subparagraph (A).

(D) Expeditious action

The administering authority and the Commission, to the extent practicable, shall expedite proceedings under this part undertaken as a result of a formal investigation commenced under subparagraph (B).

[*See main edition for text of (b) to (d)*]

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 609, 98 Stat. 3030.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98-573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1673b, 1673c of this title.

§ 1673b. Preliminary determinations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1673c, 1673d, 1673e, 1673f, 1677 of this title.

§ 1673c. Termination or suspension of investigation

(a) Termination of investigation upon withdrawal of petition

(1) In general

Except as provided in paragraphs (2) and (3), an investigation under this part may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 1673a(a) of this title.

(2) Special rules for quantitative restriction agreements

(A) In general

Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the merchandise that is subject to the investigation unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors

In making a decision under subparagraph (A) regarding the public interest the administering authority shall take into account—

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations

Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with—

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by Commission

The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 1673b(b) of this title.

[*See main edition for text of (b) and (c)*]

(d) Additional rules and conditions

The administering authority may not accept an agreement under subsection (b) or (c) of this section unless—

(1) it is satisfied that suspension of the investigation is in the public interest, and

(2) effective monitoring of the agreement by the United States is practicable.

(e) Suspension of investigation procedure

Before an investigation may be suspended under subsection (b) or (c) of this section the administering authority shall—

[*See main edition for text of (1) and (2)*]

(3) permit all interested parties described in section 1677(9) of this title to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A) of this section.

[*See main edition for text of (f)*]

(g) Investigation to be continued upon request

If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from—

[*See main edition for text of (1)*]

(2) an interested party described in subparagraph[1] (C), (D), (E), and (F) of section

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[1] So in original. Probably should be "subparagraphs".

1677(9) of this title which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) Review of suspension

(1) In general

Within 20 days after the suspension of an investigation under subsection (c) of this section, an interested party which is a party to the investigation and which is described in subparagraph [2] (C), (D), (E), and (F) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

[*See main edition for text of (2) and (3)*]

(i) Violation of agreement

(1) In general

If the administering authority determines that an agreement accepted under subsection (b) or (c) of this section is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1) of this section, of elimination of injury) and subsection (d) of this section, then, on the date of publication of its determination, it shall—

[*See main edition for text of (A) and (B)*]

(C) if the investigation was completed under subsection (g) of this section, issue an antidumping duty order under section 1673e(a) of this title effective with respect to entries of merchandise liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of Customs who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

[*See main edition for text of (2); (j)*]

(k) Termination of investigation initiated by administering authority

The administering authority may terminate any investigation initiated by the administering authority under section 1673a(a) of this title after providing notice of such termination to all parties to the investigation.

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, §§ 604(b), 612(b)(2), 98 Stat. 3026, 3034.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573, § 604(b)(1), amended generally subsec. (a), which prior to amendment read: "An investigation under this part may be terminated by either the administering authority or the Commission after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner. The Commission may not terminate an investigation under the preceding sentence before a preliminary determination is made by the administering authority under section 1673b(b) of this title."

Subsec. (d). Pub. L. 98-573, § 604(b)(2), struck out the designation "(1)" preceding the first sentence, substituted "may not accept" for "shall not accept", redesignated former subpars. (A) and (B) as pars. (1) and (2), respectively, and struck out former par. (2), which had provided that exports of merchandise to the United States were not to increase during the interim period.

Subsec. (e)(3). Pub. L. 98-573, § 604(b)(3), substituted "all interested parties described in section 1677(9) of this title" for "all parties to the investigation".

Subsecs. (g)(2), (h)(1). Pub. L. 98-573, § 612(b)(2), substituted reference to subpar. "(C), (D), (E), and (F)" for "(C), (D), or (E)" of section 1677(9) of this title.

Subsec. (i)(1)(D), (E). Pub. L. 98-573, § 604(b)(4), added subpar. (D) and redesignated former subpar. (D) as (E).

Subsec. (k). Pub. L. 98-573, § 604(b)(5), added subsec. (k).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 604 of Pub. L. 98-573 effective Oct. 30, 1984, and amendment by section 612 of Pub. L. 98-573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle on or after Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98-573, set out as a note under section 1671 of this title.

§ 1673d. Final determinations

(a) Final determination by administering authority

[*See main edition for text of (1) and (2)*]

(3) Critical circumstances determinations

If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 1673b(e) of this title, shall also contain a finding of whether—

[*See main edition for text of (A) and (B)*]

Such findings may be affirmative even though the preliminary determination under section 1673b(e)(1) of this title was negative.

(b) Final determination by Commission

(1) In general

The Commission shall make a final determination of whether—

[*See main edition for text of (A) and (B)*]

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1) of this section.

[*See main edition for text of (2) to (4)*]

(c) Effect of final determinations

[*See main edition for text of (1) and (2)*]

(3) Effect of negative determinations under subsections (a)(3) and (b)(4)(A) of this section

If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A) of this section, respectively, is negative, then the administering authority shall—

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[2] So in original. Probably should be "subparagraphs".

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 1673b(e)(2) of this title, and

[*See main edition for text of* (*B*)]

(4) Effect of affirmative determination under subsection (a)(3) of this section

If the determination of the administering authority under subsection (a)(3) of this section is affirmative, then the administering authority shall—

(A) in cases where the preliminary determinations by the administering authority under sections 1673b(b) and 1673b(e)(1) of this title were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 1673b(e)(2) of this title;

(B) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was affirmative, but the preliminary determination under section 1673b(e)(1) of this title was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 1673b(d) of this title to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was negative, shall apply any suspension of liquidation and security requirement ordered under subsection (c)(1)(B) of this section to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

[*See main edition for text of* (*d*)]

(As amended Oct. 30, 1984, Pub. L. 98–573, title VI, §§ 602(c), 605(b), 98 Stat. 3024, 3028.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98–573, § 605(b)(1), added provision that such findings may be affirmative even though the preliminary determination under section 1673b(e)(1) of this title was negative.

Subsec. (b)(1). Pub. L. 98–573, § 602(c), inserted ", or sales (or the likelihood of sales) for importation," in provisions after subpar. (B).

Subsec. (c)(3)(A). Pub. L. 98–573, § 605(b)(3), added reference to par. (4).

Subsec. (c)(4). Pub. L. 98–573, § 605(b)(2), added par. (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 602 of Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle on or after Oct. 30, 1984, and amendment by section 605 of Pub. L. 98–573 effective Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98–573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1673, 1673c, 1673e, 1673f, 1675, 1677, 1677c of this title.

§ 1673e. Assessment of duty

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1673c, 1673d, 1673f, 1677 of this title.

§§ 1673h, 1673i. Repealed. Pub. L. 98–573, title VI, §§ 610(a), 622(a)(1), Oct. 30, 1984, 98 Stat. 3031, 3039

Section 1673h, act June 17, 1930, ch. 497, title VII, § 739, as added July 26, 1979, Pub. L. 96–39, title I, § 101, 93 Stat. 174, related to duties of customs officers.

Section 1673i, act June 17, 1930, ch. 497, title VII, § 740, as added July 26, 1979, Pub. L. 96–39, title I, § 101, 93 Stat. 175, provided that the antidumping duty imposed by section 1673 of this title was to be treated as a normal customs duty for drawback purposes. See section 1677h of this title.

EFFECTIVE DATE OF REPEAL

Sections repealed effective Oct. 30, 1984, see section 626(a) of Pub. L. 98–573, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

PART III—REVIEWS; OTHER ACTIONS REGARDING AGREEMENTS

CODIFICATION

The designation "PART III" was in the original "SUBTITLE C" and was editorially changed in order to conform the numbering format of this subtitle to the usages employed in the codification of the remainder of the Tariff Act of 1930 as originally enacted.

SUBPART A—REVIEW OF AMOUNT OF DUTY AND AGREEMENTS OTHER THAN QUANTITATIVE RESTRICTION AGREEMENTS

§ 1675. Administrative review of determinations

(a) Periodic review of amount of duty

(1) In general

At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this subtitle or under section 1303 of this title, an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall—

[*See main edition for text of* (*A*) *to* (*C*)]

and shall publish the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed in the Federal Register.

[*See main edition for text of* (*2*)]

(b) Review upon information or request

(1) In general

Whenever the administering authority or the Commission receives information concerning, or a request for the review of, an agreement accepted under section 1671c of this title (other than a quantitative restriction agreement described in subsection (a)(2) or (c)(3)) or 1673c of this title (other than a quantitative restriction agreement described in subsection (a)(2)) or an affirmative determination made under section 1671c(h)(2), 1671d(a), 1671d(b), 1673c(h)(2), 1673d(a), 1673d(b), 1676a(a)(1), or 1676a(a)(2) of this title, which shows changed circumstances sufficient to warrant a review of such determination, it shall conduct such a review after publishing notice of the review in the Federal Register. In reviewing its determination under section 1671c(h)(2) or 1673c(h)(2) of this title, the Commission shall consider whether, in the light of changed circumstances, an agreement accepted under section 1671c(c) or 1673c(c) of this title continues to eliminate completely the injurious effects of imports of the merchandise. During an investigation by the Commission, the party seeking revocation of an antidumping order shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation of the antidumping order.

[*See main edition for text of* (*2*)]

(c) Revocation of countervailing duty order or antidumping duty order

The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order, or terminate a suspended investigation, after review under this section. The administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received. Any such revocation or termination shall apply with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on and after a date determined by the administering authority.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 611(a)(2), (3), 98 Stat. 3031.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-573, § 611(a)(2)(A), inserted "if a request for such a review has been received and" in provisions preceding subpar. (A).

Subsec. (b)(1). Pub. L. 98-573, § 611(a)(2)(B), substituted "1671c of this title (other than a quantitative restriction agreement described in subsection (a)(2) or (c)(3)) or 1673c of this title (other than a quantitative restriction agreement described in subsection (a)(2))" for "1671c or 1673c of this title", added reference to section 1676a(a)(1) or 1676a(a)(2) of this title, and added provision that during an investigation by the Commission, the party seeking revocation of an antidumping order shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant revocation of the antidumping order.

Subsec. (c). Pub. L. 98-573, § 611(a)(3), added provision that the administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the subsidy received.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98-573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1671b, 1671c, 1673c, 1677e, 1677f-1 of this title.

SUBPART B—CONSULTATIONS AND DETERMINATIONS REGARDING QUANTITATIVE RESTRICTION AGREEMENTS

§ 1676. Required consultations

(a) Agreements in response to subsidies

Within 90 days after the administering authority accepts a quantitative restriction agreement under section 1671c(a)(2) or (c)(3) of this title, the President shall enter into consultations with the government that is party to the agreement for purposes of—

(1) eliminating the subsidy completely, or

(2) reducing the net subsidy to a level that eliminates completely the injurious effect of exports to the United States of the merchandise.

(b) Modification of agreements on basis of consultations

At the direction of the President, the administering authority shall modify a quantitative restriction agreement as a result of consultations entered into under subsection (a) of this section.

(c) Special rule regarding agreements under section 1671c(c)(3) of this title

This chapter shall cease to apply to a quantitative restriction agreement described in section 1671c(c)(3) of this title at such time as that agreement ceases to have force and effect under section 1671c(f) of this title or violation is found under section 1671c(i) of this title.

(June 17, 1930, ch. 497, title VII, § 761, as added Oct. 30, 1984, Pub. L. 98-573, title VI, § 611(a)(4), 98 Stat. 3031.)

EFFECTIVE DATE

Subpart applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

§ 1676a. Required determinations

(a) In general

Before the expiration date, if any, of a quantitative restriction agreement accepted under section 1671c(a)(2) or 1671c(c)(3) of this title (if suspension of the related investigation is still in effect)—

(1) the administering authority shall, at the direction of the President, initiate a proceeding to determine whether any subsidy is being provided with respect to the merchandise subject to the agreement and, if being so provided, the net subsidy; and

(2) if the administering authority initiates a proceeding under paragraph (1), the Commission shall determine whether imports of the merchandise of the kind subject to the agreement will, upon termination of the agreement, materially injure, or threaten with material injury, an industry in the United States or materially retard the establishment of such an industry.

(b) Determinations

The determinations required to be made by the administering authority and the Commission under subsection (a) of this section shall be made under such procedures as the administering authority and the Commission, respectively, shall by regulation prescribe, and shall be treated as final determinations made under section 1671d of this title for purposes of judicial review under section 1516a of this title. If the determinations by each are affirmative, the administering authority shall—

(1) issue a countervailing duty order under section 1671e of this title effective with respect to merchandise entered on and after the date on which the agreement terminates; and

(2) order the suspension of liquidation of all entries of merchandise subject to the order which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of the order in the Federal Register.

(c) Hearings

The determination proceedings required to be prescribed under subsection (b) of this section shall provide that the administering authority and the Commission must, upon the request of any interested party, hold a hearing in accordance with section 1677c of this title on the issues involved.

(June 17, 1930, ch. 497, title VII, § 762, as added Oct. 30, 1984, Pub. L. 98-573, title VI, § 611(a)(4), 98 Stat. 3032.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1675 of this title.

PART IV—GENERAL PROVISIONS

§ 1677. Definitions; special rules

For purposes of this subtitle—

[*See main edition for text of (1) to (3)*]

(4) Industry

(A) In general

The term "industry" means the domestic producers as a whole of a like product, or those producers whose collective output of the like product constitutes a major proportion of the total domestic production of that product; except that in the case of wine and grape products subject to investigation under this subtitle, the term also means the domestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those producers allege material injury, or threat of material injury, as a result of imports of such wine and grape products.

[*See main edition for text of (B) to (D); (5) and (6)*]

(7) Material injury

[*See main edition for text of (A) and (B)*]

(C) Evaluation of volume and of price effects

For purposes of subparagraph (B)—

[*See main edition for text of (i) to (iii)*]

(iv) Cumulation

For purposes of clauses (i) and (ii), the Commission shall cumulatively assess the volume and effect of imports from two or more countries of like products subject to investigation if such imports compete with each other and with like products of the domestic industry in the United States market.

[*See main edition for text of (D) and (E)*]

(F) Threat of material injury

(i) In general

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of any merchandise, the Commission shall consider, among other relevant economic factors—

(I) if a subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the subsidy is an export subsidy inconsistent with the Agreement),

(II) any increase in production capacity or existing unused capacity in the exporting country likely to result in a significant increase in imports of the merchandise to the United States,

(III) any rapid increase in United States market penetration and the likelihood that the penetration will increase to an injurious level,

(IV) the probability that imports of the merchandise will enter the United States at prices that will have a depressing or suppressing effect on domestic prices of the merchandise,

(V) any substantial increase in inventories of the merchandise in the United States,

(VI) the presence of underutilized capacity for producing the merchandise in the exporting country,

(VII) any other demonstrable adverse trends that indicate the probability that the importation (or sale for importation) of the merchandise (whether or not it is actually being imported at the time) will be the cause of actual injury, and

(VIII) the potential for product-shifting if production facilities owned or controlled by the foreign manufacturers, which can be used to produce products subject to investigation(s) under section 1671 or 1673 of this title or to find orders under section 1671e or 1673e of this title, are also used to produce the merchandise under investigation.

(ii) Basis for determination

Any determination by the Commission under this subtitle that an industry in the United States is threatened with material injury shall be made on the basis of evidence that the threat of material injury is real and that actual injury is imminent. Such a determination may not be made on the basis of mere conjecture or supposition.

[*See main edition for text of* (*8*)]

(9) Interested party

The term "interested party" means—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a like product,

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a like product in the United States, and

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a like product.

[*See main edition for text of* (*10*) *to* (*13*)]

(14) Sold or, in the absence of sales, offered for sale

The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered—

(A) to all purchasers in commercial quantities, or

(B) in the ordinary course of trade to one or more selected purchasers in commercial quantities at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment shall be made therefor in calculating the price at which the merchandise is sold or offered for sale.

[*See main edition for text of* (*15*) *and* (*16*)]

(17) Usual commercial quantities

The term "usual commercial quantities", in any case in which the merchandise which is the subject of the investigation is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 612(a), 98 Stat. 3033.)

AMENDMENTS

1984—Par. (4)(A). Pub. L. 98-573, § 612(a)(1), added provision that in the case of wine and grape products subject to investigation under this subtitle, the term also means the domestic producers of the principal raw agricultural product (determined on either a volume or value basis) which is included in the like domestic product, if those producers allege material injury, or threat of material injury, as a result of imports of such wine and grape products.

Par. (7)(C)(iv). Pub. L. 98-623, § 612(a)(2)(A), added cl. (iv).

Par. (7)(F). Pub. L. 98-573, § 612(a)(2)(B), added subpar. (F).

Par. (9)(F). Pub. L. 98-573, § 612(a)(3), added subpar. (F).

Par. (14)(A), (B). Pub. L. 98-573, § 612(a)(4), substituted "in commercial quantities" for "at wholesale".

Par. (17). Pub. L. 98-573, § 612(a)(5), substituted "commercial quantities" for "wholesale quantities".

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle on or after Oct. 30, 1984; but provisions of this subtitle not to be interpreted to prevent refiling of a petition under section 1671a or 1673a of this title that was filed before Oct. 30, 1984, if the purpose of refiling was to avail petitioner of amendment of par. (4)(A) of this section by Pub. L. 98-573, and such amendment of par. (4)(A) inapplicable to petitions filed (or refiled) under section 1671a or 1673a of this title after Sept. 30, 1986, see section 626(b)(1), (c)(1), (2) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 1337, 1514, 1516a, 1671a, 1671b, 1671c, 1673a, 1673b, 1673c, 1677-1, 1677a, 1677b, 1677d, 1677e of this title; title 28 section 2631.

§ 1677-1. Upstream subsidies

(a) Definition

The term "upstream subsidy" means any subsidy described in section 1677(5)(B)(i), (ii), or (iii) of this title by the government of a country that—

(1) is paid or bestowed by that government with respect to a product (hereafter referred to as an "input product") that is used in the manufacture or production in that country of

merchandise which is the subject of a countervailing duty proceeding;

(2) in the judgment of the administering authority bestows a competitive benefit on the merchandise; and

(3) has a significant effect on the cost of manufacturing or producing the merchandise.

In applying this subsection, an association of two or more foreign countries, political subdivisions, dependent territories, or possessions of foreign countries organized into a customs union outside the United States shall be treated as being one country if the subsidy is provided by the customs union.

(b) Determination of competitive benefit

(1) In general

Except as provided in paragraph (2), the administering authority shall decide that a competitive benefit has been bestowed when the price for the input product referred to in subsection (a)(1) of this section for such use is lower than the price that the manufacturer or producer of merchandise which is the subject of a countervailing duty proceeding would otherwise pay for the product in obtaining it from another seller in an arms-length transaction.

(2) Adjustments

If the administering authority has determined in a previous proceeding that a subsidy is paid or bestowed on the input product that is used for comparison under paragraph (1), the administering authority may (A) where appropriate, adjust the price that the manufacturer or producer of merchandise which is the subject of such proceeding would otherwise pay for the product to reflect the effects of the subsidy, or (B) select in lieu of that price a price from another source.

(c) Inclusion of amount of subsidy

If the administering authority decides, during the course of a countervailing duty proceeding that an upstream subsidy is being or has been paid or bestowed regarding the merchandise under investigation, the administering authority shall include in the amount of any countervailing duty imposed on the merchandise an amount equal to the amount of the competitive benefit referred to in subparagraph (1)(B) [1], except that in no event shall the amount be greater than the amount of subsidization determined with respect to the upstream product.

(June 17, 1930, ch. 497, title VII, § 771A, as added Oct. 30, 1984, Pub. L. 98-573, title VI, § 613(a), 98 Stat. 3035.)

EFFECTIVE DATE

Section effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1671 of this title.

§ 1677a. United States price

[*See main edition for text of* (*a*)]

(b) Purchase price

For purposes of this section, the term "purchase price" means the price at which merchandise is purchased, or agreed to be purchased, prior to the date of importation, from a reseller or the manufacturer or producer of the merchandise for exportation to the United States. Appropriate adjustments for costs and expenses under subsection (d) of this section shall be made if they are not reflected in the price paid by the person by whom, or for whose account, the merchandise is imported.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 614, 98 Stat. 3036.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-573 inserted "a reseller or" before "the manufacturer".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1677f-1 of this title.

§ 1677b. Foreign market value

(a) Determination; fictitious market; sales agencies

For purposes of this subtitle—

(1) In general

The foreign market value of imported merchandise shall be the price, at the time such merchandise is first sold within the United States by the person for whom (or for whose account) the merchandise is imported to any other person who is not described in subsection (e)(3) of this section with respect to such person—

(A) at which such or similar merchandise is sold or, in the absence of sales, offered for sale in the principal markets of the country from which exported, in the usual commercial quantities and in the ordinary course of trade for home consumption, or

[*See main edition for text of* (*B*)]

increased by, when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States, except that in the case of merchandise purchased or agreed to be purchased by the person by whom or for whose account the merchandise is imported, prior to the time of importation, the foreign market value shall be ascertained as of the date of such purchase or agreement to purchase. In the ascertainment of foreign market value for the purposes of this subtitle no pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account.

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[1] So in original. Probably should be "subsection (a)(2) of this section".

[*See main edition for text of* (*2*) *and* (*3*)]

(4) Other adjustments

In determining foreign market value, if it is established to the satisfaction of the administering authority that the amount of any difference between the United States price and the foreign market value (or that the fact that the United States price is the same as the foreign market value) is wholly or partly due to—

(A) the fact that the commercial quantities, in which such or similar merchandise is sold or, in the absence of sales, offered for sale, for exportation to, or in the principal markets of, the United States, as appropriate, in the ordinary course of trade, are less or are greater than the commercial quantities in which such or similar merchandise is sold or, in the absence of sales, offered for sale, in the principal markets of the country of exportation in the ordinary course of trade for home consumption (or, if not so sold for home consumption, then for exportation to countries other than the United States);

[*See main edition for text of* (*B*) *and* (*C*)]

then due allowance shall be made therefor.

[*See main edition for text of* (*b*) *to* (*d*)]

(e) Constructed value

(1) Determination

For the purposes of this subtitle, the constructed value of imported merchandise shall be the sum of—

[*See main edition for text of* (*A*)]

(B) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise under consideration which are made by producers in the country of exportation, in the usual commercial quantities and in the ordinary course of trade, except that—

[*See main edition for text of* (*i*) *and* (*ii*), (*C*), (*2*) *and* (*3*)]

(f) Repealed. Pub. L. 98–573, title VI, § 620(b), Oct. 30, 1984, 98 Stat. 3039

(g) Exportation from an intermediate country

If—

(1) a reseller purchases the merchandise from the manufacturer or producer of the merchandise,

(2) the manufacturer or producer of the merchandise does not know (at the time of the sale to such reseller) the country to which such reseller intends to export the merchandise,

(3) the merchandise is exported by, or on behalf of, such reseller to a country other than the United States,

(4) the merchandise enters the commerce of such country but is not substantially transformed in such country, and

(5) the merchandise is subsequently exported to the United States,

such country shall be treated, for purposes of this section, as the country from which the merchandise was exported.

(As amended Oct. 30, 1984, Pub. L. 98–573, title VI, §§ 615, 620(b), 98 Stat. 3036, 3039.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–573, § 615(1), substituted "time such merchandise is first sold within the United States by the person for whom (or for whose account) the merchandise is imported to any other person who is not described in subsection (e)(3) of this section with respect to such person" for "time of exportation of such merchandise to the United States" in provisions preceding subpar. (A).

Subsecs. (a)(1)(A), (4)(A), (e)(1)(B). Pub. L. 98–573, § 615(2), substituted "commercial quantities" for "wholesale quantities" wherever appearing.

Subsec. (f). Pub. L. 98–573, § 620(b), struck out subsec. (f) which related to the authority to use sampling techniques and to disregard insignificant adjustments.

Subsec. (g). Pub. L. 98–573, § 615(3), added subsec. (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 615 of Pub. L. 98–573 effective Oct. 30, 1984, and amendment by section 620 of Pub. L. 98–573 applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle on or after Oct. 30, 1984, see section 626(a), (b)(1) of Pub. L. 98–573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1677f–1 of this title.

§ 1677c. Hearings

(a) Investigation hearings

(1) In general

Except as provided in paragraph (2), the administering authority and the Commission shall each hold a hearing in the course of an investigation upon the request of any party to the investigation before making a final determination under section 1671d or 1673d of this title.

(2) Exception

If investigations are initiated under part I and part II of this subtitle regarding the same merchandise from the same country within 6 months of each other (but before a final determination is made in either investigation), the holding of a hearing by the Commission in the course of one of the investigations shall be treated as compliance with paragraph (1) for both investigations, unless the Commission considers that special circumstances require that a hearing be held in the course of each of the investigations. During any investigation regarding which the holding of a hearing is waived under this paragraph, the Commission shall allow any party to submit such additional written comment as it considers relevant.

[*See main edition for text of* (*b*)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 616, 98 Stat. 3037.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573 designated existing provisions as par. (1), in par. (1) as so designated inserted "Except as provided in paragraph (2)," and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1673e, 1675, 1676a of this title.

§ 1677d. Subsidy practices discovered during proceeding

If, in the course of an [1] proceeding under this subtitle, the administering authority discovers a practice which appears to be a subsidy, but was not included in the matters alleged in a countervailing duty petition, then the administering authority—

(1) shall include the practice in the proceeding if it appears to be a subsidy with respect to the merchandise which is the subject of the proceeding, or

[*See main edition for text of* (*2*)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 617, 98 Stat. 3037.)

AMENDMENTS

1984—Pub. L. 98-573 substituted "proceeding" for "investigation" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

§ 1677e. Verification of information

(a) General rule

The administering authority shall verify all information relied upon in making—

(1) a final determination in an investigation,

(2) a revocation under section 1675(c) of this title, and

(3) a review and determination under section 1675(a) of this title, if—

(A) verification is timely requested by an interested party as defined in section 1677(9)(C), (D), (E), or (F) of this title, and

(B) no verification was made under this paragraph during the 2 immediately preceding reviews and determinations under that section of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

In publishing notice of any action referred to in paragraph (1), (2), or (3), the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its action, which may include, in actions referred to in paragraph (1), the information submitted in support of the petition.

[*See main edition for text of* (*b*)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 618, 98 Stat. 3037.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573 amended generally subsec. (a), which prior to amendment read: "Except with respect to information the verification of which is waived under section 1673b(b)(2) of this title, the administering authority shall verify all information relied upon in making a final determination in an investigation. In publishing such a determination, the administering authority shall report the methods and procedures used to verify such information. If the administering authority is unable to verify the accuracy of the information submitted, it shall use the best information available to it as the basis for its determination, which may include the information submitted in support of the petition."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

§ 1677f. Access to information

(a) Information generally made available

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Ex parte meetings

The administering authority and the Commission shall maintain a record of any ex parte meeting between—

(A) interested parties or other persons providing factual information in connection with a proceeding, and

(B) the person charged with making the determination, or any person charged with making a final recommendation to that person, in connection with that proceeding,

if information relating to that proceeding was presented or discussed at such meeting. The record of such an ex parte meeting shall include the identity of the persons present at the meeting, the date, time, and place of the meeting, and a summary of the matters discussed or submitted. The record of the ex parte meeting shall be included in the record of the proceeding.

[*See main edition for text of* (*4*)]

(b) Confidential information

(1) Confidentiality maintained

Except as provided in subsection (a)(4)(A) and subsection (c) of this section, information submitted to the administering authority or the Commission which is designated as confidential by the person submitting it shall not be disclosed to any person (other than an officer or employee of the administering authority or the Commission who is directly concerned with carrying out the investigation in connection with which the information is submitted, or an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this subtitle) without the consent of the person submitting it. The administering authority and the Commission shall require that information for which confidential treatment is requested be accompanied by—

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[1] So in original. Probably should be "a".

(A) either—

(i) a nonconfidential summary in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence, or

(ii) a statement that the information is not susceptible to summary accompanied by a statement of the reasons in support of the contention, and

(B) either—

(i) a statement which permits the administering authority to release under administrative protective order, in accordance with subsection (c) of this section, the information submitted in confidence, or

(ii) a statement that the information should not be released under administrative protective order.

[*See main edition for text of* (*2*)]

(c) Limited disclosure of certain confidential information under protective order

(1) Disclosure by administering authority or Commission

(A) In general

Upon receipt of an application, [1] (before or after receipt of the information requested) which describes with particularity the information requested and sets forth the reasons for the request, the administering authority and the Commission may make confidential information submitted by any other party to the investigation available under a protective order described in subparagraph (B).

[*See main edition for text of* (*B*), (*2*)]

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 619, 98 Stat. 3038.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-573, § 619(1), amended par. (3) generally, substituting in provisions preceding subpar. (A) "of any ex parte meeting" for "of ex parte meetings", in subpar. (A) "a proceeding" for "an investigation", in subpar. (B) "or any person" for "and any person" and "that proceeding," for "that investigation," and, in provisions following subpar. (B), "if information relating to that proceeding was presented or discussed at such meeting. The record of such an" for "The record of the".

Subsec. (b)(1). Pub. L. 98-573, § 619(2), in first sentence, added provision referring to an officer or employee of the United States Customs Service who is directly involved in conducting an investigation regarding fraud under this subtitle.

Pub. L. 98-573, § 619(3), amended second sentence generally, and thereby substituted "the Commission shall require" for "the Commission may require", designated existing provisions as subpar. (A) and, in subpar. (A) as so designated, substituted "either— (i) a nonconfidential summary" for "a non-confidential summary", inserted the designation "(ii)", substituted "summary accompanied" for "summary, accompanied", and added subpar. (B).

Subsec. (c)(1)(A). Pub. L. 98-573, § 619(4), inserted "(before or after receipt of the information requested)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1516a, 1671b of this title; title 28 section 1581, 2631, 2635, 2636, 2640, 2643.

§ 1677f-1. Sampling and averaging

(a) In general

For the purpose of determining United States price or foreign market value under sections 1677a and 1677b of this title, and for purposes of carrying out annual reviews under section 1675 of this title, the administering authority may—

(1) use averaging or generally recognized sampling techniques whenever a significant volume of sales is involved or a significant number of adjustments to prices is required, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(b) Selection of samples and averages

The authority to select appropriate samples and averages shall rest exclusively with the administering authority; but such samples and averages shall be representative of the transactions under investigation.

(June 17, 1930, ch. 497, title VII, § 777A, as added Oct. 30, 1984, Pub. L. 98-573, title VI, § 620(a), 98 Stat. 3039.)

EFFECTIVE DATE

Section applicable with respect to investigations initiated by petition or by the administering authority under parts I and II of this subtitle on or after Oct. 30, 1984, see section 626(b)(1) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

§ 1677g. Interest on certain overpayments and underpayments

(a) General rule

Interest shall be payable on overpayments and underpayments of amounts deposited on merchandise entered, or withdrawn from warehouse, for consumption on and after—

(1) the date of publication of a countervailing or antidumping duty order under this subtitle or section 1303 of this title, or

(2) the date of a finding under the Antidumping Act, 1921.

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[1] So in original. The comma probably should follow the parenthetical.

(b) Rate

The rate of interest payable under subsection (a) of this section for any period of time is the rate of interest established under section 6621 of title 26 for such period.

(As amended Oct. 30, 1984, Pub. L. 98-573, title VI, § 621, 98 Stat. 3039.)

REFERENCES IN TEXT

The Antidumping Act, 1921, referred to in subsec. (a)(2), is act May 27, 1921, ch. 14, title II, 42 Stat. 11, as amended, which was classified generally to sections 160 to 171 of this title, and was repealed by Pub. L. 96-39, title I, § 106(a), July 26, 1979, 93 Stat. 193.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573 amended subsec. (a) generally, substituting provisions making interest payable on and after the date of publication of a countervailing or antidumping duty order under this subtitle or section 1303 of this title or the date of a finding under the Antidumping Act, 1921 for provisions making interest payable on and after the date on which notice of an affirmative determination by the Commission under section 1671d(b) or 1673d(b) of this title with respect to such merchandise was published.

Subsec. (b). Pub. L. 98-573 amended subsec. (b) generally, substituting provisions that the rate of interest payable under subsec. (a) for any period of time is the rate of interest established under section 6621 of title 26 for such period for provision that the rate at which such interest was payable would be 8 percent per annum or, if higher, the rate in effect under section 6621 of title 26 on the date on which the rate or amount of the duty was finally determined.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as a note under section 1671 of this title.

§ 1677h. Drawbacks

For purposes of any law relating to the drawback of customs duties, countervailing duties and antidumping duties imposed by this subtitle shall be treated as any other customs duties.

(June 17, 1930, ch. 497, title VII, § 779, as added Oct. 30, 1984, Pub. L. 98-573, title VI, § 622(a)(2), 98 Stat. 3039.)

EFFECTIVE DATE

Section effective Oct. 30, 1984, see section 626(a) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1671 of this title.

CHAPTER 5—SMUGGLING

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1581, 1587, 1644 of this title.

§ 1704. Refusal or revocation of registry, enrollment, license or number on evidence that vessel engaging in smuggling; appeal; immunity from liability

CROSS REFERENCES

Definition of enrollment, license, or register with respect to vessel documentation, see section 12101 of Title 46, Shipping.

CHAPTER 7—TRADE EXPANSION PROGRAM

SUBCHAPTER II—TRADE AGREEMENTS

PART IV—NATIONAL SECURITY

§ 1862. Safeguarding national security

PROCLAMATION NO. 3279

Proc. No. 3279, Mar. 10, 1959, 24 F.R. 1781, as amended by Proc. No. 3290, Apr. 30, 1959, 24 F.R. 3527; Proc. No. 3328, Dec. 10, 1959, 24 F.R. 10133; Proc. No. 3386, Dec. 24, 1960, 25 F.R. 13945; Proc. No. 3389, Jan. 17, 1961, 26 F.R. 507; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Proc. No. 3509, Nov. 30, 1962, 27 F.R. 11985; Proc. No. 3531, Apr. 19, 1963, 28 F.R. 4077; Proc. No. 3541, June 12, 1963, 28 F.R. 5931; Proc. No. 3693, Dec. 10, 1965, 30 F.R. 15459; Proc. No. 3779, Apr. 10, 1967, 32 F.R. 5919; Proc. No. 3794, July 17, 1967, 32 F.R. 10547; Proc. No. 3820, Nov. 9, 1967, 32 F.R. 15701; Proc. No. 3823, Jan. 29, 1968, 33 F.R. 1171; Proc. No. 3969, Mar. 10, 1970, 35 F.R. 4321; Proc. No. 3990, June 17, 1970, 35 F.R. 10091; Proc. No. 4018, Oct. 16, 1970, 35 F.R. 16357; Proc. No. 4025, Dec. 22, 1970, 35 F.R. 19391; Proc. No. 4092, Nov. 5, 1971, 36 F.R. 21397; Proc. No. 4099, Dec. 20, 1971, 36 F.R. 24203; Proc. No. 4133, May 11, 1972, 37 F.R. 9543; Proc. No. 4156, Sept. 18, 1972, 37 F.R. 19115; Proc. No. 4175, Dec. 16, 1972, 37 F.R. 28043; Proc. No. 4178, Jan. 17, 1973, 38 F.R. 1719; Ex. Ord. No. 11703, Feb. 7, 1973, 38 F.R. 3579; Proc. No. 4202, Mar. 23, 1973, 38 F.R. 7977; Proc. No. 4210, Apr. 18, 1973, 38 F.R. 9645; Proc. No. 4227, June 19, 1973, 38 F.R. 16195; Ex. Ord. No. 11743, Oct. 23, 1973, 38 F.R. 29459; Ex. Ord. No. 11775, Mar. 26, 1974, 39 F.R. 11415; Ex. Ord. No. 11790, June 25, 1974, 39 F.R. 23185; Proc. No. 4317, Sept. 27, 1974, 39 F.R. 35103; Proc. No. 4341, Jan. 23, 1975, 40 F.R. 3965; Proc. No. 4355, Mar. 4, 1975, 40 F.R. 10437; Proc. No. 4370, Apr. 30, 1975, 40 F.R. 19421; Proc. No. 4377, May 27, 1975, 40 F.R. 23429; Proc. No. 4412, Jan. 3, 1976, 41 F.R. 1037; Proc. No. 4543, Dec. 27, 1977, 42 F.R. 64849; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4947; Proc. No. 4629, Dec. 8, 1978, 43 F.R. 58077; Proc. No. 4655, Apr. 6, 1979, 44 F.R. 21243; Proc. No. 4702, Nov. 12, 1979, 44 F.R. 65581; Proc. No. 4744, Apr. 2, 1980, 45 F.R. 22864; Proc. No. 4766, June 19, 1980, 45 F.R. 41899; Proc. No. 4907, Mar. 10, 1982, 47 F.R. 10507, which set forth regulations governing the licensing of imports of petroleum and petroleum products, was revoked by Proc. No. 5141, Dec. 22, 1983, 48 F.R. 56929, set out below.

PROC. NO. 5141. IMPORTS OF PETROLEUM AND PETROLEUM PRODUCTS

Proc. No. 5141, Dec. 22, 1983, 48 F.R. 56929, provided:

The Secretary of Energy has advised me that no purpose is currently served by the existing system of licensing of imports of petroleum and petroleum products. The Secretary of Energy also recommends that I retain the current prohibition on imports of Libyan crude oil into the United States, its territories and possessions, which was adopted in Proclamation No. 4907 [amending Proc. No. 3279, formerly set out above], on the ground that such imports would be inimical to the United States national security. The Secretary further recommends that he continue to monitor imports of petroleum and petroleum products in order to be able to advise me as to the need for further action, as appropriate, under Section 232 of the Trade Expansion Act of 1962, as amended [this section].

I agree with the recommendations of the Secretary of Energy.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, including Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), do hereby proclaim that:

SECTION 1. Proclamation No. 3279, as amended, is revoked.

SEC. 2. The Secretary of Energy shall continue to monitor imports of petroleum and petroleum products and shall, from time to time, in consultation with the Secretary of State, the Secretary of Commerce, and such other federal agencies as he deems appropriate, review the status of such imports with respect to the national security. The Secretary shall inform the President of any circumstances which in his opinion might indicate the need for further action by the President under Section 232 of the Trade Expansion Act [this section].

SEC. 3. (a) No crude oil produced in Libya may be imported into the United States, its territories or possessions.

(b) The Secretary of the Treasury may issue such regulations and interpretations as he deems necessary to implement this section.

SEC. 4. The Secretary of Energy may continue to consider requests for refund of fees paid under Proclamation No. 3279, as amended, if such requests were filed with the Secretary prior to the effective date of this Proclamation [Dec. 22, 1983]. Any such requests shall be considered in accordance with the previously applicable provisions of Proclamation No. 3279, as amended, and implementing regulations thereunder.

SEC. 5. The revocation of Proclamation No. 3279, as amended, shall not affect the authority of any federal department or agency to institute and conduct any administrative, civil or criminal audit, investigation or proceeding based on any act committed or liability incurred while that Proclamation was in effect.

SEC. 6. The revocation of Proclamation No. 3279, as amended, shall not affect the presently applicable tariff rates for imports of petroleum and petroleum products, as reflected in the Tariff Schedules of the United States, Schedule 4, part 10.

SEC. 7. This Proclamation shall be effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand this 22nd day of December, in the year of our Lord nineteen hundred and eighty-three, and of the Independence of the United States of America the two hundred and eighth.

RONALD REAGAN.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1339, 1863, 2137, 2463, 2703 of this title.

PART V—ADMINISTRATIVE PROVISIONS

§ 1872. Interagency trade organization

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2114c, 2114d, 2171, 2241, 2512, 2553, 2554, 2804 of this title.

CHAPTER 10—CUSTOMS SERVICE

§ 2075. Appropriations authorization

[*See main edition for text of* (*a*)]

(b) Fiscal year 1985

There are authorized to be appropriated to the Department of the Treasury not to exceed $686,399,000 for the salaries and expenses of the United States Customs Service for fiscal year 1985; of which (A) $28,070,000 is for the operation and maintenance of the air interdiction program of the Service, and (B) not to exceed $15,000,000 is for the implementation of the "Operation EXODUS" program and any related program designed to enforce or monitor export controls under the Export Administration Act of 1979 [50 App. U.S.C. 2401 et seq.].

[*See main edition for text of* (*c*)]

(d) Overtime pay limitations; waiver

No part of any sum that is appropriated under subsection (b) of this section for fiscal years after September 30, 1984, may be used for administrative expenses to pay any employee of the United States Customs Service overtime pay in an amount exceeding $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Service.

(e) Pay comparability authorization

For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Department of the Treasury for salaries of the United States Customs Service such additional sums as may be provided by law to reflect pay rate changes made in accordance with the Federal Pay Comparability Act of 1970.

(As amended Pub. L. 98-573, title VII, § 702, Oct. 30, 1984, 98 Stat. 3043.)

REFERENCES IN TEXT

The Export Administration Act of 1979, referred to in subsec. (b), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, as amended, which is classified principally to section 2401 et seq. of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

The Federal Pay Comparability Act of 1970, referred to in subsec. (e), is Pub. L. 91-656, Jan. 8, 1971, 84 Stat. 1946, as amended, which enacted sections 5305 to 5308 and 5947 of Title 5, Government Organization and Employees, amended sections 5108, 5301, and 5942 of Title 5 and section 410 of Title 39, Postal Service, repealed section 5302 of Title 5, and enacted provisions set out as notes under sections 5305 and 5942 of Title 5, section 60a of Title 2, The Congress, and section 410 of Title 39. For complete classification of the Act to the Code see Short Title note set out under section 5301 of Title 5 and Tables.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-573, § 702(1), amended generally subsec. (b) which prior to amendment read: "There are authorized to be appropriated to the Department of the Treasury not to exceed $564,224,000 for the salaries and expenses of the United States Customs Service for fiscal year 1983, of which not to exceed $31,464,000 is for salary and expenses for the enforcement of the alcohol and tobacco revenue laws."

Subsecs. (d), (e). Pub. L. 98-573, § 702(2), (3), added subsec. (d) and redesignated former subsec. (d) as (e).

CHAPTER 12—TRADE ACT OF 1974

SUBCHAPTER I—NEGOTIATING AND OTHER AUTHORITY

PART 1—RATES OF DUTY AND OTHER TRADE BARRIERS

Sec.
2114a. Negotiating objectives with respect to trade in services, foreign direct investment, and high technology products.
    (a) Trade in services.
    (b) Foreign direct investment.
    (c) High technology products.
    (d) Definition of barriers and other distortions.

Sec.
2114b. Provisions relating to international trade in services.
2114c. Trade in services; development, coordination, and implementation of Federal policies; staff support and other assistance; specific service sector authorities unaffected; executive functions.
2114d. Foreign export requirements; consultations and negotiations for reduction and elimination; restrictions on and exclusion from entry of products or services; savings provision; compensation authority applicable.
2114e. Negotiation of agreements concerning high technology industries.

PART 2—OTHER AUTHORITY

2138. Modification and continuance of treatment with respect to duties on high technology products.
  (a) Proclamation authority.
  (b) Tariff Schedules coverage.
  (c) Termination.

PART 3—BARRIERS TO MARKET ACCESS

2241. Actions concerning barriers to market access.
  (a) National trade estimates.
  (b) Report to Congress.
  (c) Assistance of other agencies.

SUBCHAPTER V—GENERALIZED SYSTEM OF PREFERENCES

2465. Termination of duty-free treatment and reports.
  (a) Date of termination.
  (b) Report on operation of subchapter.
  (c) Annual report on worker rights.
2466. Agricultural exports of beneficiary developing countries.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1352, 2502, 2804, 2805 of this title; title 28 sections 1581, 2631.

§ 2101. Short title

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-573, title III, § 301(a), Oct. 30, 1984, 98 Stat. 3000, provided that: "This title [enacting sections 2114a to 2114e, 2138, and 2241 of this title, amending sections 2112, 2114, 2155, 2171, and 2411 to 2415 of this title and sections 3101 to 3104 of Title 22, Foreign Relations and Intercourse, and enacting provisions set out as notes under section 2102 of this title and section 3101 of Title 22] may be cited as the 'International Trade and Investment Act'."

Pub. L. 98-573, title V, § 501(a), Oct. 30, 1984, 98 Stat. 3018, provided that: "This title [enacting section 2466 of this title, amending sections 2461 to 2465 of this title, and enacting provisions set out as notes under section 2461 of this title] may be cited as the 'Generalized System of Preferences Renewal Act of 1984'."

§ 2102. Congressional statement of purpose

STATEMENT OF PURPOSES OF 1984 AMENDMENT

Pub. L. 98-573, title III, § 302, Oct. 30, 1984, 98 Stat. 3000, provided that: "The purposes of this title [see Short Title of 1984 Amendment note set out under section 2101 of this title] are—

"(1) to foster the economic growth of, and full employment in, the United States by expanding competitive United States exports through the achievement of commercial opportunities in foreign markets substantially equivalent to those accorded by the United States;

"(2) to improve the ability of the President—

"(A) to identify and to analyze barriers to (and restrictions on) United States trade and investment, and

"(B) to achieve the elimination of such barriers and restrictions;

"(3) to encourage the expansion of—

"(A) international trade in services through the negotiation of agreements (both bilateral and multilateral) which reduce or eliminate barriers to international trade in services, and

"(B) United States service industries in foreign commerce; and

"(4) to enhance the free flow of foreign direct investment through the negotiation of agreements (both bilateral and multilateral) which reduce or eliminate the trade distortive effects of certain investment-related measures."

SUBCHAPTER I—NEGOTIATING AND OTHER AUTHORITY

PART 1—RATES OF DUTY AND OTHER TRADE BARRIERS

§ 2111. Basic authority for trade agreements

PROC. NO. 4707. CARRYING OUT THE GENEVA (1979) PROTOCOL TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND FOR OTHER PURPOSES

Proc. No. 4707, Dec. 11, 1979, 44 F.R. 72348, as amended by Ex. Ord. No. 12204, Mar. 27, 1980, 45 F.R. 20740; Proc. No. 4792, Sept. 15, 1980, 45 F.R. 61589; Proc. No. 4889, Dec. 29, 1981, 47 F.R. 1; Proc. No. 4904, Feb. 27, 1982, 47 F.R. 8753; Ex. Ord. No. 12354, Mar. 30, 1982, 47 F.R. 13477; Ex. Ord. No. 12371, July 12, 1982, 47 F.R. 30449; Ex. Ord. No. 12389, Oct. 25, 1982, 47 F.R. 47529; Ex. Ord. No. 12413, Mar. 30, 1983, 48 F.R. 13921; Proc. No. 5050, Apr. 15, 1983, 48 F.R. 16639; Ex. Ord. No. 12459, Jan. 16, 1984, 49 F.R. 2089; Ex. Ord. No. 12471, Mar. 30, 1984, 49 F.R. 13101, provided:

[*See main edition for text*]

ANNEXES II TO IV

Annexes II to IV of Proclamation 4707, which amend the Tariff Schedules of the United States, are not set out under this section because the Tariff Schedules are not set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title. For Tariff Schedules as amended by annexes II to IV of Proclamation 4707, see the Tariff Schedules of the United States Annotated, a current version of which is maintained and published periodically by the United States International Trade Commission and is available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

PROC. NO. 4768. CARRYING OUT THE AGREEMENT ON IMPLEMENTATION OF ARTICLES VII OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE AND FOR OTHER PURPOSE

Proc. No. 4768, June 28, 1980, 45 F.R. 45135, as amended by Proc. No. 4792, Sept. 15, 1980, 45 F.R. 61589; Ex. Ord. No. 12311, § 5, June 29, 1981, 46 F.R. 34305; Proc. No. 4904, Feb. 27, 1982, 47 F.R. 8753; Ex. Ord. No. 12354, Mar. 30, 1982, 47 F.R. 13477; Ex. Ord. No. 12413, Mar. 30, 1983, 48 F.R. 13921; Ex. Ord. No. 12471, Mar. 30, 1984, 49 F.R. 13101, provided:

[*See main edition for text*]

ANNEXES I TO IV

Annexes I to IV of Proclamation 4768, which amend the Tariff Schedules of the United States, are not set out under this section because the Tariff Schedules are not set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

For Tariff Schedules as amended by annexes II to IV of Proclamation 4768, see the Tariff Schedules of the United States Annotated, a current version of which is maintained and published periodically by the United States International Trade Commission and is available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

§ 2112. Barriers to and other distortions of trade

[*See main edition for text of* (*a*)]

(b) Presidential determinations prerequisite to entry into trade agreements; trade with Israel

(1) Whenever the President determines that any barriers to (or other distortions of) international trade of any foreign country or the United States unduly burden and restrict the foreign trade of the United States or adversely affect the United States economy, or that the imposition of such barriers is likely to result in such a burden, restriction, or effect, and that the purposes of this chapter will be promoted thereby, the President, during the 13-year period beginning on January 3, 1975, may enter into trade agreements with foreign countries or instrumentalities providing for the harmonization, reduction, or elimination of such barriers (or other distortions) or providing for the prohibition of or limitations on the imposition of such barriers (or other distortions).

(2)(A) Trade agreements that provide for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) only with Israel.

(B) The negotiation of any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States shall take fully into account any product that benefits from a discriminatory preferential tariff arrangement between Israel and a third country if the tariff preference on such product has been the subject of a challenge by the United States Government under the authority of section 2411 of this title and the General Agreement on Tariffs and Trade.

(C) Notwithstanding any other provision of this section, the requirements of subsections (c) and (e)(1) of this section shall not apply to any trade agreement entered into under paragraph (1) with Israel that provides for the elimination or reduction of any duty imposed by the United States.

(3) Notwithstanding any other provision of law, no trade benefit shall be extended to any country by reason of the extension of any trade benefit to another country under a trade agreement entered into under paragraph (1) with such other country.

(4)(A) Notwithstanding paragraph (2), a trade agreement that provides for the elimination or reduction of any duty imposed by the United States may be entered into under paragraph (1) with any country other than Israel if—

(i) such country requested the negotiation of such an agreement, and

(ii) the President, at least 60 days prior to the date notice is provided under subsection (e)(1) of this section—

(I) provides written notice of such negotiations to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and

(II) consults with such committees regarding the negotiation of such agreement.

(B) The provisions of section 2191 of this title shall not apply to an implementing bill (within the meaning of section 2191(b) of this title if—

(i) such implementing bill contains a provision approving of any trade agreement which—

(I) is entered into under this section with any country other than Israel, and

(II) provides for the elimination or reduction of any duty imposed by the United States, and

(ii) either—

(I) the requirements of subparagraph (A) were not met with respect to the negotiation of such agreement, or

(II) the Committee on Finance of the Senate or the Committee on Ways and Means of the House of Representatives disapproved of the negotiation of such agreement before the close of the 60-day period which begins on the date notice is provided under subsection[1] (A)(ii)(I) with respect to the negotiation of such agreement.

(C) The 60-day period described in subparagraphs (A)(ii) and (B)(ii)(II) shall be computed without regard to—

(i) the days on which either House of Congress is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House of Congress is not in session.

[*See main edition for text of* (*c*) *to* (*f*)]

(g) Definitions

For purposes of this section—

(1) the term "barrier" includes—

(A) the American selling price basis of customs evaluation as defined in section 1401a or 1402 of this title, as appropriate, and

(B) any duty or other import restriction;

(2) the term "distortion" includes a subsidy; and

(3) the term "international trade" includes—

(A) trade in both goods and services, and

(B) foreign direct investment by United States persons, especially if such investment has implications for trade in goods and services.

(As amended Pub. L. 98-573, title III, § 307(a), title IV, § 401(a)-(c)(1), Oct. 30, 1984, 98 Stat. 3012, 3013-3015.)

References in Text

This chapter, referred to in subsec. (b)(1), was in the original "this Act", meaning Pub. L. 93-618, Jan. 3,

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[1] So in original. Probably should be "subparagraph".

1975, 88 Stat. 1978, as amended, which is classified principally to this chapter. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

Section 1402 of this title, referred to in subsec. (g)(1)(A), was repealed by Pub. L. 96-39.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-573, § 401(a), designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (g)(1). Pub. L. 98-573, § 401(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (g)(3). Pub. L. 98-573, § 307(a), designated existing provisions as subpar. (A) and added subpar. (B).

TRADE AGREEMENTS WITH ISRAEL

Pub. L. 98-573, title IV, §§ 402-404, 406, Oct. 30, 1984, 98 Stat. 3015-3017, provided that:

"SEC. 402. CRITERIA FOR DUTY-FREE TREATMENT OF ARTICLES.

"(a)(1) Any trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] may provide for the reduction or elimination of any duty imposed by the United States with respect to any article only if—

"(A) that article is the growth, product, or manufacture of Israel or is a new or different article of commerce that has been grown, produced, or manufactured in Israel;

"(B) that article is imported directly from Israel into the customs territory of the United States; and

"(C) the sum of—

"(i) the cost of value of the materials produced in Israel, plus

"(ii) the direct costs of processing operations performed in Israel,

is not less than 35 percent of the appraised value of such article at the time it is entered.

If the cost or value of materials produced in the customs territory of the United States is included with respect to an article to which this subsection applies, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributable to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (C).

"(2) No article may be considered to be an eligible Israeli article by virtue of having merely undergone—

"(A) simple combining or packaging operations; or

"(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

"(b) As used in this section, the phrase 'direct costs of processing operations' includes, but is not limited to—

"(1) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

"(2) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned, or are not costs of manufacturing the product, such as (A) profit, and (B) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

"(c) REGULATIONS.—The Secretary of the Treasury, after consultation with the United States Trade Representative, shall prescribe such regulations as may be necessary to carry out this section.

"SEC. 403. APPLICATION OF CERTAIN OTHER TRADE LAW PROVISIONS.

"(a) SUSPENSION OF DUTY-FREE TREATMENT.—The President may by proclamation suspend the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under the authority of section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] with respect to any article and may proclaim a duty rate for such article if such action is proclaimed under section 203 of the Trade Act of 1974 [19 U.S.C. 2253] or section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862].

"(b) ITC REPORTS.—In any report by the United States International Trade Commission (hereinafter referred to in this title [this note] as the 'Commission') to the President under section 201(d)(1) of the Trade Act of 1974 [19 U.S.C. 2251(d)(1)] regarding any article for which a reduction or elimination of any duty is provided under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)], the Commission shall state whether and to what extent its findings and recommendations apply to such an article when imported from Israel.

"(c) For purposes of subsections (a) and (c) of section 203 of the Trade Act of 1974 [19 U.S.C. 2253(a), (c)], the suspension of the reduction or elimination of a duty under subsection (a) shall be treated as an increase in duty.

"(d) No proclamation which provides solely for a suspension referred to in subsection (a) with respect to any article shall be made under subsections (a) and (c) of section 203 of the Trade Act of 1974 [19 U.S.C. 2253(a), (c)], unless the Commission, in addition to making an affirmative determination with respect to such article under section 201(b) of the Trade Act of 1974 [19 U.S.C. 2251(b)], determines in the course of its investigation under that section that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the reduction or elimination of any duty provided under any trade agreement provision entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)].

"(e)(1) Any proclamation issued under section 203 of the Trade Act of 1974 [19 U.S.C. 2253] that is in effect when an agreement with Israel is entered into under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] shall remain in effect until modified or terminated.

"(2) If any article is subject to import relief at the time an agreement is entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)], the President may reduce or terminate the application of such import relief to the importation of such article before the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of subsections (h) and (i) of section 203 of the Trade Act of 1974 [19 U.S.C. 2253(h), (i)].

"SEC. 404. FAST TRACK PROCEDURES FOR PERISHABLE ARTICLES.

"(a) If a petition is filed with the Commission under the provisions of section 201 of the Trade Act of 1974 [19 U.S.C. 2251] regarding a perishable product which is subject to any reduction or elimination of a duty imposed by the United States under a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] and alleges injury from imports of that product, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted under subsection (c) with respect to such article.

"(b) Within 14 days after the filing of a petition under subsection (a)—

"(1) if the Secretary of Agriculture has reason to believe that a perishable product from Israel is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

"(2) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

"(c) Within 7 days after the President receives a recommendation from the Secretary of Agriculture to take emergency action under subsection (b), he shall issue a proclamation withdrawing the reduction or elimination of duty provided to the perishable product under any trade agreement provision entered into under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] or publish a notice of his determination not to take emergency action.

"(d) The emergency action provided under subsection (c) shall cease to apply—

"(1) upon the proclamation of import relief under section 202(a)(1) of the Trade Act of 1974 [19 U.S.C. 2252(a)(1)];

"(2) on the day the President makes a determination under section 203(b)(2) of such Act [19 U.S.C. 2253(b)(2)] not to impose import relief;

"(3) in the event of a report of the Commission containing a negative finding, on the day the Commission's report is submitted to the President; or

"(4) whenever the President determines that because of changed circumstances such relief is no longer warranted.

"(e) For purposes of this section, the term 'perishable product' means any—

"(1) live plant provided for in subpart A of part 6 of schedule 1 of the Tariff Schedules of the United States (19 U.S.C. 1202, hereinafter referred to as the 'TSUS');

"(2) vegetable provided for in schedule 1, part 8, of the TSUS;

"(3) fresh mushroom provided for in item 144.10 of the TSUS;

"(4) edible nut or fruit provided for in schedule 1, part 9, of the TSUS;

"(5) fresh cut flower provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

"(6) concentrated citrus fruit provided for in items 165.25 and 165.35 of the TSUS.

"(f) No trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 [19 U.S.C. 2112(b)(1)] shall affect fees imposed under section 22 of the Agricultural Adjustment Act (7 U.S.C. 624).

"SEC. 406. CONSTRUCTION OF TITLE.

"Neither the taking effect of any trade agreement provision entered into with Israel under section 102(b)(1) [19 U.S.C. 2112(b)(1)], nor any proclamation issued to implement any such provision, may affect in any manner, or to any extent, the application to any Israeli articles of section 232 of the Trade Expansion Act of 1962 [19 U.S.C. 1862], section 337 of title VII [probably should be "title III" of the Tariff Act of 1930 [19 U.S.C. 1337], chapter 1 of title II and chapter 1 of title III of the Trade Act of 1974 [19 U.S.C. 2251 et seq., 2411 et seq.], or any other provision of law under which relief from injury caused by import competition or by unfair import trade practices may be sought."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1303, 2113, 2114, 2114a, 2115, 2116, 2117, 2118, 2131, 2136, 2151, 2155, 2191, 2194, 2462, 2503, 2504 of this title.

§ 2114. Sector negotiating objectives

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Identification of appropriate product sectors of manufacturing

For the purposes of this section and section 2155 of this title, the United States Trade Representative together with the Secretary of Commerce, Agriculture, or Labor, as appropriate, shall, after consultation with the Advisory Committee for Trade Negotiations established under section 2155 of this title and after consultation with interested private or non-Federal governmental organizations, identify appropriate product sectors of manufacturing.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-573, title III, § 306(c)(2)(C)(i), Oct. 30, 1984, 98 Stat. 3012.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-573 inserted "or non-Federal governmental" after "private".

§ 2114a. Negotiating objectives with respect to trade in services, foreign direct investment, and high technology products

(a) Trade in services

(1) In general

Principal United States negotiating objectives under section 2112 of this title shall be—

(A) to reduce or to eliminate barriers to, or other distortions of, international trade in services (particularly United States service sector trade in foreign markets), including barriers that deny national treatment and restrictions on the establishment and operation in such markets; and

(B) to develop internationally agreed rules, including dispute settlement procedures, which—

(i) are consistent with the commercial policies of the United States, and

(ii) will reduce or eliminate such barriers or distortions and help ensure open international trade in services.

(2) Domestic objectives

In pursuing the objectives described in paragraph (1), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the laws and regulations related thereto.

(b) Foreign direct investment

(1) In general

Principal United States negotiating objectives under section 2112 of this title shall be—

(A) to reduce or to eliminate artificial or trade-distorting barriers to foreign direct investment, to expand the principle of national treatment, and to reduce unreasonable barriers to establishment; and

(B) to develop internationally agreed rules, including dispute settlement procedures, which—

(i) will help ensure a free flow of foreign direct investment, and

(ii) will reduce or eliminate the trade distortive effects of certain investment related measures.

(2) Domestic objectives

In pursuing the objectives described in paragraph (1), United States negotiators shall take into account legitimate United States domestic objectives including, but not limited to, the protection of legitimate health or safety, essential security, environmental, consumer or employment opportunity interests and the laws and regulations related thereto.

(c) High technology products

Principal United States negotiating objectives shall be—

(1) to obtain and preserve the maximum openness with respect to international trade and investment in high technology products and related services;

(2) to obtain the elimination or reduction of, or compensation for, the significantly distorting effects of foreign government acts, policies, or practices identified in section 2241 of this title, with particular consideration given to the nature and extent of foreign government intervention affecting United States exports of high technology products or investments in high technology industries, including—

(A) foreign industrial policies which distort international trade or investment;

(B) measures which deny national treatment or otherwise discriminate in favor of domestic high technology industries;

(C) measures which fail to provide adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property (including trademarks, patents, and copyrights);

(D) measures which impair access to domestic markets for key commodity products; and

(E) measures which facilitate or encourage anticompetitive market practices or structures;

(3) to obtain commitments that official policy of foreign countries or instrumentalities will not discourage government or private procurement of foreign high technology products and related services;

(4) to obtain the reduction or elimination of all tariffs on, and other barriers to, United States exports of high technology products and related services;

(5) to obtain commitments to foster national treatment;

(6) to obtain commitments to—

(A) foster the pursuit of joint scientific cooperation between companies, institutions or governmental entities of the United States and those of the trading partners of the United States in areas of mutual interest through such measures as financial participation and technical and personnel exchanges, and

(B) ensure that access by all participants to the results of any such cooperative efforts should not be impaired; and

(7) to provide effective minimum safeguards for the acquisition and enforcement of intellectual property rights and the property value of proprietary data.

(d) Definition of barriers and other distortions

For purposes of subsection (a) of this section, the term "barriers to, or other distortions of, international trade in services" includes, but is not limited to—

(1) barriers to establishment in foreign markets, and

(2) restrictions on the operation of enterprises in foreign markets, including—

(A) direct or indirect restrictions on the transfer of information into, or out of, the country or instrumentality concerned, and

(B) restrictions on the use of data processing facilities within or outside of such country or instrumentality.

(Pub. L. 93-618, title I, § 104A, as added Pub. L. 98-573, title III, § 305(a)(1), Oct. 30, 1984, 98 Stat. 3006.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2114e, 2138 of this title.

§ 2114b. Provisions relating to international trade in services

(1) The Secretary of Commerce shall establish a service industries development program designed to—

(A) develop, in consultation with other Federal agencies as appropriate, policies regarding services that are designed to increase the competitiveness of United States service industries in foreign commerce;

(B) develop a data base for assessing the adequacy of Government policies and actions pertaining to services, including, but not limited to, data on trade, both aggregate and pertaining to individual service industries;

(C) collect and analyze, in consultation with appropriate agencies, information pertaining to the international operations and competitiveness of United States service industries, including information with respect to—

(i) policies of foreign governments toward foreign and United States service industries;

(ii) Federal, State, and local regulation of both foreign and United States suppliers of services, and the effect of such regulation on trade;

(iii) the adequacy of current United States policies to strengthen the competitiveness of United States service industries in foreign commerce, including export promotion activities in the service sector;

(iv) tax treatment of services, with particular emphasis on the effect of United States taxation on the international competitiveness of United States firms and exports;

(v) treatment of services under international agreements of the United States;

(vi) antitrust policies as such policies affect the competitiveness of United States firms; and

(vii) treatment of services in international agreements of the United States;

(D) conduct a program of research and analysis of service-related issues and problems, including forecasts and industrial strategies; and

(E) conduct sectoral studies of domestic service industries.

(2) For purposes of the collection and analysis required by paragraph (1), and for the purpose of any reporting the Department of Commerce makes under paragraph (3), such collection and reporting shall distinguish between income from investment and income from noninvestment services.

(3) On not less than a biennial basis beginning in 1986, the Secretary shall prepare a report which analyzes the information collected under paragraph (1). Such report shall be submitted to the Congress and to the President by not later than the date that is 120 days after the close of the period covered by the report.

(4) The Secretary of Commerce shall carry out the provisions of this subsection from funds otherwise made available to him which may be used for such purposes.

(5) For purposes of this section, the term "services" means economic activities whose outputs are other than tangible goods. Such term includes, but is not limited to, banking, insurance, transportation, communications and data processing, retail and wholesale trade, advertising, accounting, construction, design and engineering, management consulting, real estate, professional services, entertainment, education, health care, and tourism.

(Pub. L. 98-573, title III, § 306(a), Oct. 30, 1984, 98 Stat. 3008.)

Codification

Section was enacted as part of the International Trade and Investment Act, and also as part of the Trade and Tariff Act of 1984, and not as part of the Trade Act of 1974 which comprises this chapter.

Section is comprised of subsec. (a) of section 306 of Pub. L. 98-573. Subsec. (b) of such section amended sections 3101, 3103, and 3104 of Title 22, Foreign Relations and Intercourse, and enacted a provision set out as a note under section 3101 of Title 22, subsec. (c)(1), (2)(A) of such section is classified to section 2114c of this title, and subsec. (c)(2)(B), (C) of such section amended sections 2114, 2155, 2413, and 2414 of this title.

§ 2114c. Trade in services: development, coordination, and implementation of Federal policies; staff support and other assistance; specific service sector authorities unaffected; executive functions

(1)(A) The United States Trade Representative, through the interagency trade organization established pursuant to section 1872(a) of this title or any subcommittee thereof, shall, in conformance with this Act and other provisions of law, develop (and coordinate the implementation of) United States policies concerning trade in services.

(B) In order to encourage effective development, coordination, and implementation of United States policies on trade in services—

(i) each department or agency of the United States responsible for the regulation of any service sector industry shall, as appropriate, advise and work with the United States Trade Representative concerning matters that have come to the department's or agency's attention with respect to—

(I) the treatment afforded United States service sector interest in foreign markets; or

(II) allegations of unfair practices by foreign governments or companies in a service sector; and

(ii) the Department of Commerce, together with other appropriate agencies as requested by the United States Trade Representative, shall provide staff support and other assistance for negotiations on service-related issues by the United States Trade Representatives[1] and the domestic implementation of service-related agreements.

(C) Nothing in this paragraph shall be construed to alter any existing authority or responsibility with respect to any specific service sector.

(2)(A)[2] The President shall, as he deems appropriate—

(i) consult with State governments on issues of trade policy, including negotiating objectives and implementation of trade agreements, affecting the regulatory authority of non-Federal governments, or their procurement of goods and services;

(ii) establish one or more intergovernmental policy advisory committees on trade which shall serve as a principal forum in which State and local governments may consult with the Federal Government with respect to the matters described in clause (i); and

(iii) provide to State and local governments and to United States service industries, upon their request, advice, assistance, and (except as may be otherwise prohibited by law) data, analyses, and information concerning United States policies on international trade in services.

(Pub. L. 98-573, title III, § 306(c)(1), (2)(A), Oct. 30, 1984, 98 Stat. 3010, 3011.)

References in Text

This Act, referred to in par. (1)(A), is Pub. L. 98-573, Oct. 30, 1984, 98 Stat. 2984, known as the Trade and Tariff Act of 1984. For classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 1654 of this title and Tables.

Codification

Section was enacted as part of the International Trade and Investment Act, and also as part of the Trade and Tariff Act of 1984, and not as part of the Trade Act of 1974 which comprises this chapter.

Section is comprised of subsec. (c)(1), (2)(A) of section 306 of Pub. L. 98-573. Subsec. (a) of such section is classified to section 2114(b) of this title, subsec. (b) of such section amended sections 3101, 3103, and 3104 of Title 22, Foreign Relations and Intercourse, and enacted a provision set out as a note under section 3101 of Title 22, and subsec. (c)(2)(B), (C) of such section amended sections 2114, 2155, 2413, and 2414 of this title.

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[1] So in original. Probably should be "Representative".

[2] See Codification note below.

§ 2114d. Foreign export requirements; consultations and negotiations for reduction and elimination; restrictions on and exclusion from entry of products or services; savings provision; compensation authority applicable

(1) If the United States Trade Representative, with the advice of the committee established by section 1872 of this title, determines that action by the United States is appropriate to respond to any export performance requirements of any foreign country or instrumentality that adversely affect the economic interests of the United States, then the United States Trade Representative shall seek to obtain the reduction and elimination of such export performance requirements through consultations and negotiations with the foreign country or instrumentality concerned.

(2) In addition to the action referred to in subsection (1), the United States Trade Representative may impose duties or other import restrictions on the products or services of such foreign country or instrumentality for such time as he determines appropriate, including the exclusion from entry into the United States of products subject to such requirements.

(3) Nothing in paragraph (2) or paragraph (3) shall apply to any products or services with respect to which—

(A) any foreign direct investment (including a purchase of land or facilities) has been made directly or indirectly by any United States person before October 30, 1984, or

(B) any written commitment relating to a foreign direct investment that is binding on October 30, 1984, has been made directly or indirectly by any United States person.

(4) Whenever the international obligations of the United States and actions taken under paragraph (2) make compensation necessary or appropriate, compensation may be provided by the United States Trade Representative subject to the limitations and conditions contained in section 2133 of this title for providing compensation for actions taken under section 2253 of this title.

(Pub. L. 98-573, title III, § 307(b), Oct. 30, 1984, 98 Stat. 3012.)

Codification

Section was enacted as part of the International Trade and Investment Act, and also as part of the Trade and Tariff Act of 1984, and not as part of the Trade Act of 1974 which comprises this chapter.

Section is comprised of subsec. (b) of section 307 of Pub. L. 98-573. Subsec. (a) of such section amended section 2112(g)(3) of this title.

§ 2114e. Negotiation of agreements concerning high technology industries

The President may enter into such bilateral or multilateral agreements as may be necessary or appropriate to achieve the objectives of this section and the negotiating objectives under section 2114a(c) of this title.

(Pub. L. 98-573, title III, § 308(a), Oct. 30, 1984, 98 Stat. 3013.)

References in Text

This section, referred to in text, means section 308 of Pub. L. 98-573. See Codification note below.

Codification

Section was enacted as part of the International Trade and Investment Act, and also as part of the Trade and Tariff Act of 1984, and not as part of the Trade Act of 1974 which comprises this chapter.

Section is comprised of subsec. (a) of section 308 of Pub. L. 98-573. Subsec. (b) of such section 308 enacted section 2138 of this title.

§ 2119. Staging requirements and rounding authority

Staging of Certain Tariff Reductions

Section 503 of Pub. L. 96-39 provided that:

"(a) In General.—The aggregate reduction in the rate of duty applicable to items described in this subsection in effect on any day pursuant to a trade agreement entered into under section 101 of the Trade Act of 1974 [19 U.S.C. 2111] before January 3, 1980, may exceed the limitation in section 109(a) of such Act (19 U.S.C. 2119):

"(1) Items amended under section 223(d) of this Act [items 402.00 to 413.51 of the Tariff Schedules] to the extent that they apply to articles which the President determines were not imported into the United States before January 1, 1978, and were not produced in the United States before May 1, 1978.

"(2)(A) Items to the extent that they apply to articles which the President determines are not import sensitive and are the product of a least developed developing country as defined in the United Nations General Assembly list of "Least Developed Countries" and which are beneficiary developing countries under section 502 of the Trade Act of 1974 [19 U.S.C. 2462].

"(B) The President may at any time suspend the treatment accorded under subparagraph (A) in which case the aggregate reduction in effect for such products shall be the reduction in effect for countries other than least developed developing countries.

"(3) Item 628.57. Notwithstanding the first sentence of this subsection, the limitation in section 109(a) of the Trade Act of 1974 may be exceeded only to the extent necessary to permit an aggregate reduction of 4.8 percent ad valorem in the rate of duty in effect under such item during the first 1-year period after the effective date of the first reduction in the rate of duty proclaimed for such item.

"(4) Items 132.50, 170.10, 170.15, 170.20, 177.62, 186.15, and 429.47.

"(5) Items 306.31, 306.32, 306.33, and 306.34. Notwithstanding subsection (a), the limitation in section 109(a) of the Trade Act of 1974 may be exceeded only to the extent necessary to permit the total reduction proclaimed under section 101 of the Trade Act of 1974 relating to such item to take effect within 2 years after the effective date of the first reduction in the rate of duty proclaimed for such item.

"(6) Items for which the President determines the effective date of the first reduction will be after June 30, 1980, and before January 1, 1981, to the extent necessary to permit the second reduction to take effect on January 1, 1981.

"(b) Opportunity for Comment.—Before making any determination under subsection (a)(1) and (2), the President shall provide interested parties an opportunity to comment and shall publish his final determinations in the Federal Register before July 1, 1980."

Part 2—Other Authority

§ 2133. Compensation authority

Section Referred to in Other Sections

This section is referred to in sections 2114d, 2151, 2152, 2153, 2154, 2212 of this title.

§ 2138. Modification and continuance of treatment with respect to duties on high technology products

(a) Proclamation authority

In order to carry out any agreement concluded as a result of the negotiating objectives under section 2114a(c) of this title, the President may proclaim, subject to the provisions of part 3 of this subchapter—

(1) such modification, elimination, or continuance of any existing duty, duty-free, or excise treatment, or

(2) such additional duties,

as he deems appropriate.

(b) Tariff Schedules coverage

The President shall exercise his authority under subsection (a) of this section only with respect to the following items listed in the Tariff Schedules of the United States:

(1) Transistors (provided for in item 587.70, part 5, schedule 6).

(2) Diodes and rectifiers (provided for in item 687.72, part 5, schedule 6).

(3) Monolithic integrated circuits (provided for in item 687.74, part 5, schedule 6).

(4) Other integrated circuits (provided for in item 687.77, part 5, schedule 6).

(5) Other components (provided for in item 687.81, part 5, schedule 6).

(6) Parts of semiconductors (provided for in item 687.85, part 5, schedule 6).

(7) Parts of automatic data-processing machines and units thereof (provided for in item 676.52, part 4G, schedule 6) other than parts incorporating a cathode ray tube.

(c) Termination

The President may exercise his authority under this section only during the 5-year period beginning on October 30, 1984.

(Pub. L. 93-618, title I, § 128, as added Pub. L. 98-573, title III, § 308(b)(1), Oct. 30, 1984, 98 Stat. 3013.)

References in Text

The Tariff Schedules of the United States, referred to in subsec. (b), are not set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

Cross References

Authority of President to enter bilateral and multilateral agreements to achieve objectives of this section, see section 2114e of this title.

Part 3—Hearings and Advice Concerning Negotiations

Part Referred to in Other Sections

This part is referred to in section 2138 of this title.

§ 2155. Advice from private or public sector

(a) Information and advice relating to trade agreements and other matters

The President shall seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to negotiating objectives and bargaining positions before entering into a trade agreement referred to in section 2111 or 2112 of this title, with respect to the operation of any trade agreement once entered into, and with respect to other matters arising in connection with the administration of the trade policy of the United States.

[*See main edition for text of* (*b*)]

(c) General policy, sectoral, functional, or policy advisory committees

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The President—

(A) may establish policy advisory committees representing non-Federal governmental interests to provide, where the President finds it necessary, policy advice—

(i) on matters referred to in subsection (a) of this section, and

(ii) with respect to implementation of trade agreements, and

(B) shall include as members of committees established under subparagraph (A) representatives of non-Federal governmental interests if he finds such inclusion appropriate after consultation by the United States Trade Representative with such representatives.

[*See main edition for text of* (*d*) *to* (*f*)]

(g) Trade secrets and confidential commercial, financial, or other information

(1)(A) Trade secrets and commercial or financial information which is privileged or confidential, submitted in confidence by the private or non-Federal government sector to officers or employees of the United States in connection with trade negotiations, shall not be disclosed to any person other than to—

[*See main edition for text of* (*i*) *and* (*ii*)]

for use in connection with negotiation of matters referred to in subsection (a) of this section.

(B) Information, other than that described in paragraph (A), and advice submitted in confidence by the private or non-Federal government sector to officers or employees of the United States, to the Advisory Committee for Trade Negotiations or to any advisory committee established under subsection (c) of this section, in connection with matters referred to in subsection (a) of this section, shall not be disclosed to any person other than—

[*See main edition for text of* (*i*) *and* (*ii*), (*2*); (*h*) *and* (*i*)]

(j) Private or non-Federal government organizations or groups

In addition to any advisory committee established pursuant to this section, the President shall provide adequate, timely and continuing opportunity for the submission on an informal and, if such information is submitted under the provisions of subsection (g) of this section, confidential basis by private or non-Federal government organizations or groups, representing government, labor, industry, agriculture, small business, service industries, consumer interests, and others, of statistics, data, and other trade information, as well as policy recommendations, pertinent to the negotiation of any matters referred to in subsection (a) of this section.

[*See main edition for text of* (*k*) *and* (*l*)]

(n) [1] **Non-Federal government defined**

The term "non-Federal government" means—

(1) any State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or

(2) any agency or instrumentality of any entity described in paragraph (1).

(As amended Pub. L. 98-573, title III, § 306(c)(2)(B), Oct. 30, 1984, 98 Stat. 3011.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573, § 306(c)(2)(B)(i), inserted "and the non-Federal governmental sector" after "private sector".

Subsec. (c)(3). Pub. L. 98-573, § 306(c)(2)(B)(ii), added par. (3).

Subsec. (g)(1)(A), (B). Pub. L. 98-573, § 306(c)(2)(B)(iii), inserted "or non-Federal government" after "private".

Subsec. (j). Pub. L. 98-573, § 306(c)(2)(B)(iii), (iv), inserted "or non-Federal government" after "private" and "government," before "labor, industry".

Subsec. (n). Pub. L. 98-573, § 306(c)(2)(B)(v), added subsec. (n).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2114, 2241, 2412, 2413, 2414, 2512, 2514, 2547 of this title.

PART 4—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

§ 2171. Structure, functions, powers, and personnel

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Powers of United States Trade Representative

The United States Trade Representative may, for the purpose of carrying out his functions under this section—

[*See main edition for text of* (*1*) *to* (*7*)]

(8) pay for expenses approved by him for official travel without regard to the Federal Travel Regulations or to the provisions of subchapter I of chapter 57 of title 5 (relating to rates of per diem allowances in lieu of subsistence expenses);

(9) accept, hold, administer, and utilize gifts, devises, and bequests of property, both real and personal, for the purpose of aiding or facilitating the work of the Office; and

(10) acquire, by purchase or exchange, not more than two passenger motor vehicles for use abroad, except that no vehicle may be acquired at a cost exceeding $9,500.

(8) [2] provide, where authorized by law, copies of documents to persons at cost, except that any funds so received shall be credited to, and be available for use from, the account from which expenditures relating thereto were made.

[*See main edition for text of* (*e*)]

(f) Authorization of appropriations

(1) There are authorized to be appropriated to the Office for the purpose of carrying out its functions $14,179,000 for fiscal year 1985; of which not to exceed $80,000 may be used for entertainment and representation expenses.

[*See main edition for text of* (*2*)]

(As amended Pub. L. 98-573, title III, § 304(d)(2)(A), title VII, § 703, Oct. 30, 1984, 98 Stat. 3004, 3043.)

AMENDMENTS

1984—Subsec. (d)(6) to (8). Pub. L. 98-573, § 304(d)(2)(A), which directed that a new par. (8), relating to the provision of copies of documents to persons at cost, be added to subsec. (d) by striking out "and" at the end of par. (6), substituting "; and" for the period at the end of par. (7), and adding the new par. (8) at the end thereof, was executed by adding the new par. (8) following par. (10). Amendments to pars. (6) and (7) could not be executed.

Subsec. (f)(1). Pub. L. 98-573, § 703, substituted provisions authorizing appropriations of $14,179,000 for fiscal year 1985, of which not more than $80,000 may be used for entertainment and representation for provisions authorizing appropriations of $11,100,000 for fiscal year 1983, of which not more than $65,000 could be used for entertainment and representation expenses.

PART 5—CONGRESSIONAL PROCEDURES WITH RESPECT TO PRESIDENTIAL ACTIONS

§ 2192. Resolutions disapproving certain actions

(a) Contents of resolutions

(1) For purposes of this section, the term "resolution" means only—

(A) a joint resolution of the two Houses of the Congress, the matter after the resolving clause of which is as follows: "That the Congress does not approve the action taken by, or the determination of, the President under section 203 of the Trade Act of 1974 transmitted to the Congress on ______.", the blank space being filled with the appropriate date; and

[*See main edition for text of* (*B*), (*2*); (*b*) *to* (*f*)]

(As amended Pub. L. 98-573, title II, § 248(b), Oct. 30, 1984, 98 Stat. 2998.)

AMENDMENTS

1984—Subsec. (a)(1)(A). Pub. L. 98-573, substituted "joint resolution" for "concurrent resolution".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of this title.

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[1] So in original. No subsec. (m) has been enacted.

[2] See 1984 Amendment note below.

Part 8—Barriers to Market Access

§ 2241. Actions concerning barriers to market access

(a) National trade estimates

(1) In general

Not later than the date on which the initial report is required under subsection (b)(1) of this section, the United States Trade Representative, through the interagency trade organization established pursuant to section 1872(a) of this title shall—

(A) identify and analyze acts, policies, or practices which constitute significant barriers to, or distortions of—

(i) United States exports of goods or services (including agricultural commodities; and property protected by trademarks, patents, and copyrights exported or licensed by United States persons), and

(ii) foreign direct investment by United States persons, especially if such investment has implications for trade in goods or services; and

(B) make an estimate of the trade-distorting impact on United States commerce of any act, policy, or practice identified under subparagraph (A).

(2) Certain factors taken into account in making analysis and estimate

In making any analysis or estimate under paragraph (1), the Trade Representative shall take into account—

(A) the relative impact of the act, policy, or practice on United States commerce;

(B) the availability of information to document prices, market shares, and other matters necessary to demonstrate the effects of the act, policy, or practice;

(C) the extent to which such act, policy, or practice is subject to international agreements to which the United States is a party; and

(D) any advice given through appropriate committees established pursuant to section 2155 of this title.

(3) Annual revisions and updates

The Trade Representative shall annually revise and update the analysis and estimate under paragraph (1).

(b) Report to Congress

(1) In general

On or before the date which is one year after October 30, 1984, and each year thereafter, the Trade Representative shall submit the analysis and estimate under subsection (a) of this section to the Committee on Finance of the Senate and to the Committee on Ways and Means of the House of Representatives.

(2) Reports to include information with respect to action being taken

The Trade Representative shall include in each report submitted under paragraph (1) information with respect to any action taken (or the reasons for no action taken) to eliminate any act, policy, or practice identified under subsection (a), including, but not limited to—

(A) any action under section 2411 of this title, or

(B) negotiations or consultations with foreign governments.

(3) Consultation with Congress on trade policy priorities

The Trade Representative shall keep the committees described in paragraph (1) currently informed with respect to trade policy priorities for the purposes of expanding market opportunities.

(c) Assistance of other agencies

(1) Furnishing of information

The head of each department or agency of the executive branch of the Government, including any independent agency, is authorized and directed to furnish to the Trade Representative or to the appropriate agency, upon request, such data, reports, and other information as is necessary for the Trade Representative to carry out his functions under this section.

(2) Restrictions on release or use of information

Nothing in this subsection shall authorize the release of information to, or the use of information by, the Trade Representative in a manner inconsistent with law or any procedure established pursuant thereto.

(3) Personnel and services

The head of any department, agency, or instrumentality of the United States may detail such personnel and may furnish such services, with or without reimbursement, as the Trade Representative may request to assist in carrying out his functions.

(Pub. L. 93-618, title I, § 181, as added Pub. L. 98-573, title III, § 303(a), Oct. 30, 1984, 98 Stat. 3001.)

Section Referred to in Other Sections

This section is referred to in section 2114a of this title.

SUBCHAPTER II—RELIEF FROM INJURY CAUSED BY IMPORT COMPETITION

Part 1—Import Relief

Part Referred to in Other Sections

This part is referred to in section 1339 of this title.

§ 2251. Investigation by International Trade Commission

[See main edition for text of (a)]

(b) Requests to Commission by President, Trade Representative, or Congressional committees for investigation; nature and scope of Commission's investigation

[See main edition for text of (1)]

(2) In making its determinations under paragraph (1), the Commission shall take into account all economic factors which it considers relevant, including (but not limited to)—

[*See main edition for text of* (*A*)]

(B) with respect to threat of serious injury, a decline in sales, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and a downward trend in production, profits, wages, or employment (or increasing underemployment) in the domestic industry concerned;

(C) with respect to substantial cause, an increase in imports (either actual or relative to domestic production) and a decline in the proportion of the domestic market supplied by domestic producers; and

(D) the presence or absence of any factor which the Commission is required to evaluate in subparagraphs (A) and (B) shall not necessarily be dispositive of whether an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or threat of serious injury to the domestic industry.

[*See main edition for text of* (*3*) *to* (*6*)]

(7) For purposes of this section, the term "significant idling of productive facilities" includes the closing of plants or the underutilization of production capacity.

[*See main edition for text of* (*c*) *to* (*f*)]

(As amended Pub. L. 98-573, title II, § 249, Oct. 30, 1984, 98 Stat. 2998.)

Amendments

1984—Subsec. (b)(2)(B). Pub. L. 98-573, § 249(1)(A), substituted "inventory (whether maintained by domestic producers, importers, wholesalers, or retailers), and" for "inventory, and".

Subsec. (b)(2)(D). Pub. L. 98-573, § 249(1)(B)-(D), added subpar. (D).

Subsec. (b)(7). Pub. L. 98-573, § 249(2), added par. (7).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Term "Industry" To Include Producers Located in United States Insular Possessions

Pub. L. 98-67, title II, § 214(f), Aug. 5, 1983, 97 Stat. 393, provided that: "For purposes of chapter 1 of title II of the Trade Act of 1974 [this part], the term 'industry' shall include producers located in the United States insular possessions."

Section Referred to in Other Sections

This section is referred to in sections 1330, 1872, 2252, 2253, 2274, 2354, 2436, 2703 of this title; title 42 section 2210b.

§ 2252. Presidential action after investigations

Section Referred to in Other Sections

This section is referred to in sections 1330, 1872, 2251, 2253, 2436, 2703 of this title.

§ 2253. Import relief

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Congressional action

(1) If the President reports under subsection (b) of this section that he is taking action which differs from the action recommended by the Commission under section 2251(d)(1)(A) of this title, or that he will not provide import relief, the action recommended by the Commission shall take effect (as provided in paragraph (2)) upon enactment of a joint resolution described in section 2192(a)(1)(A) of this title within the 90-day period beginning on the date on which the document referred to in subsection (b) of this section is transmitted to the Congress.

(2) If the contingency set forth in paragraph (1) occurs, the President shall (within 30 days after the enactment of the joint resolution referred to in paragraph (1)) proclaim the increase in, or imposition of, any duty or other import restriction on the article which was recommended by the Commission under section 2251(d) of this title.

[*See main edition for text of* (*d*) *to* (*k*)]

(As amended Pub. L. 98-573, title II, § 248(a), Oct. 30, 1984, 98 Stat. 2998.)

Amendments

1984—Subsec. (c)(1). Pub. L. 98-573, § 248(a)(1), substituted provision that the action recommended by the Commission shall take effect upon enactment of a joint resolution described in section 2192(a)(1)(A) of this tilte for provision that the action recommended by the Commission would take effect upon the adoption by both Houses of Congress, by an affirmative vote of a majority of the Members of each House present and voting under the procedures set forth in section 2192 of this title, of a concurrent resolution disapproving the action taken by the President or his determination not to provide import relief under section 2252(a)(1)(A) of this title.

Subsec. (c)(2). Pub. L. 98-573, § 248(a)(2), substituted "enactment of the joint resolution referred to in paragraph (1)" for "adoption of such resolution" and "section 2251(d)" for "section 2251(b)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-573 effective the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of this title.

Steel Import Stabilization

Title VIII of Pub. L. 98-573 provided that:

"**SEC. 801. SHORT TITLE.**

"This title may be cited as the 'Steel Import Stabilization Act'.

"**SEC. 802. FINDINGS AND PURPOSES.**

"(a) The Congress finds that—

"(1) the United States steel industry has a serious need to modernize its plant and equipment in order to enhance its international competitiveness, and needs increased capital investments to effect that modernization;

"(2) the ability of the domestic steel industry to be internationally competitive is, and has been, impeded by the effects of the enormous Federal budget deficit, an overvalued dollar, and increasing trade deficits, as well as serious injury due to imports of, and subsidies, dumping, and the use of other unfair and restrictive foreign trade practices regarding steel products;

"(3) the extensiveness of the unfair trade practices engaged in the international market regarding such products imposes unusually harsh burdens on the United States steel industry in combating those practices through the trade remedy laws;

"(4) expeditious and effective action under the President's national policy for the steel industry, including more vigorous efforts by the Executive Branch to self-initiate and pursue remedies against those practices, is needed to eliminate the adverse effects of those unfair trade practices;

"(5) import relief will be ineffective and will not serve the national economic interest unless the industry during the period of relief engages in serious efforts substantially to modernize and to improve its international competitiveness; and

"(6) full and effective implementation of the national policy for the steel industry will substantially improve the economy and employment in both the steel and iron ore-producing sectors.

"(b) The purposes of this title are—

"(1) to supplement the authority of the President to achieve the goals of the national policy for the steel industry by granting enforcement powers regarding those bilateral arrangements that are entered into or undertaken for purposes of implementing that national policy; and

"(2) to make the continuation of those powers subject to the condition that the steel industry undertake a comprehensive modernization of its plant and equipment.

"SEC. 803. SENSE OF CONGRESS REGARDING THE NATIONAL POLICY FOR THE STEEL INDUSTRY.

"It is the sense of the Congress that—

"(1) the President should, in conjunction with the authority granted under this title, implement the national policy for the steel industry in a manner to ensure that the foreign share of the United States market for steel products is commensurate with a level which would obtain under conditions of fair, unsubsidized competition; and it is further the sense of Congress that when this policy is fully implemented, it will result in a foreign share of the domestic market of 17.0 to 20.2 percent, subject to such modifications that changes in market conditions and the composition of the steel industry may require;

"(2) the national policy for the steel industry should not be implemented in a manner contrary to the antitrust laws; and

"(3) if the national policy for the steel industry does not produce satisfactory results within a reasonable period of time, the Congress will consider taking such legislative actions concerning steel and iron ore products as may be necessary or appropriate to stabilize conditions in the domestic market for such products.

"SEC. 804. DEFINITIONS.

"As used in this title—

"(1) The term 'bilateral arrangement' means any arrangement, agreement, or understanding (including, but not limited to, any surge control understanding or suspension agreement) entered into or undertaken, or previously entered into or undertaken, by the United States and any foreign country or customs union containing such quantitative limitations, restrictions, or other terms relating to the importation into, or exportation to, the United States of categories of steel products as may be necessary to implement the national policy for the steel industry.

"(2) The term 'national policy for the steel industry' means those actions and elements described in Executive Communication 4046, dated September 18, 1984 (printed as House Document 98-263).

"(3) The term 'steel industry' means producers in the United States of steel products.

"SEC. 805. ENFORCEMENT AUTHORITY.

"(a) Subject to section 806, the President is authorized to carry out such actions as may be necessary or appropriate to enforce the quantitative limitations, restrictions, and other terms agreed to between the United States and steel-exporting nations as contained in bilateral arrangements. Such actions may include, but are not limited to, requirements that valid export licenses or other documentation issued by a foreign government be presented as a condition for the entry into the United States of steel products.

"(b)(1) In connection with the provisions of the Arrangement on European Communities' Export of Pipes and Tubes to the United States of America, contained in an exchange of letters dated October 21, 1982, between representatives of the United States and the Commission of the European Communities, including any modification, clarification, extension, or successor agreement thereto (collectively referred to hereinafter as 'the Arrangement'), the Secretary of Commerce is authorized to request the Secretary of the Treasury to take action pursuant to paragraph (2) of this subsection whenever he determines that—

"(A) the level of exports of pipes and tubes to the United States from the European Communities is exceeding the average share of annual United States apparent consumption specified in the Arrangement, or

"(B) distortion is occurring in the pattern of United States-European Communities trade within the pipe and tube sector taking into account the average share of annual United States apparent consumption accounted for by European Communities articles within product categories developed by the Secretary of Commerce.

Any request to the Secretary of the Treasury pursuant to this subsection by the Secretary of Commerce shall identify one or more categories of pipe and tube products with respect to which action under paragraph (2) is requested.

"(2) At the request of the Secretary of Commerce pursuant to paragraph (1), the Secretary of the Treasury shall take such action as may be necessary to ensure that the aggregate quantity of European Communities articles in each product category identified by the Secretary of Commerce in such request that are entered into the United States are in accordance with the terms of the Arrangement.

"(3) Nothing in this subsection may be construed as prohibiting the Secretary of Commerce from permitting the importation of additional quantities of specific products in cases where the Secretary determines that conditions of short supply or emergency economic situations related to market demand exist; except that a short supply or emergency economic situation shall not be considered to exist solely because domestic producers are unwilling to supply products at prices below their costs of production (as determined by the Secretary of Commerce).

"(c) For purposes of carrying out this title, the Secretary of the Treasury may provide by regulation for the terms and conditions under which steel products may be denied entry into the United States.

"SEC. 806. EFFECTIVE PERIOD OF TITLE.

"(a) IN GENERAL.—Section 805 shall terminate—

"(1) at the close of the fifth anniversary of the effective date of this title; or

"(2) at the close of the first, second, third, or fourth anniversary of the effective date of this title, unless the President, before each such anniversary, submits to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate (in writing and together with the reasons therefor) an affirmative annual determination described in subsection (b).

"(b)(1) An affirmative annual determination is a determination by the President that—

"(A) the major companies of the steel industry, taken as a whole, have, during the 12-month period ending at the close of an anniversary referred to in subsection (a)(2)—

"(i) committed substantially all of their net cash flow from steel product operations for purposes of reinvestment in, and modernization of, that industry through investment in modern plant and equipment, research and development, and other appropriate projects, such as working capital for steel operations and programs for the retraining of workers; and

"(ii) taken sufficient action to maintain their international competitiveness, including action to produce price-competitive and quality-competitive products, to control costs of production, including employment costs, and to improve productivity; and

"(B) each of the major companies committed for the applicable 12-month period not less than 1 percent of net cash flow to the retraining of workers; except that this requirement may be waived by the President with respect to a major company in noncompliance, if he finds unusual economic circumstances exist with respect to that company; and

"(C) the enforcement authority provided under section 805 remains necessary to maintain the effectiveness of bilateral arrangements undertaken to eliminate unfair trade practices in the steel sector.

"(2) For purposes of this subsection—

"(A) the [The] term 'major company' means an enterprise whose raw steel production in the United States during 1983 exceeded 1,500,000 net tons.

"(B) The term 'net cash flow' means annual net (after-tax) income plus depreciation, depletion allowances, amortization, and changes in reserves minus dividends and payments on short-term and long-term debts and liabilities.

"(3) For purposes of carrying out this subsection, the President shall take into account such information as may be available from the United States International Trade Commission and other appropriate sources relating to the modernization efforts of the steel industry.

"SEC. 807. DEPARTMENT OF LABOR WORKER ASSISTANCE PLAN.

"Within 6 months after the effective date of this title, the Secretary of Labor shall prepare (in consultation with the Steel Advisory Committee established on November 3, 1983, by the Secretary of Commerce and the Secretary of Labor (48 F.R. 51165)) and submit to the Congress a proposed plan of action for assisting workers in communities that are adversely affected by imports of steel products; which assistance shall include retraining and relocation for former workers in the steel industry who will likely be unable to return to employment in that industry. The plan required under this section shall be based upon existing authorities for providing such assistance, but shall be accompanied by such recommendations for additional statutory authority as the Secretary of Labor considers necessary to carry out the purposes of the plan.

"SEC. 808. EFFECTIVE DATE.

"This title shall take effect on October 1, 1984."

LIMITATION ON MEAT IMPORTS

Pub. L. 88-482, § 2, Aug. 22, 1964, 78 Stat. 594, as amended by Pub. L. 96-177, Dec. 31, 1979, 93 Stat. 1291, provided that:

"(a) This section may be cited as the 'Meat Import Act of 1979'.

"(b) For purposes of this section—

"(1) The term 'entered' means entered, or withdrawn from warehouse, for consumption in the customs territory of the United States.

"(2) The term 'meat articles' means the articles provided for in the Tariff Schedules of the United States (19 U.S.C. 1202) under—

"(A) item 106.10 (relating to fresh, chilled, or frozen cattle meat);

"(B) items 106.22 and 106.25 (relating to fresh, chilled, or frozen meat of goats and sheep (except lambs)); and

"(C) items 107.55 and 107.62 (relating to prepared and preserved beef and veal (except sausage)), if the articles are prepared, whether fresh, chilled, or frozen, but not otherwise preserved.

"(3) The term 'Secretary' means the Secretary of Agriculture.

"(c) The aggregate quantity of meat articles which may be entered in any calendar year after 1979 may not exceed 1,204,600,000 pounds; except that this aggregate quantity shall be—

"(1) increased or decreased for any calendar year by the same percentage that the estimated average annual domestic commercial production of meat articles in that calendar year and the 2 preceding calendar years increases or decreases in comparison with the average annual domestic commercial production of meat articles during calendar years 1968 through 1977; and

"(2) adjusted further under subsection (d).

For purposes of paragraph (1), the estimated annual domestic commercial production of meat articles for any calendar year does not include the carcass weight of live cattle specified in items 100.40, 100.43, 100.45, 100.53, and 100.55 of such Schedules entered during such year.

"(d) The aggregate quantity referred to in subsection (c), as increased or decreased under paragraph (1) of such subsection, shall be adjusted further for any calendar year after 1979 by multiplying such quantity by a fraction—

"(1) the numerator of which is the average annual per capita production of domestic cow beef during that calendar year (as estimated) and the 4 calendar years preceding such calendar year; and

"(2) the denominator of which is the average annual per capita production of domestic cow beef in that calendar year (as estimated) and the preceding calendar year.

For the purposes of this subsection, the phrase 'domestic cow beef' means that portion of the total domestic cattle slaughter designated by the Secretary as cow slaughter.

"(e) For each calendar year after 1979, the Secretary shall estimate and publish—

"(1) before the first day of such calendar year, the aggregate quantity prescribed for such calendar year under subsection (c) as adjusted under subsection (d); and

"(2) before the first day of each calendar quarter in such calendar year, the aggregate quantity of meat articles which (but for this section) would be entered during such calendar year.

In applying paragraph (2) for the second or any succeeding calendar quarter in any calendar year, actual entries for the preceding calendar quarter or quarters in such calendar year shall be taken into account to the extent data is available.

"(f)(1) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is 110 percent or more of the aggregate quantity estimated by him under subsection (e)(1), and if there is no limitation in effect under this section for such calendar year with respect to meat articles, the President shall by proclamation limit the total quantity of meat articles which may be entered during such calendar year to the aggregate quantity estimated for such calendar year by the Secretary under subsection (e)(1); except that no limitation imposed under this paragraph for any calendar year may be less than 1,250,000,000 pounds. The President shall include in the articles subject to any limit proclaimed under this paragraph any article of meat provided for in item 107.61 of the Tariff Schedules of the United Sttes (relating to high-quality beef specially processed into fancy cuts).

"(2) If the aggregate quantity estimated before any calendar quarter by the Secretary under subsection (e)(2) is less than 110 percent of the aggregate quantity estimated by him under subsection (e)(1), and if a limitation is in effect under this section for such calendar year with respect to meat articles, such limitation shall cease to apply as of the first day of such calendar quarter. If any such limitation has been in effect for the third calendar quarter of any calendar year, then it shall continue in effect for the fourth calendar quarter of such year unless the proclamation is suspended or the total quantity is increased pursuant to subsection (g).

"(g) The President may, after providing opportunity for public comment by giving 30 days' notice by publication in the Federal Register of his intention to so act, suspend any proclamation made under subsection (f), or increase the total quantity proclaimed under such subsection, if he determines and proclaims that—

"(1) such action is required by overriding economic or national security interests of the United States, giving special weight to the importance to the Nation of the economic well-being of the domestic cattle industry;

"(2) the supply of meat articles will be inadequate to meet domestic demand at reasonable prices; or

"(3) trade agreements entered into after the date of enactment of this Act [probably means Dec. 31, 1979] insure [ensure] that the policy set forth in subsections (c) and (d) will be carried out.

Any such suspension shall be for such periods, and any such increase shall be in such amount, as the President determines and proclaims to be necessary to carry out the purposes of this subsection.

"(h) Notwithstanding the previous subsections, the total quantity of meat articles which may be entered during any calendar year may not be increased by the President if the fraction described in subsection (d) for that calendar year yields a quotient of less than 1.0, unless—

"(1) during a period of national emergency declared under section 201 of the National Emergencies Act of 1976 [50 U.S.C. 1621], he determines and proclaims that such action is required by overriding national security interests of the United States;

"(2) he determines and proclaims that the supply of articles of the kind to which the limitation would otherwise apply will be inadequate, because of a natural disaster, disease, or major national market disruption, to meet domestic demand at reasonable prices; or

"(3) on the basis of actual data for the first two quarters of the calendar year, a revised calculation of the fraction described in subsection (d) for the calendar year yields a quotient of 1.0 or more.

Any such suspension shall be for such period, and any such increase shall be in such amont, as the President determines and proclaims to be necessary to carry out the purposes of this subsection. The effective period of any such suspension or increase made pursuant to paragraph (1) may not extend beyond the termination, in accordance with the provisions of section 202 of the National Emergencies Act of 1976 [50 U.S.C. 1622], of such period of national emergency, notwithstanding the provisions of section 202(a) of that Act.

"(i) The Secretary shall allocate the total quantity proclaimed under subsection (f)(1) and any increase in such quantity provided for under subsection (g) among supplying countries on the basis of the shares of the United States market for meat articles such countries supplied during a representative period. Notwithstanding the preceding sentence, due account may be given to special factors which have affected or may affect the trade in meat articles or cattle. The Secretary shall certify such allocations to the Secretary of the Treasury.

"(j) The Secretary shall issue such regulations as he determines to be necessary to prevent circumvention of the purposes of this section.

"(k) All determinations by the President and the Secretary under this section shall be final.

"(*l*) The Secretary of Agriculture shall study the regional economic impact of imports of meat articles and report the results of his study, together with any recommendations (including recommendations for legislation, if any) to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate not later than June 30, 1980."

[Section 2 of Pub. L. 96-177 provided that: "This Act [amending this note] shall take effect January 1, 1980."]

Section Referred to in Other Sections

This section is referred to in sections 1330, 1872, 1981, 2114d, 2133, 2137, 2192, 2194, 2251, 2252, 2436, 2463, 2581, 2703 of this title.

Part 2—Adjustment Assistance for Workers

Effective and Termination Date

Section 285, formerly section 284 of Pub. L. 93-618, title II, Jan. 3, 1975, 88 Stat. 2019, renumbered Pub. L. 96-417, title VI, § 613(a), Oct. 10, 1980, 94 Stat. 1746, and amended Pub. L. 97-35, title XXV, § 2512, Aug. 13, 1981, 95 Stat. 888; Pub. L. 98-120, § 2(b), Oct. 12, 1983, 97 Stat. 809, provided that: "Chapters 2, 3, and 4 of this title [parts 2, 3, and 4 of this subchapter] shall become effective on the 90th day following the date of enactment of this Act [Jan. 3, 1975] and chapters 2 and 3 shall terminate on September 30, 1985. Chapter 4 shall terminate on September 30, 1982."

Part Referred to in Other Sections

This part is referred to in sections 1339, 2251, 2252, 2318, 2391 of this title.

SUBPART A—PETITIONS AND DETERMINATIONS

§ 2272. Group eligibility requirements

The Secretary shall certify a group of workers as eligible to apply for adjustment assistance under this part if he determines—

[*See main edition for text of (1) and (2)*]

(3) that increases of imports of articles like or directly competitive with articles produced by such workers' firm or an appropriate subdivision thereof contributed importantly to such total or partial separation, or threat thereof, and to such decline in sales or production.

For purposes of paragraph (3), the term "contributed importantly" means a cause which is important, but not necessarily more important than any other cause.

(As amended Pub. L. 98-120, § 3(a), Oct. 12, 1983, 97 Stat. 809.)

Amendments

1983—Pub. L. 98-120, § 3(a)(2), substituted "For purposes of paragraph (3), the term 'contributed importantly' means a cause which is important, but not necessarily more important than any other cause" for "For purposes of paragraph (3), the term 'substantial cause' means a cause which is important and not less than any other cause" in the provision following par. (3).

Par. (3). Pub. L. 98-120, § 3(a)(1), substituted "contributed importantly to such total or partial separation, or threat thereof, and to such decline" for "were a substantial cause of such total or partial separation, or threat thereof, and of such decline".

Effective Date of 1983 Amendment

Section 3(b) of Pub. L. 98-120, provided that: "The amendments made by subsection (a) [amending this section] shall apply with respect to petitions for certification filed under section 221 of the Trade Act of 1974 [19 U.S.C. 2271] on or after October 1, 1983."

§ 2273. Determinations by Secretary of Labor

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2275, 2291, 2355, 2395 of this title; title 28 sections 1581, 2631, 2636, 2640, 2643.

SUBPART B—PROGRAM BENEFITS

§ 2293. Limitations on trade readjustment allowances

(a) Maximum allowance; deduction for unemployment insurance; additional payments for approved training periods

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 2296 of this title, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this part; or

(B) begins with the first week of such training, if such training is approved after the last week described in subparagraph (A).

Payments for such additional weeks may be made only for weeks in such 26-week period during which the individual is engaged in such training and has not been determined under section 2296(c) of this title to be failing to make satisfactory progress in the training.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-369, div. B, title VI, § 2671, July 18, 1984, 98 Stat. 1172.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-369 substituted "Notwithstanding paragraph (1), in order to assist the adversely affected worker to complete training approved for him under section 2296 of this title, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period that—

"(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this part; or

"(B) begins with the first week of such training, if such training is approved after the last week described in subparagraph (A)."

for "Notwithstanding paragraph (1), in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 26 additional weeks in the 26-week period following the last week of entitlement to trade readjustment allowances otherwise payable under this part in order to assist the adversely affected worker to complete training approved for the worker under section 2296 of this title."

§ 2296. Training

(a) Approval of training; eligibility for unemployment insurance; "suitable employment" defined

(1) If the Secretary determines that—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) training approved by the Secretary is available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963,[1] and employers), and

[*See main edition for text of* (*E*), *concluding provision,* (*2*) *and* (*3*); (*b*) *and* (*c*); *credits*]

REFERENCES IN TEXT

Section 195(2) of the Vocational Education Act of 1963, referred to in subsec. (a)(1)(D), is section 195(2) of Pub. L. 88-210, title I, as added by Pub. L. 94-482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2211, and amended, which was classified to section 2461(2) of Title 20, Education, prior to the general revision and redesignation of Pub. L. 99-210 as the Carl D. Perkins Vocational Education Act by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435. The definition of "area vocational education school" is now contained in section 521(3) of Pub. L. 88-210, which is classified to section 2471(3) of Title 20.

§ 2297. Job search allowances

(a) Terms

Any adversely affected worker covered by a certification under subpart A of this part may file an application with the Secretary for a job search allowance. Such allowance, if granted, shall provide reimbursement to the worker of 90 percent of the cost of necessary job search expenses as prescribed by regulations of the Secretary; except that—

(1) such reimbursement may not exceed $800 for any worker, and

[*See main edition for text of* (*2*); (*b*)]

(As amended Pub. L. 98-369, div. B, title VI, § 2672(a), July 18, 1984, 98 Stat. 1172.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369 substituted "$800" for "$600".

§ 2298. Relocation allowances

[*See main edition for text of* (*a*) *to* (*c*)]

(d) "Relocation allowance" defined

For the purposes of this section, the term "relocation allowance" means—

[*See main edition for text of* (*1*)]

(2) a lump sum equivalent to three times the worker's average weekly wage, up to a maximum payment of $800.

(As amended Pub. L. 98-369, div. B, title VI, § 2672(b), July 18, 1984, 98 Stat. 1172.)

AMENDMENTS

1984—Subsec. (d)(2). Pub. L. 98-369 substituted "$800" for "$600".

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[1] See References in Text note below.

SUBPART C—GENERAL PROVISIONS

§ 2317. Authorization of appropriations

There are authorized to be appropriated to the Department of Labor, for each of the fiscal years 1982 through 1985, such sums as may be necessary to carry out the purposes of this part.

(As amended Pub. L. 98-120, § 2(a), Oct. 12, 1983, 97 Stat. 809.)

AMENDMENTS

1983—Pub. L. 98-120 substituted: "each of the fiscal years 1982 through 1985" for "each of fiscal years 1982 and 1983".

PART 3—ADJUSTMENT ASSISTANCE FOR FIRMS

EFFECTIVE AND TERMINATION DATE

This part effective on the 90th day following Jan. 3, 1975, and to terminate on Sept. 30, 1985, see section 285 of Pub. L. 93-618, set out as a note preceding section 2271 of this title.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1339, 2251, 2252, 2391 of this title.

§ 2341. Petitions and determinations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2342, 2343, 2345, 2346, 2355, 2395 of this title; title 28 sections 1581, 2631, 2636, 2640, 2643.

§ 2345. Conditions for financial assistance

[*See main edition for text of* (*a*) *to* (*h*)]

(i) Preference for firms having employee stock ownership plans

(1) When considering whether to grant a direct loan or to guarantee a loan to a corporation which is otherwise certified under section 2341 of this title, the Secretary shall give preference to a corporation which agrees with respect to such loan to fulfill the following requirements—

(A) 25 percent of the principal amount of the loan is paid by the lender to a qualified trust established under an employee stock ownership plan established and maintained by the recipient corporation, by a parent or subsidiary of such corporation, or by several corporations including the recipient corporation,

(B) the employee stock ownership plan meets the requirements of this subsection, and

(C) the agreement among the recipient corporation, the lender, and the qualified trust relating to the loan meets the requirements of this section.

(2) An employee stock ownership plan does not meet the requirements of this subsection unless the governing instrument of the plan provides that—

(A) the amount of the loan paid under paragraph (1)(A) to the qualified trust will be used to purchase qualified employer securities,

(B) the qualified trust will repay to the lender the amount of such loan, together with the interest thereon, out of amounts contributed to the trust by the recipient corporation, and

(C) from time to time, as the qualified trust repays such amount, the trust will allocate qualified employer securities among the individual accounts of participants and their beneficiaries in accordance with the provisions of paragraph (4).

(3) The agreement among the recipient corporation, the lender, and the qualified trust does not meet the requirements of this subsection unless—

(A) it is unconditionally enforceable by any party against the others, jointly and severally,

(B) it provides that the liability of the qualified trust to repay loan amounts paid to the qualified trust may not, at any time, exceed an amount equal to the amount of contributions required under paragraph (2)(B) which are actually received by such trust,

(C) it provides that amounts received by the recipient corporation from the qualified trust for qualified employer securities purchased for the purpose of this subsection will be used exclusively by the recipient corporation for those purposes for which it may use that portion of the loan paid directly to it by the lender,

(D) it provides that the recipient corporation may not reduce the amount of its equity capital during the one year period beginning on the date on which the qualified trust purchases qualified employer securities for purposes of this subsection, and

(E) it provides that the recipient corporation will make contributions to the qualified trust of not less than such amounts as are necessary for such trust to meet its obligation to make repayments of principal and interest on the amount of the loan received by the trust without regard to whether such contributions are deductible by the corporation under section 404 of title 26 and without regard to any other amounts the recipient corporation is obligated under law to contribute to or under the employee stock ownership plan.

(4) At the close of each plan year, an employee stock ownership plan shall allocate to the accounts of participating employees that portion of the qualified employer securities the cost of which bears substantially the same ratio to the cost of all the qualified employer securities purchased under paragraph (2)(A) of this subsection as the amount of the loan principal and interest repaid by the qualified trust during that year bears to the total amount of the loan principal and interest payable by such trust during the term of such loan. Qualified employer securities allocated to the individual account of a participant during one plan year must bear substantially the same proportion to the amount of all such securities allocated to all participants in the plan as the amount of compensation paid to such participant bears to the total

amount of compensation paid to all such participants during that year.

(5) For purposes of this subsection, the term—

(A) "employee stock ownership plan" means a plan described in section 4975(e)(7) of title 26,

(B) "qualified trust" means a trust established under an employee stock ownership plan and meeting the requirements of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] and section 401 of title 26,

(C) "qualified employer securities" means common stock issued by the recipient corporation or by a parent or subsidiary of such corporation with voting power and dividend rights no less favorable than the voting power and dividend rights on other common stock issued by the issuing corporation and with voting power being exercised by the participants in the employee stock ownership plan after it is allocated to their plan accounts, and

(D) "equity capital" means, with respect to the recipient corporation, the sum of its money and other property (in an amount equal to the adjusted basis of such property but disregarding adjustments made on account of depreciation or amortization made during the period described in paragraph (3)(D)), less the amount of its indebtedness.

(As amended Pub. L. 98-120, § 4(a), Oct. 12, 1983, 97 Stat. 809.)

References in Text

The Employee Retirement Income Security Act of 1974, referred to in subsec. (i)(5)(B), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 832, as amended. Title I of the Employee Retirement Income Security Act of 1974 is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

Amendments

1983—Subsec. (i). Pub. L. 98-120 added subsec. (i).

Effective Date of 1983 Amendment

Section 4(b) of Pub. L. 98-120 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 12, 1983]."

§ 2355. Assistance to industry; authorization of appropriations

(a) Technical assistance

The Secretary may provide technical assistance, on such terms and conditions as the Secretary deems appropriate, for the establishment of industrywide programs for new product development, new process development, export development, or other uses consistent with the purposes of this part. Such technical assistance may be provided through existing agencies, private individuals, firms, universities and institutions, and by grants, contracts, or cooperative agreements to associations, unions, or other nonprofit industry organizations in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under section 2273 or 2341 of this title.

(b) Expenditures

Expenditures for technical assistance under this section may be up to $10,000,000 annually per industry and shall be made under such terms and conditions as the Secretary deems appropriate.

(As amended Pub. L. 98-369, div. B, title VI, § 2673, July 18, 1984, 98 Stat. 1172.)

Amendments

1984—Subsec. (a). Pub. L. 98-369, § 2673(1), added "or workers" after "of firms" and added reference to section 2273 of this title.

Subsec. (b). Pub. L. 98-369, § 2673(2), substituted "$10,000,000" for "$2,000,000".

Part 5—Miscellaneous Provisions

§ 2395. Judicial review

References in Text

Section 1256 of title 28, referred to in subsec. (c), was repealed by Pub. L. 97-164, title I, § 123, Apr. 2, 1982, 96 Stat. 36.

SUBCHAPTER III—ENFORCEMENT OF UNITED STATES RIGHTS UNDER TRADE AGREEMENTS AND RESPONSE TO CERTAIN FOREIGN TRADE PRACTICES

Subchapter Referred to in Other Sections

This subchapter is referred to in section 1339 of this title.

§ 2411. Determinations and action by President

(a) Determinations requiring action

(1) In general

If the President determines that action by the United States is appropriate—

(A) to enforce the rights of the United States under any trade agreement; or

(B) to respond to any act, policy, or practice of a foreign country or instrumentality that—

(i) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or

(ii) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice.

(2) Scope of action

The President may exercise his authority under this section with respect to any goods or sector—

(A) on a nondiscriminatory basis or solely against the foreign country or instrumentality involved, and

(B) without regard to whether or not such goods or sector were involved in the act, policy, or practice identified under paragraph (1).

(b) Other action

Upon making a determination described in subsection (a) of this section, the President, in addition to taking action referred to in such subsection, may—

(1) suspend, withdraw, or prevent the application of, or refrain from proclaiming, benefits of trade agreement concessions to carry out a trade agreement with the foreign country or instrumentality involved;

(2) impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country or instrumentality for such time as he determines appropriate.

(c) Additional actions on services

(1) In general

Notwithstanding any other provision of law governing any service sector access authorization, and in addition to the authority conferred in subsection (b) of this section, the President may—

(A) restrict, in the manner and to the extent the President deems appropriate, the terms and conditions of any such authorization, or

(B) deny the issuance of any such authorization.

(2) Affected authorizations

Actions under paragraph (1) shall apply only with respect to service sector access authorizations granted, or applications therefor pending, on or after the date on which—

(A) a petition is filed under section 2412(a) of this title, or

(B) a determination to initiate an investigation is made by the United States Trade Representative (hereinafter in this subchapter referred to as the "Trade Representative") under section 2412(c) of this title.

(3) Consultation

Before the President takes action under subsection (b) or (c) of this section involving the imposition of fees or other restrictions on the services of a foreign country, the Trade Representative shall, if the services involved are subject to regulation by any agency of the Federal Government or of any State, consult, as appropriate, with the head of the agency concerned.

(d) Presidential procedures

(1) Action on own motion

If the President decides to take action under this section and no petition requesting action on the matter involved has been filed under section 2412 of this title, the President shall publish notice of his determination, including the reasons for the determination in the Federal Register. Unless he determines that expeditious action is required, the President shall provide an opportunity for the presentation of views concerning the taking of such action.

(2) Action requested by petition

Not later than 21 days after the date on which he receives the recommendation of the Trade Representative under section 2414 of this title with respect to a petition, the President shall determine what action, if any, he will take under this section, and shall publish notice of his determination, including the reasons for the determination, in the Federal Register.

(e) Definitions; special rule for vessel construction subsidies

For purposes of this section—

(1) Commerce

The term "commerce" includes, but is not limited to—

(A) services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and

(B) foreign direct investment by United States persons with implications for trade in goods or services.

(2) Vessel construction subsidies

An act, policy, or practice of a foreign country or instrumentality that burdens or restricts United States commerce may include the provision, directly or indirectly, by that foreign country or instrumentality of subsidies for the construction of vessels used in the commercial transportation by water of goods between foreign countries and the United States.

(3) Unreasonable

The term "unreasonable" means any act, policy, or practice which, while not necessarily in violation of or inconsistent with the international legal rights of the United States, is otherwise deemed to be unfair and inequitable. The term includes, but is not limited to, any act, policy, or practice which denies fair and equitable—

(A) market opportunities;

(B) opportunities for the establishment of an enterprise; or

(C) provision of adequate and effective protection of intellectual property rights.

(4) Unjustifiable

(A) In general

The term "unjustifiable" means any act, policy, or practice which is in violation of, or inconsistent with, the international legal rights of the United States.

(B) Certain actions included

The term "unjustifiable" includes, but is not limited to, any act, policy, or practice described in subparagraph (A) which denies national or most-favored-nation treatment, the right of establishment, or protection of intellectual property rights.

(5) Definition of discriminatory

The term "discriminatory" includes, where appropriate, any act, policy, or practice which denies national or most-favored-nation treatment to United States goods, services, or investment.

(6) Service sector access authorization

The term "service sector access authorization" means any license, permit, order, or other authorization, issued under the authority of Federal law, that permits a foreign supplier of services access to the United States market in a service sector concerned.

(As amended Pub. L. 98-573, title III, § 304(a)-(c), (f), Oct. 30, 1984, 98 Stat. 3002, 3005.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573, § 304(a), amended generally subsec. (a) which prior to amendment provided that if the President determines that action by the United States is appropriate (1) to enforce the rights of the United States under any trade agreement; or (2) to respond to any act, policy, or practice of a foreign country or instrumentality that (A) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (B) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce; the President shall take all appropriate and feasible action within his power to enforce such rights or to obtain the elimination of such act, policy, or practice and that action under this section may be taken on a nondiscriminatory basis or solely against the products or services of the foreign country or instrumentality involved.

Subsec. (b)(1). Pub. L. 98-573, § 304(b)(1), struck out "and" at the end.

Subsec. (b)(2). Pub. L. 98-573, § 304(b)(2), (3), inserted ", notwithstanding any other provision of law," and substituted "goods" for "products".

Subsecs. (c), (d). Pub. L. 98-573, § 304(c), added subsec. (c) and redesignated existing subsecs. (c) and (d) as (d) and (e), respectively.

Subsec. (e). Pub. L. 98-573, § 304(c), (f), redesignated subsec. (d) as (e), inserted "For purposes of this section—" before par. (1), in par. (1) substituted provisions defining the term "commerce" as including, but not limited to services (including transfers of information) associated with international trade, whether or not such services are related to specific goods, and foreign direct investment by United States persons with implications for trade in goods or services for provision defining "commerce" as including, but not limited to, services associated with international trade, whether or not such services are related to specific products, and added pars. (3) to (6).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2112, 2171, 2241, 2412, 2414, 2416, 2554, 2581 of this title; title 7 sections 1736l, 1736m.

§ 2412. Initiation of investigations by United States Trade Representative

(a) Filing of petition

(1) In general

Any interested person may file a petition with the United States Trade Representative (hereinafter in this subchapter referred to as the "Trade Representative") requesting the President to take action under section 2411 of this title and setting forth the allegations in support of the request.

(2) Review of allegations

The Trade Representative shall review the allegations in the petition and, not later than forty-five days after the date on which he received the petition, shall determine whether to initiate an investigation.

(b) Determinations regarding petitions

(1) Negative determination

If the Trade Representative determines not to initiate an investigation with respect to a petition, he shall inform the petitioner of the reasons therefor and shall publish notice of the determination, together with a summary of such reasons, in the Federal Register.

(2) Affirmative determination

If the Trade Representative determines to initiate an investigation with respect to a petition, he shall initiate an investigation regarding the issues raised. The Trade Representative shall publish a summary of the petition in the Federal Register and shall, as soon as possible, provide opportunity for the presentation of views concerning the issues, including a public hearing—

(A) within the thirty-day period after the date of the determination (or on a date after such period if agreed to by the petitioner) if a public hearing within such period is requested in the petition; or

(B) at such other time if a timely request therefor is made by the petitioner or by any interested person.

(c) Determination to initiate by motion of trade representative

(1) Determination to initiate

If the Trade Representative determines with respect to any matter that an investigation should be initiated in order to advise the President concerning the exercise of the President's authority under section 2411 of this title, the Trade Representative shall publish such determination in the Federal Register and such determination shall be treated as an affirmative determination under subsection (b)(2) of this section.

(2) Consultation before initiation

The Trade Representative shall, before making any determination under paragraph (1), consult with appropriate committees established pursuant to section 2155 of this title.

(Pub. L. 93-618, title III, § 302, as added Pub. L. 96-39, title IX, § 901, July 26, 1979, 93 Stat. 296, and amended Pub. L. 98-573, title III, § 304(d)(1), Oct. 30, 1984, 98 Stat. 3003.)

AMENDMENTS

1984—Pub. L. 98-573 amended section generally, thereby substituting "United States Trade Representative" and "Trade Representative" for "Special Representative for Trade Negotiations" and "Special Representative", respectively, substituting "the reasons" for "his reasons" in subsec. (b)(1), substituting "a summary" for "the text" in subsec. (b)(2), striking out the comma after "petitioner)" in subsec. (b)(2)(A), and inserting "or by any interested person" after "petitioner" in subsec. (b)(2)(B).

§ 2413. Consultation upon initiation of investigation

(a) In general

On the date an affirmative determination is made under section 2412(b) of this title, the Trade Representative, on behalf of the United

States, shall request consultations with the foreign country or instrumentality concerned regarding issues raised in the petition or the determination of the Trade Representative under section 2412(c)(1) of this title. If the case involves a trade agreement and a mutually acceptable resolution is not reached during the consultation period, if any, specified in the trade agreement, the Trade Representative shall promptly request proceedings on the matter under the formal dispute settlement procedures provided under such agreement. The Trade Representative shall seek information and advice from the petitioner (if any) and the appropriate representatives provided for under section 2155 of this title in preparing United States presentations for consultations and dispute settlement proceedings.

(b) Delay of request for consultations for up to 90 days

(1) In general

Notwithstanding the provisions of subsection (a) of this section—

(A) the United States Trade Representative may delay for up to 90 days any request for consultations under subsection (a) of this section for the purpose of verifying or improving the petition to ensure an adequate basis for consultation, and

(B) if such consultations are delayed by reason of subparagraph (A), each time limitation under section 2414 of this title shall be extended for the period of such delay.

(2) Notice and report

The Trade Representative shall—

(A) publish notice of any delay under paragraph (1) in the Federal Register, and

(B) report to Congress on the reasons for such delay in the report required by section 2416 of this title.

(As amended Pub. L. 98-573, title III, §§ 304(d)(2)(B), (e), 306(c)(2)(C)(ii), Oct. 30, 1984, 98 Stat. 3004, 3005, 3012.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-573, §§ 304(d)(2)(B), (e)(1), 306(c)(2)(C)(ii), designated existing provisions as subsec. (a), struck out "with respect to a petition" after "section 2412(b) of this title", inserted "or the determination of the Trade Representative under section 2412(c)(1) of this title" after "in the petition", inserted "(if any)" after "petitioner", and struck out "private sector" after "appropriate".

Subsec. (b). Pub. L. 98-573, § 304(e)(2), added subsec. (b).

CHANGE OF NAME

"Trade Representative", meaning United States Trade Representative, was substituted in subsec. (a) preceding ", on behalf of" and "shall seek information" for "Special Representative", meaning Special Representative for Trade Negotiations, pursuant to Reorg. Plan No. 3 of 1979, § 1(b)(1), 44 F.R. 69273, 93 Stat. 1381, eff. Jan. 2, 1980, as provided by section 1-107(a) of Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 993, set out as notes under section 2171 of this title. See, also, section 2171 of this title as amended by Pub. L. 97-456.

§ 2414. Recommendations by Trade Representative

(a) Recommendations

(1) In general

On the basis of the investigation under section 2412 of this title, and the consultations (and the proceedings, if applicable) under section 2413 of this title, and subject to subsection (b) of this section, the Trade Representative shall recommend to the President what action, if any, he should take under section 2411 of this title with respect to the matters under investigation. The Trade Representative shall make that recommendation not later than—

[*See main edition for text of* (*A*) *to* (*D*), (*2*) *and* (*3*)]

(b) Consultation before recommendation

Before recommending that the President take action under section 2411 of this title with respect to the treatment of any product or service of a foreign country or instrumentality which is the subject of a petition filed under section 2412 of this title, the Trade Representative, unless he determines that expeditious action is required—

[*See main edition for text of* (*1*)]

(2) shall obtain advice from the appropriate advisory representatives provided for under section 2155 of this title, and

[*See main edition for text of* (*3*)]

If the Trade Representative does not comply with paragraphs (1) and (2) because expeditious action is required, he shall, after making the recommendation concerned to the President, comply with such paragraphs.

(As amended Pub. L. 98-573, title III, §§ 304(d)(2)(C), 306(c)(2)(C)(ii), Oct. 30, 1984, 98 Stat. 3005, 3012.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-573, § 304(d)(2)(C), substituted "matters under investigation" for "issues raised in the petition" in first sentence.

Subsec. (b)(2). Pub. L. 98-573, § 306(c)(2)(C)(ii), struck out "private sector" after "appropriate".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2411, 2413 of this title.

§ 2415. Requests for information

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Certain business information not made available

(1) In general

Except as provided in paragraph (2), and notwithstanding any other provision of law (including section 552 of title 5), no information requested and received by the Trade Representative in aid of any investigation under this subchapter shall be made available to any person if—

(A) the person providing such information certifies that—

(i) such information is business confidential,

(ii) the disclosure of such information would endanger trade secrets or profitability, and

(iii) such information is not generally available;

(B) the Trade Representative determines that such certification is well-founded; and

(C) to the extent required in regulations prescribed by the Trade Representative, the person providing such information provides an adequate nonconfidential summary of such information.

(2) Use of information

The Trade Representative may—

(A) use such information, or make such information available (in his own discretion) to any employee of the Federal Government for use, in any investigation under this subchapter, or

(B) may make such information available to any other person in a form which cannot be associated with, or otherwise identify, the person providing the information.

(As amended Pub. L. 98-573, title III, § 304(g), Oct. 30, 1984, 98 Stat. 3006.)

Amendments

1984—Subsec. (c). Pub. L. 98-573 added subsec. (c).

§ 2416. Administration

Section Referred to in Other Sections

This section is referred to in section 2413 of this title.

SUBCHAPTER IV—TRADE RELATIONS WITH COUNTRIES NOT CURRENTLY RECEIVING NONDISCRIMINATORY TREATMENT

§ 2432. Freedom of emigration in East-West trade

Continuation of Waiver for Socialist Republic of Romania, Hungarian People's Republic, and People's Republic of China

Determination of the President of the United States, No. 84-9, May 31, 1984, 49 F.R. 24107, provided:

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93-618), January 3, 1975 (88 Stat. 1978) (hereinafter "the Act") [this chapter], I determined, pursuant to subsection 402(d)(5) of the Act [subsec. (d)(5) of this section], that the further extension of the waiver authority granted by subsection 402(c) of the Act [subsec. (c) of this section] will substantially promote the objectives of section 402 of the Act [this section]. I further determine that the continuation of the waivers applicable to the Hungarian People's Republic, the People's Republic of China and the Socialist Republic of Romania will substantially promote the objectives of section 402 of the Act.

This determination shall be published in the Federal Register.

Ronald Reagan.

§ 2441. East-West Foreign Trade Board

Ex. Ord. No. 12469. Delegation of Functions

Ex. Ord. No. 12469, Mar. 26, 1984, 49 F.R. 11799, provided:

By the authority vested in me as President by the Constitution and the statutes of the United States of America, including section 301 of Title 3 of the United States Code (3 U.S.C. 301), and section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)), in order to provide for more efficient reporting to the Congress, it is hereby ordered as follows:

Section 1. The reporting functions of the East-West Foreign Trade Board under section 411(c) of the Trade Act of 1974 (19 U.S.C. 2441(c)), as transferred to the President by section 5(c) of Reorganization Plan No. 3 of 1979 (19 U.S.C. 2717 note), are delegated to the United States Trade Representative.

Sec. 2. This order is effective upon publication in the Federal Register.

Ronald Reagan.

SUBCHAPTER V—GENERALIZED SYSTEM OF PREFERENCES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 2253, 2703 of this title.

§ 2461. Authority to extend preferences

The President may provide duty-free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this subchapter. In taking any such action, the President shall have due regard for—

(1) the effect such action will have on furthering the economic development of developing countries through the expansion of their exports;

(2) the extent to which other major developed countries are undertaking a comparable effort to assist developing countries by granting generalized preferences with respect to imports of products of such countries;

(3) the anticipated impact of such action on United States producers of like or directly competitive products; and

(4) the extent of the beneficiary developing country's competitiveness with respect to eligible articles.

(As amended Pub. L. 98-573, title V, § 502, Oct. 30, 1984, 98 Stat. 3018.)

Amendments

1984—Par. (1). Pub. L. 98-573, § 502(1), inserted "through the expansion of their exports".

Par. (4). Pub. L. 98-573, § 502(2)-(4), added par. (4).

Effective Date of 1984 Amendment

Section 508 of Pub. L. 98-573 provided that: "The amendments made by this title [enacting section 2466 of this title, amending sections 2461 to 2465 of this title, and enacting provisions set out as notes under sections 2101 and 2461 of this title] shall take effect on January 4, 1985."

Statement of Purpose of 1984 Amendment

Section 501(b) of Pub. L. 98-573 provided that: "The purpose of this title [enacting section 2466 of this title, amending sections 2461 to 2465 of this title, and enacting provisions set out as notes under sections 2101 and 2461 of this title] is to—

"(1) promote the development of developing countries, which often need temporary preferential advantages to compete effectively with industrialized countries;

"(2) promote the notion that trade, rather than aid, is a more effective and cost-efficient way of promoting broad-based sustained economic development;

"(3) take advantage of the fact that developing countries provide the fastest growing markets for United States exports and that foreign exchange earnings from trade with such countries through the Generalized System of Preferences can further stimulate United States exports;

"(4) allow for the consideration of the fact that there are significant differences among developing countries with respect to their general development and international competitiveness;

"(5) encourage the providing of increased trade liberalization measures, thereby setting an example to be emulated by other industrialized countries;

"(6) recognize that a large number of developing countries must generate sufficient foreign exchange earnings to meet international debt obligations;

"(7) promote the creation of additional opportunities for trade among the developing countries;

"(8) integrate developing countries into the international trading system with its attendant responsibilities in a manner commensurate with their development;

"(9) encourage developing countries—

"(A) to eliminate or reduce significant barriers to trade in goods and services and to investment,

"(B) to provide effective means under which foreign nationals may secure, exercise, and enforce exclusive intellectual property rights, and

"(C) to afford workers internationally recognized worker rights; and

"(10) address the concerns listed in the preceding paragraphs in a manner that—

"(A) does not adversely affect United States producers and workers, and

"(B) conforms to the international obligations of the United States under the General Agreement on Tariffs and Trade."

§ 2462. Beneficiary developing countries

(a) Designation by President

[*See main edition for text of (1) to (3)*]

(4) For purposes of this subchapter the term "internationally recognized worker rights" includes—

(A) the right of association;

(B) the right to organize and bargain collectively;

(C) a prohibition on the use of any form of forced or compulsory labor;

(D) a minimum age for the employment of children; and

(E) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

(b) Countries ineligible for designation as beneficiary developing countries

No designation shall be made under this section with respect to any of the following:

> Australia, Austria, Canada, Czechoslovakia, European Economic Community member states, Finland, Germany (East), Iceland, Japan, Monaco, New Zealand, Norway, Poland, Republic of South Africa, Sweden, Switzerland, Union of Soviet Socialist Republics.

In addition, the President shall not designate any country a beneficiary developing country under this section—

[*See main edition for text of (1) to (3)*]

(4) if such country—

(A) has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify an existing contract or agreement with a United States citizen or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property, including patents, trademarks, or copyrights so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, including patents, trademarks, or copyrights,

unless—

[*See main edition for text of (D)*]

promptly furnishes a copy of such determination to the Senate and House of Representatives;

[*See main edition for text of (5)*]

(6) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(7) if such country aids or abets, by granting sanctuary from prosecution to, any individual or group which has committed an act of international terrorism; and

(8) if such country has not taken or is not taking steps to afford internationally recognized worker rights to workers in the country (including any designated zone in that country).

Paragraphs (4), (5), (6), (7), and (8) shall not prevent the designation of any country as a beneficiary developing country under this section if the President determines that such designation will be in the national economic interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) Factors determinative of whether to designate country as beneficiary developing country

In determining whether to designate any country a beneficiary developing country under this section, the President shall take into account—

[*See main edition for text of (1) and (2)*]

(3) whether or not the other major developed countries are extending generalized preferential tariff treatment to such country;

(4) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;

(5) the extent to which such country is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights;

(6) the extent to which such country has taken action to—

(A) reduce trade distorting investment practices and policies (including export performance requirements); and

(B) reduce or eliminate barriers to trade in services; and

(7) whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-573, title V, § 503, Oct. 30, 1984, 98 Stat. 3019.)

AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98-573, § 503(a), added par. (4).

Subsec. (b). Pub. L. 98-573, § 503(b)(1), struck out "Hungary" in the list of countries preceding par. (1).

Pub. L. 98-573, § 503(b)(7), added reference to par. (8) in provisions following par. (8).

Subsec. (b)(4)(A), (B). Pub. L. 98-573, § 503(b)(2), which directed the insertion of ", including patents, trademarks, or copyrights" after "control of such property" in subpars. (A) and (B), was executed by inserting that phrase in subpars. (A) and (B) following "control of property".

Subsec. (b)(4)(C). Pub. L. 98-573, § 503(b)(3), inserted ", including patents, trademarks, or copyrights" after "control of such property".

Subsec. (b)(8). Pub. L. 98-573, § 503(b)(4)-(6), added par. (8).

Subsec. (c)(4). Pub. L. 98-573, § 503(c)(2), substituted "and the extent to which such country has assured the United States that it will refrain from engaging in unreasonable export practices;" for the period at the end thereof.

Subsec. (c)(5) to (7). Pub. L. 98-573, § 503(c)(1), (3), added pars. (5) to (7).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Jan. 4, 1985, see section 508 of Pub. L. 98-573, set out as a note under section 2461 of this title.

§ 2463. Eligible articles

[*See main edition for text of* (*a*)]

(b) Eligible articles qualifying for duty-free treatment

The duty-free treatment provided under section 2461 of this title with respect to any eligible article shall apply only—

[*See main edition for text of* (*1*) *and* (*2*)]

The Secretary of the Treasury, after consulting with the United States Trade Representative,[2] shall prescribe such regulations as may be necessary to carry out this subsection.

(c) Articles which may not be designated as eligible articles

(1) The President may not designate any article as an eligible article under subsection (a) of this section if such article is within one of the following categories of import-sensitive articles—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this subchapter on April 1, 1984,

[*See main edition for text of* (*F*) *and* (*G*), (*2*)]

(As amended Pub. L. 98-573, title V, § 504, Oct. 30, 1984, 98 Stat. 3020.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-573, § 504(a), directed the amendment of section 503(b) of the Tariff Act of 1930 (19 U.S.C. 2463(b)) by inserting ", after consulting with the United States Trade Representative," immediately after "The Secretary of the Treasury" in the last sentence thereof. Because section 503 of the Tariff Act of 1930 does not contain a subsec. (b) and because that section is classified to 19 U.S.C. 1503 rather than 19 U.S.C. 2463, the amendment was executed to section 503(b) of the Trade Act of 1974 (19 U.S.C. 2463(b)) [subsec. (b) of this section] to reflect the probable intent of Congress.

Subsec. (c)(1)(E). Pub. L. 98-573, § 504(b), substituted "footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of this subchapter on April 1, 1984" for "footwear articles specified in items 700.05 through 700.27, 700.29 through 700.53, 700.55.23 through 700.55.75, and 700.60 through 700.80 of the Tariff Schedules of the United States".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Jan. 4, 1985, see section 508 of Pub. L. 98-573, set out as a note under section 2461 of this title.

§ 2464. Limitations on preferential treatment

(a) Withdrawal, suspension, or limitation of duty-free treatment; reporting requirements

(1) The President may withdraw, suspend, or limit the application of the duty-free treatment accorded under section 2461 of this title with respect to any article or with respect to any country; except that no rate of duty may be established in respect of any article pursuant to this section other than the rate which would apply but for this subchapter. In taking any action under this subsection, the President shall consider the factors set forth in sections 2461 and 2462(c) of this title.

(2) The President shall, as necessary, advise the Congress and, by no later than January 4, 1988, submit to the Congress a report on the application of sections 2461 and 2462(c) of this title, and the actions the President has taken to

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[2] See 1984 Amendment note below.

withdraw, to suspend, or to limit the application of duty-free treatment with respect to any country which has failed to adequately take the actions described in section 2462(c) of this title.

[*See main edition for text of* (*b*)]

(c) Beneficiary developing country; determinations, treatment, reviews, etc.

(1) Subject to paragraphs (2) through (7) and subsection (d) of this section, whenever the President determines that any country—

(A) has exported (directly or indirectly) to the United States during a calendar year a quantity of an eligible article having an appraised value in excess of an amount which bears the same ratio to $25,000,000 as the gross national product of the United States for the preceding calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974; or

(B) has exported (either directly or indirectly) to the United States a quantity of any eligible article equal to or exceeding 50 percent of the appraised value of the total imports of such article into the United States during any calendar year;

then, not later than July 1 of the next calendar year, such country shall not be treated as a beneficiary developing country with respect to such article.

(2)(A) Not later than January 4, 1987, and periodically therafter,[3] the President shall conduct a general review of eligible articles based on the considerations described in section 2461 or 2462(c) of this title.

(B) If, after any review under subparagraph (A), the President determines that this subparagraph should apply because a beneficiary developing country has demonstrated a sufficient degree of competitiveness (relative to other beneficiary developing countries) with respect to any eligible article, then paragraph (1) shall be applied to such country with respect to such article by substituting—

(i) "1984" for "1974" in subparagraph (A), and

(ii) "25 percent" for "50 percent" in subparagraph (B).

(3)(A) Not earlier than January 4, 1987, the President may waive the application of this subsection with respect to any eligible article of any beneficiary developing country if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made with respect to such eligible article, the President—

(i) receives the advice of the International Trade Commission on whether any industry in the United States is likely to be adversely affected by such waiver,

(ii) determines, based on the considerations described in sections 2461 and 2462(c) of this title and the advice described in clause (i), that such waiver is in the national economic interest of the United States, and

(iii) publishes the determination described in clause (ii) in the Federal Register.

(B) In making any determination under subparagraph (A), the President shall give great weight to—

(i) the extent to which the beneficiary developing country has assured the United States that such country will provide equitable and reasonable access to the markets and basic commodity resources of such country, and

(ii) the extent to which such country provides adequate and effective means under its law for foreign nationals to secure, to exercise, and to enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights.

(C) Any waiver granted pursuant to this paragraph shall remain in effect until the President determines that such waiver is no longer warranted due to changed circumstances.

(D)(i) The President may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered in any calendar year which exceeds an aggregate value equal to 30 percent of the total value of all articles which entered duty-free under this subchapter during the preceding calendar year.

(ii) The President may not exercise the waiver authority provided under subparagraph (A) with respect to a quantity of eligible articles entered from any beneficiary developing country during any calendar year beginning after 1984 which exceeds 15 percent of the total value of all articles that have entered duty-free under this subchapter during the preceding calendar year if for the preceding calendar year such beneficiary developing country—

(I) had a per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of $5,000 or more; or

(II) had exported (either directly or indirectly) to the United States a quantity of articles that was duty-free under this subchapter that had an appraised value of more than 10 percent of the total imports of all articles that entered duty-free under this subchapter during that year.

(iii) There shall be counted against the limitations imposed under clauses (i) and (ii) for any calendar year only that quantity of any eligible article of any country that—

(I) entered duty-free under this title during such calendar year; and

(II) is in excess of the quantity of that article that would have been so entered during such calendar year if the 1974 limitation applied under paragraph (1)(A) and the 50 percent limitation applied under paragraph (1)(B).

(4) Except in any case to which paragraph (2)(B) applies, the President may waive the application of this subsection if, before July 1 of the calendar year beginning after the calendar year for which a determination described in paragraph (1) was made, the President determines and publishes in the Federal Register that, with respect to such country—

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[3] So in original. Probably should be "thereafter,".

(A) there has been an historical preferential trade relationship between the United States and such country,

(B) there is a treaty or trade agreement in force covering economic relations between such country and the United States, and

(C) such country does not discriminate against, or impose unjustifiable or unreasonable barriers to, United States commerce.

(5) A country which is no longer treated as a beneficiary developing country with respect to an eligible article by reason of this subsection may be redesignated a beneficiary developing country with respect to such article, subject to the provisions of sections 2461 and 2462 of this title, if imports of such article from such country did not exceed the limitations in paragraph (1) (after application of paragraph (2)) during the preceding calendar year.

(6)(A) This subsection shall not apply to any beneficiary developing country which the President determines, based on the considerations described in sections 2461 and 2462(c) of this title, to be a least-developed beneficiary developing country.

(B) The President shall—

(i) make a determination under subparagraph (A) with respect to each beneficiary developing country before July 4, 1985, and periodically thereafter, and

(ii) notify the Congress at least 60 days before any such determination becomes final.

(7) For purposes of this subsection, the term 'country' does not include an association of countries which is treated as one country under section 2462(a)(3) of this title, but does include a country which is a member of any such association.

(d) Domestic non-production of like or directly competitive articles

(1) Subsection (c)(1)(B) of this section (after application of subsection (c)(2) of this section) shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985.

(2) The President may disregard subsection (c)(1)(B) of this section with respect to any eligible article if the appraised value of the total imports of such article into the United States during the preceding calendar year is not in excess of an amount which bears the same ratio to $5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979.

[*See main edition for text of* (e)]

(f) Per capita gross national product of beneficiary developing country for determination year

(1) If the President determines that the per capita gross national product (calculated on the basis of the best available information, including that of the World Bank) of any beneficiary developing country for any calendar year (hereafter in this subsection referred to as the "determination year") after 1984, exceeds the applicable limit for the determination year—

(A) subsection (c)(1)(B) of this section shall be applied for the 2-year period beginning on July 1 of the calendar year succeeding the determination year by substituting "25 percent" for "50 percent", and

(B) such country shall not be treated as a beneficiary developing country under this subchapter after the close of such 2-year period.

(2)(A) For purposes of this subsection, the term "applicable limit" means the sum of—

(i) $8,500, plus

(ii) 50 percent of the amount determined under subparagraph (B) for the determination year.

(B) The amount determined under this subparagraph for the determination year is an amount equal to—

(i) $8,500, multiplied by

(ii) the percentage determined by dividing—

(I) the excess, if any, of the gross national product of the United States (as determined by the Secretary of Commerce) for the determination year over the gross national product of the United States for 1984, by

(II) the gross national product for 1984.

(As amended Pub. L. 98–573, title V, § 505, Oct. 30, 1984, 98 Stat. 3020.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–573, § 505(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 98–573, § 505(b), amended provisions generally, thereby making changes summarized as follows:

Subsec. (c)(1). Pub. L. 98–573, § 505(b), substituted "Subject to paragraphs (2) through (7) and subsection (d) of this section, whenever" for "Whenever" in provisions preceding par. (1), and, in provision following lettered subparagraphs, substituted requirement that, not later than July 1 of the next calendar year, such country shall not be treated as a beneficiary developing country with respect to such article for requirement that not later than 90 days after the close of such calendar year such country would not be treated as a beneficiary developing country with respect to such article unless the President made and published in the Federal Register certain determinations with respect to such country. See subsec. (c)(4).

Subsec. (c)(1)(A). Pub. L. 98–573, § 505(b), substituted "year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1974; or" for "year, as determined by the Department of Commerce, bears to the gross national product of the United States for calander year 1974, or".

Subsec. (c)(1)(B). Pub. L. 98–573, § 505(b), substituted "has exported" for "except as provided in subsection (d) of this section, has exported" and substituted a semicolon for the comma following "any calendar year".

Subsec. (c)(2) to (4). Pub. L. 98–573, § 505(b), added pars. (2) to (4). Former pars. (2) and (3) redesignated (5) and (7), respectively.

Subsec. (c)(5). Pub. L. 98–573, § 505(b), redesignated former par. (2) as (5) and, in par. (5) as so redesignated, substituted provisions permitting countries formerly treated as beneficiary developing countries to be redesignated as beneficiary developing countries subject to sections 2461 and 2462 of this title if imports of the eligible article from such country did not exceed the limitations in par. (1) (after application of par. (2)) for provisions permitting redesignation of such countries as beneficiary developing countries subject to section

2462 of this title if imports of such article from such country did not exceed the limitations in par. (1).

Subsec. (c)(6). Pub. L. 98-573, § 505(b), added par. (6).

Subsec. (c)(7). Pub. L. 98-573, § 505(b), redesignated former par (3) as (7).

Subsec. (d)(1). Pub. L. 98-573, § 505(b), designated existing first sentence as par. (1) and, in par. (1) as so designated, substituted "Subsection (c)(1)(B) of this section (after application of subsection (c)(2) of this section) shall not apply with respect to any eligible article if a like or directly competitive article is not produced in the United States on January 3, 1985" for "Subsection (c)(1)(B) of this section does not apply with respect to any eligible article if a like or directly competitive article is not produced on January 3, 1975, in the United States".

Subsec. (d)(2). Pub. L. 98-573, § 505(b), designated existing second sentence as par. (2) and, in par. (2) as so designated, substituted "$5,000,000 as the gross national product of the United States for that calendar year (as determined by the Department of Commerce) bears to the gross national product of the United States for calendar year 1979" for "$1,000,000 as the gross national product of the United States for that calendar year, as determined by the Department of Commerce, bears to the gross national product of the United States for the calendar year 1979".

Subsec. (f). Pub. L. 98-573, § 505(c), added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Jan. 4, 1985, see section 508 of Pub. L. 98-573, set out as a note under section 2461 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1202, 2703 of this title.

§ 2465. Termination of duty-free treatment and reports

(a) Date of termination

No duty-free treatment provided under this subchapter shall remain in effect after July 4, 1993.

(b) Report on operation of subchapter

On or before January 4, 1990, the President shall submit to the Congress a full and complete report regarding the operation of this subchapter.

(c) Annual report on worker rights

The President shall submit an annual report to the Congress on the status of internationally recognized worker rights within each beneficiary developing country.

(As amended Pub. L. 98-573, title V, § 506(a), Oct. 30, 1984, 98 Stat. 3023.)

AMENDMENTS

1984—Pub. L. 98-573 amended section generally, thereby making changes summarized as follows:

Subsec. (a). Pub. L. 98-573 substituted "treatment provided" for "treatment" and "July 4, 1993" for "the date which is 10 years after January 3, 1975".

Subsec. (b). Pub. L. 98-573 substituted "On or before January 4, 1990" for "On or before the date which is 5 years after January 3, 1975" and "report regarding the operation" for "report of the operation".

Subsec. (c). Pub. L. 98-573 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective Jan. 4, 1985, see section 508 of Pub. L. 98-573, set out as a note under section 2461 of this title.

§ 2466. Agricultural exports of beneficiary developing countries

The appropriate agencies of the United States shall assist beneficiary developing countries to develop and implement measures designed to assure that the agricultural sectors of their economies are not directed to export markets to the detriment of the production of foodstuffs for their citizenry.

(Pub. L. 93-618, title V, § 506, as added Pub. L. 98-573, title V, § 507(a), Oct. 30, 1984, 98 Stat. 3023.)

EFFECTIVE DATE

Section effective Jan. 4, 1985, see section 508 of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 2461 of this title.

CHAPTER 13—TRADE AGREEMENTS ACT OF 1979

§ 2503. Approval of trade agreements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1671, 1677, 2414, 2504, 2518, 2571, 2702 of this title.

SUBCHAPTER I—GOVERNMENT PROCUREMENT

§ 2511. General authority to modify discriminatory purchasing requirements

EX. ORD. NO. 12260. AGREEMENT ON GOVERNMENT PROCUREMENT

Ex. Ord. No. 12260, Dec. 31, 1980, 46 F.R. 1653, as amended by Ex. Ord. No. 12347, Feb. 23, 1982, 47 F.R. 8149; Ex. Ord. No. 12388, Oct. 14, 1982, 47 F.R. 46245; Ex. Ord. No. 12474, Apr. 17, 1984, 49 F.R. 15539, provided:

[*See main edition for text of first par.; Parts 1-1 and 1-2*]

ANNEX

1. ACTION
2. Administrative Conference of the United States
3. American Battle Monuments Commission
4. Board for International Broadcasting
5. Civil Aeronautics Board
6. Commission on Civil Rights
7. Commodity Futures Trading Commission
8. Consumer Product Safety Commission
9. Department of Agriculture (The Agreement on Government Procurement does not apply to procurement of agricultural products made in furtherance of agricultural support programs or human feeding programs)
10. Department of Commerce
11. Department of Defense (Excludes Corps of Engineers)
12. Department of Education
13. Department of Health and Human Services
14. Department of Housing and Urban Development
15. Department of the Interior (Excludes the Bureau of Reclamation)
16. Department of Justice
17. Department of Labor
18. Department of State
19. Department of the Treasury
20. Environmental Protection Agency
21. Equal Employment Opportunity Commission
22. Executive Office of the President
23. Export-Import Bank of the United States
24. Farm Credit Administration

25. Federal Communications Commission
26. Federal Deposit Insurance Corporation
27. Federal Home Loan Bank Board
28. Federal Maritime Commission
29. Federal Mediation and Conciliation Service
30. Federal Trade Commission
31. General Services Administration (Purchases by the Tools Commodity Center, and the Region 9 Office in San Francisco, California are not included)
32. Interstate Commerce Commission
33. Merit Systems Protection Board
34. National Aeronautics and Space Administration
35. National Credit Union Administration
36. National Labor Relations Board
37. National Mediation Board
38. National Science Foundation
39. National Transportation Safety Board
40. Nuclear Regulatory Commission
41. Office of Personnel Management
42. Overseas Private Investment Corporation
43. Panama Canal Commission
44. Railroad Retirement Board
45. Securities and Exchange Commission
46. Selective Service System
47. Smithsonian Institution
48. United States Arms Control and Disarmament Agency
49. United States Information Agency
50. United States International Development Cooperation Agency
51. United States International Trade Commission
52. Veterans Administration
53. Maritime Administration of the Department of Transportation
54. The Peace Corps

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 2582. Repealed. Pub. L. 98–67, title II, § 214(d), Aug. 5, 1983, 97 Stat. 393

Section, Pub. L. 96–39, title XI, § 1112, July 26, 1979, 93 Stat. 316, authorized the payment of compensation to losses in taxes resulting from concessions granted by the United States in the Tokyo Round of the Multilateral Trade Negotiations on articles produced by United States possessions on which excise taxes are levied by the United States.

Effective Date of Repeal

Repeal of section effective Aug. 5, 1983, see section 218(a) of Pub. L. 98–67, which is classified to section 2706 of this title.

CHAPTER 15—CARIBBEAN BASIN ECONOMIC RECOVERY

Sec.
2701. Authority to grant duty-free treatment.
2702. Beneficiary country.
  (a) Definitions; termination of designation.
  (b) Countries eligible for designation as beneficiary countries; conditions.
  (c) Factors determining designation.
  (d) Omitted.
  (e) Withdrawal or suspension of designation.
2703. Eligible articles.
  (a) Growth, product, or manufacture of beneficiary countries.
  (b) Articles to which duty-free treatment does not apply.
  (c) Sugar and beef products; stable food production plan; suspension of duty-free treatment; monitoring.
  (d) Price-support program protection.
Sec.
  (e) Proclamations suspending duty-free treatment.
  (f) Petitions to International Trade Commission.
  (g) Fees not affected by proclamation.
2704. International Trade Commission reports on impact of Caribbean Basin Economic Recovery Program.
  (a) Reporting requirement.
  (b) Requisite areas of Commission assessment.
  (c) Time of submission of reports; public participation.
2705. Impact study by Secretary of Labor.
2706. Effective date; termination of duty-free treatment.

Chapter Referred to in Other Sections

This chapter is referred to in section 1202 of this title.

§ 2701. Authority to grant duty-free treatment

The President may proclaim duty-free treatment for all eligible articles from any beneficiary country in accordance with the provisions of this chapter.

(Pub. L. 98–67, title II, § 211, Aug. 5, 1983, 97 Stat. 384.)

References in Text

This chapter, referred to in text, was in the original "this title" meaning title II of Pub. L. 98–67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out below and Tables.

Short Title

Section 201 of title II of Pub. L. 98–67 provided that: "This title [enacting this chapter, amending section 1202 of this title and sections 274 and 7652 of Title 26, Internal Revenue Code, repealing section 2582 of this title, and enacting provisions set out as notes under sections 1319, 2251, and 2703 of this title, sections 274 and 7652 of Title 26, and section 1311 of Title 33, Navigation and Navigable Waters] may be cited as the 'Caribbean Basin Economic Recovery Act'."

Section Referred to in Other Sections

This section is referred to in section 2703 of this title.

§ 2702. Beneficiary country

(a) Definitions; termination of designation

(1) For purposes of this chapter—

(A) The term "beneficiary country" means any country listed in subsection (b) of this section with respect to which there is in effect a proclamation by the President designating such country as a beneficiary country for purposes of this chapter. Before the President designates any country as a beneficiary country for purposes of this chapter, he shall notify the House of Representatives and the Senate of his intention to make such designation, together with the considerations entering into such decision.

(B) The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(C) The term "TSUS" means Tariff Schedules of the United States.

(2) If the President has designated any country as a beneficiary country for purposes of this chapter, he shall not terminate such designation (either by issuing a proclamation for that purpose or by issuing a proclamation which has the effect of terminating such designation) unless, at least sixty days before such termination, he has notified the House of Representatives and the Senate and has notified such country of his intention to terminate such designation, together with the considerations entering into such decision.

(b) Countries eligible for designation as beneficiary countries; conditions

In designating countries as "beneficiary countries" under this chapter the President shall consider only the following countries and territories or successor political entities:

Anguilla
Antigua and Barbuda
Bahamas, The
Barbados
Belize
Costa Rica
Dominica
Dominican Republic
El Salvador
Grenada
Guatemala
Guyana
Haiti
Honduras
Jamaica
Nicaragua
Panama
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Cayman Islands
Montserrat
Netherlands Antilles
Saint Christopher-Nevis
Turks and Caicos Islands
Virgin Islands, British

In addition, the President shall not designate any country a beneficiary country under this chapter—

(1) if such country is a Communist country;

(2) if such country—

(A) has nationalized, expropriated or otherwise seized ownership or control of property owned by a United States citizen or by a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens,

(B) has taken steps to repudiate or nullify—

(i) any existing contract or agreement with, or

(ii) any patent, trademark, or other intellectual property of,

a United States citizen or a corporation, partnership, or association which is 50 per centum or more beneficially owned by United States citizens, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of property so owned, or

(C) has imposed or enforced taxes or other exactions, restrictive maintenance or operational conditions, or other measures with respect to property so owned, the effect of which is to nationalize, expropriate, or otherwise seize ownership or control of such property, unless the President determines that—

(i) prompt, adequate, and effective compensation has been or is being made to such citizen, corporation, partnership, or association,

(ii) good-faith negotiations to provide prompt, adequate, and effective compensation under the applicable provisions of international law are in progress, or such country is otherwise taking steps to discharge its obligations under international law with respect to such citizen, corporation, partnership, or association, or

(iii) a dispute involving such citizen, corporation, partnership, or association, over compensation for such a seizure has been submitted to arbitration under the provisions of the Convention for the Settlement of Investment Disputes, or in another mutually agreed upon forum, and

promptly furnishes a copy of such determination to the Senate and House of Representatives;

(3) if such country fails to act in good faith in recognizing as binding or in enforcing arbitral awards in favor of United States citizens or a corporation, partnership or association which is 50 per centum or more beneficially owned by United States citizens, which have been made by arbitrators appointed for each case or by permanent arbitral bodies to which the parties involved have submitted their dispute;

(4) if such country affords preferential treatment to the products of a developed country, other than the United States, which has, or is likely to have, a significant adverse effect on United States commerce, unless the President has received assurances satisfactory to him that such preferential treatment will be eliminated or that action will be taken to assure that there will be no such significant adverse effect, and he reports those assurances to the Congress;

(5) if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent;

(6) if such country does not take adequate steps to cooperate with the United States to prevent narcotic drugs and other controlled substances (as listed in the schedules in section 812 of title 21) produced, processed, or transported in such country from entering the United States unlawfully; and

(7) unless such country is a signatory to a treaty, convention, protocol, or other agreement regarding the extradition of United States citizens.

Paragraphs (1), (2), (3), and (5) shall not prevent the designation of any country as a beneficiary country under this Act if the President determines that such designation will be in the national economic or security interest of the United States and reports such determination to the Congress with his reasons therefor.

(c) Factors determining designation

In determining whether to designate any country a beneficiary country under this chapter, the President shall take into account—

(1) an expression by such country of its desire to be so designated;

(2) the economic conditions in such country, the living standards of its inhabitants, and any other economic factors which he deems appropriate;

(3) the extent to which such country has assured the United States it will provide equitable and reasonable access to the markets and basic commodity resources of such country;

(4) the degree to which such country follows the accepted rules of international trade provided for under the General Agreement on Tariffs and Trade, as well as applicable trade agreements approved under section 2503(a) of this title;

(5) the degree to which such country uses export subsidies or imposes export performance requirements or local content requirements which distort international trade;

(6) the degree to which the trade policies of such country as they relate to other beneficiary countries are contributing to the revitalization of the region;

(7) the degree to which such country is undertaking self-help measures to promote its own economic development;

(8) the degree to which workers in such country are afforded reasonable workplace conditions and enjoy the right to organize and bargain collectively;

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television material, belonging to United States copyright owners without their express consent; and

(11) the extent to which such country is prepared to cooperate with the United States in the administration of the provisions of this chapter.

(d) Omitted

(e) Withdrawal or suspension of designation

The President shall, after complying with the requirements of subsection (a)(2) of this section, withdraw or suspend the designation of any country as a beneficiary country if, after such designation, he determines that as the result of changed circumstances such country would be barred from designation as a beneficiary country under subsection (b) of this section.

(Pub. L. 98-67, title II, § 212, Aug. 5, 1983, 97 Stat. 384.)

References in Text

The Tariff Schedules of the United States, referred to in subsec. (a)(1)(C), are not set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

This Act, referred to in provisions following subsec. (b)(7), probably should be "this title" meaning title II of Pub. L. 98-67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 2701 of this title and Tables.

Codification

Subsec. (d) of this section amended general headnote 3(a) of the Tariff Schedules of the United States, which is classified to par. 3(a) of section 1202 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1202, 2703 of this title; title 26 section 274.

§ 2703. Eligible articles

(a) Growth, product, or manufacture of beneficiary countries

(1) Unless otherwise excluded from eligibility by this chapter, the duty-free treatment provided under this chapter shall apply to any article which is the growth, product, or manufacture of a beneficiary country if—

(A) that article is imported directly from a beneficiary country into the customs territory of the United States; and

(B) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct costs of processing operations performed in a beneficiary country or countries is not less than 35 per centum of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term "beneficiary country" includes the Commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15 per centum of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B).

(2) The Secretary of the Treasury shall prescribe such regulations as may be necessary to carry out this subsection including, but not limited to, regulations providing that, in order to be eligible for duty-free treatment under this chapter, an article must be wholly the growth, product, or manufacture of a beneficiary country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary country; but no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone—

(A) simple combining or packaging operations, or

(B) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article.

(3)[1] As used in this subsection, the phrase "direct costs of processing operations" includes, but is not limited to—

(A) all actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training and the cost of engineering, supervisory, quality control, and similar personnel; and

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[1] So in original. Two pars. designated "(3)" have been enacted.

(B) dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise.

Such phrase does not include costs which are not directly attributable to the merchandise concerned or are not costs of manufacturing the product, such as (i) profit, and (ii) general expenses of doing business which are either not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions or expenses.

(3)[2] Notwithstanding section 1311 of this title, the products of a beneficiary country which are imported directly from such country into Puerto Rico may be entered under bond for processing or use in manufacturing in Puerto Rico. No duty shall be imposed on the withdrawal from warehouse of the product of such processing or manufacturing if, at the time of such withdrawal, such product meets the requirements of paragraph (1)(B).

(b) Articles to which duty-free treatment does not apply

The duty-free treatment provided under this chapter shall not apply to—

(1) textile and apparel articles which are subject to textile agreements;

(2) footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel not designated at the time of the effective date of this chapter [August 5, 1983] as eligible articles for the purpose of the generalized system of preferences under title V of the Trade Act of 1974 [19 U.S.C. 2461 et seq.];

(3) tuna, prepared or preserved in any manner, in airtight containers;

(4) petroleum, or any product derived from petroleum, provided for in part 10 of schedule 4 of the TSUS; or

(5) watches and watch parts (including cases, bracelets and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which TSUS column 2 rates of duty apply.

(c) Sugar and beef products; stable food production plan; suspension of duty-free treatment; monitoring

(1) As used in this subsection—

(A) The term "sugar and beef products" means—

(i) sugars, sirups, and molasses provided for in items 155.20 and 155.30 of the TSUS, and

(ii) articles of beef or veal, however provided for in subpart B of part 2 of schedule 1 of the TSUS.

(B) The term "Plan" means a stable food production plan that consists of measures and proposals designed to ensure that the present level of food production in, and the nutritional level of the population of, a beneficiary country will not be adversely affected by changes in land use and land ownership that will result if increased production of sugar and beef products is undertaken in response to the duty-free treatment extended under this chapter to such products. A Plan must specify such facts regarding, and such proposed actions by, a beneficiary country as the President deems necessary for purposes of carrying out this subsection, including but not limited to—

(i) the current levels of food production and nutritional health of the population;

(ii) current level of production and export of sugar and beef products;

(iii) expected increases in production and export of sugar and beef products as a result of the duty-free access to the United States market provided under this chapter;

(iv) measures to be taken to ensure that the expanded production of those products because of such duty-free access will not occur at the expense of stable food production; and

(v) proposals for a system to monitor the impact of such duty-free access on stable food production and land use and land ownership patterns.

(2) Duty-free treatment extended under this chapter to sugar and beef products that are the product of a beneficiary country shall be suspended by the President under this subsection if—

(A) the beneficiary country, within the ninety-day period beginning on the date of its designation as such a country under section 2702 of this title, does not submit a Plan to the President for evaluation;

(B) on the basis of his evaluation, the President determines that the Plan of a beneficiary country does not meet the criteria set forth in paragraph (1)(B); or

(C) as a result of the monitoring of the operation of the Plan under paragraph (5), the President determines that a beneficiary country is not making a good faith effort to implement its Plan, or that the measures and proposals in the Plan, although being implemented, are not achieving their purposes.

(3) Before the President suspends duty-free treatment by reason of paragraph (2)(A), (B), or (C) to the sugar and beef products of a beneficiary country, he must offer to enter into consultation with the beneficiary country for purposes of formulating appropriate remedial action which may be taken by that country to avoid such suspension. If the beneficiary country thereafter enters into consultation within a reasonable time and undertakes to formulate remedial action in good faith, the President shall withhold the suspension of duty-free treatment on the condition that the remedial action agreed upon be appropriately implemented by that country.

(4) The President shall monitor on a biennial basis the operation of the Plans implemented

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[2] So in original. Two pars. designated "(3)" have been enacted.

by beneficiary countries, and shall submit a written report to Congress by March 15 following the close of each biennium, that—

(A) specifies the extent to which each Plan, and remedial actions, if any, agreed upon under paragraph (4), have been implemented; and

(B) evaluates the results of such implementation.

(5) The President shall terminate any suspension of duty-free treatment imposed under this subsection if he determines that the beneficiary country has taken appropriate action to remedy the factors on which the suspension was based.

(d) Price-support program protection

For such period as there is in effect a proclamation issued by the President pursuant to the authority vested in him by section 624 of title 7 to protect a price-support program for sugar beets and sugar cane, the importation and duty-free treatment of sugars, sirups, and molasses classified under items 155.20 and 155.30 of the TSUS shall be governed in the following manner:

(1)(A) For all beneficiary countries, except those subject to subparagraph (B) and paragraph (2), duty-free treatment shall be provided in the same manner as it is provided pursuant to title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.), at the time of the effective date of this chapter; except that the President upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the value limitation provided for in section 504(c)(1) of the Trade Act of 1974 [19 U.S.C. 2464(c)(1)] on the duty-free treatment afforded to beneficiary countries under this section if he finds that such adjustment will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions.

(B) As an alternative to subparagraph (A), the President may at the request of a beneficiary country not subject to paragraph (2) and upon the recommendation of the Secretary of Agriculture, elect to permit sugar, sirups, and molasses from that country to enter duty-free during a calendar year subject to quantitative limitations to be established by the President on the quantity of sugar, sirups, and molasses entered from that country.

(2) For the following countries whose exports of sugar, sirups, and molasses in 1981 were not eligible for duty-free treatment because of the operation of section 504(c) of the Trade Act of 1974 [19 U.S.C. 2464(c)], the quantity of sugar, sirups, and molasses which may be entered in any calendar year shall be limited to no more than the quantity specified below:

Metric tons:	
Dominican Republic	780,000
Guatemala	210,000
Panama	160,000

Such sugar, sirups, and molasses shall be admitted free of duty, except as provided for in paragraph (3).

(3) The President, upon the recommendation of the Secretary of Agriculture, may suspend or adjust upward the quantitative limitations imposed under paragraph (1)(B) or (2) if he determines such action will not interfere with the price support program for sugar beets and sugar cane and is appropriate in light of market conditions. The President, upon the recommendation of the Secretary of Agriculture, may suspend the duty-free treatment for all or part of the quantity of sugar, sirups, and molasses permitted to be entered by paragraphs (1)(B) and (2) if such action is necessary to protect the price-support program for sugar beets and sugar cane.

(4) Any quantitative limitation imposed on a beneficiary country under paragraphs (1)(B) and (2) shall apply only to the extent that such limitation permits a lesser quantity of sugar, sirups, and molasses to be entered from that country than the quantity that would be permitted to be entered under any other provision of law.

(e) Proclamations suspending duty-free treatment

(1) The President may by proclamation suspend the duty-free treatment provided by this chapter with respect to any eligible article and may proclaim a duty rate for such article if such action is proclaimed pursuant to section 203 of the Trade Act of 1974 [19 U.S.C. 2253] or section 1862 of this title.

(2) In any report by the International Trade Commission to the President under section 201(d)(1) of the Trade Act of 1974 [19 U.S.C. 2251(d)(1)] regarding any article for which duty-free treatment has been proclaimed by the President pursuant to this chapter, the Commission shall state whether and to what extent its findings and recommendations apply to such article when imported from beneficiary countries.

(3) For purposes of subsections (a) and (c) of section 203 of the Trade Act of 1974 [19 U.S.C. 2253(a), (c)], the suspension of the duty-free treatment provided by this chapter shall be treated as an increase in duty.

(4) No proclamation which provides solely for a suspension referred to in paragraph (3) of this subsection with respect to any article shall be made under subsections (a) and (c) of section 203 of the Trade Act of 1974 [19 U.S.C. 2253(a), (c)] unless the United States International Trade Commission, in addition to making an affirmative determination with respect to such article under section 201(b) of the Trade Act of 1974 [19 U.S.C. 2251(b)], determines in the course of its investigation under section 201(b) of such Act that the serious injury (or threat thereof) substantially caused by imports to the domestic industry producing a like or directly competitive article results from the duty-free treatment provided by this chapter.

(5)(A) Any proclamation issued pursuant to section 203 of the Trade Act of 1974 [19 U.S.C. 2253] that is in effect when duty-free treatment pursuant to section 2701 [3] of this title is proclaimed shall remain in effect until modified or terminated.

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[3] See References in Text note below.

(B) If any article is subject to import relief at the time duty-free treatment is proclaimed pursuant to section 2701 of this title, the President may reduce or terminate the application of such import relief to the importation of such article from beneficiary countries prior to the otherwise scheduled date on which such reduction or termination would occur pursuant to the criteria and procedures of subsections (h) and (i) of section 203 of the Trade Act of 1974.

(f) Petitions to International Trade Commission

(1) If a petition is filed with the International Trade Commission pursuant to the provisions of section 201 of the Trade Act of 1974 [19 U.S.C. 2251] regarding a perishable product and alleging injury from imports from beneficiary countries, then the petition may also be filed with the Secretary of Agriculture with a request that emergency relief be granted pursuant to paragraph (3) of this subsection with respect to such article.

(2) Within fourteen days after the filing of a petition under paragraph (1) of this subsection—

(A) if the Secretary of Agriculture has reason to believe that a perishable product from a beneficiary country is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported product and that emergency action is warranted, he shall advise the President and recommend that the President take emergency action; or

(B) the Secretary of Agriculture shall publish a notice of his determination not to recommend the imposition of emergency action and so advise the petitioner.

(3) Within seven days after the President receives a recommendation from the Secretary of Agriculture to take emergency action pursuant to paragraph (2) of this subsection, he shall issue a proclamation withdrawing the duty-free treatment provided by this chapter or publish a notice of his determination not to take emergency action.

(4) The emergency action provided by paragraph (3) of this subsection shall cease to apply—

(A) upon the proclamation of import relief pursuant to section 202(a)(1) of the Trade Act of 1974 [19 U.S.C. 2252(a)(1)],

(B) on the day the President makes a determination pursuant to section 203(b)(2) of such Act [19 U.S.C. 2253(b)(2)] not to impose import relief,

(C) in the event of a report of the United States International Trade Commission containing a negative finding, on the day the Commission's report is submitted to the President, or

(D) whenever the President determines that because of changed circumstances such relief is no longer warranted.

(5) For purposes of this subsection, the term "perishable product" means—

(A) live plants provided for in subpart A of part 6 of schedule 1 of the TSUS;

(B) fresh or chilled vegetables provided for in items 135.10 through 138.42 of the TSUS;

(C) fresh mushrooms provided for in item 144.10 of the TSUS;

(D) fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.33, 147.50 through 149.21 and 149.50 of the TSUS;

(E) fresh cut flowers provided for in items 192.17, 192.18, and 192.21 of the TSUS; and

(F) concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

(g) Fees not affected by proclamation

No proclamation issued pursuant to this chapter shall affect fees imposed pursuant to section 624 of title 7.

(Pub. L. 98-67, title II, § 213, Aug. 5, 1983, 97 Stat. 387; Pub. L. 98-573, title II, § 235, Oct. 30, 1984, 98 Stat. 2992.)

REFERENCES IN TEXT

The Trade Act of 1974, referred to in subsecs. (b)(2) and (d)(1)(A), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended. Title V of the Trade Act of 1974 is classified generally to subchapter V (§ 2461 et seq.) of chapter 12 of this title. For complete classification of this Act to the Code, see section 2101 of this title and Tables.

TSUS, referred to in subsecs. (b)(4), (5), (c)(1)(A), (d), and (f)(5), means the Tariff Schedules of the United States, which are not set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of this title.

Section 2701 of this title, referred to in subsec. (e)(5)(A), was in the original "section 101 of this title" which has been translated as the probable intent of Congress as meaning section 211 of this title.

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-573 added the par. (3) relating to products of a beneficiary country imported directly from such country into Puerto Rico.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-573 effective the 15th day after Oct. 30, 1984, see section 214(a), (b) of Pub. L. 98-573, set out as a note under section 1304 of this title.

DUTY-FREE TREATMENT OF IMPORTED RUM; COMPENSATION MEASURES; PRESIDENTIAL AUTHORITY; REPORT TO CONGRESS

Section 214(c) of Pub. L. 98-67 provided that: "If the sum of the amounts of taxes covered into the treasuries of Puerto Rico or the United States Virgin Islands pursuant to section 7652(c) of the Internal Revenue Code of 1954 [26 U.S.C. 7652(c)] is reduced below the amount that would have been covered over if the imported rum had been produced in Puerto Rico or the United States Virgin Islands, then the President shall consider compensation measures and, in this regard, may withdraw the duty-free treatment on rum provided by this title [this chapter]. The President shall submit a report to the Congress on the measures he takes."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1202 of this title; title 26 section 7652.

§ 2704. International Trade Commission reports on impact of Caribbean Basin Economic Recovery Program

(a) Reporting requirement

The United States International Trade Commission (hereinafter in this section referred to as the "Commission") shall prepare, and submit to the Congress and to the President, a report regarding the economic impact of this Act on United States industries and consumers during—

(1) the twenty-four-month period beginning with August 5, 1983; and

(2) each calendar year occurring thereafter until duty-free treatment under this chapter is terminated under section 2706(b)[4] of this title.

For purposes of this section, industries in the Commonwealth of Puerto Rico and the insular possessions of the United States shall be considered to be United States industries.

(b) Requisite areas of Commission assessment

(1) Each report required under subsection (a) of this section shall include, but not be limited to, an assessment by the Commission regarding—

(A) the actual effect, during the period covered by the report, of this Act on the United States economy generally as well as on those specific domestic industries which produce articles that are like, or directly competitive with, articles being imported into the United States from beneficiary countries; and

(B) the probable future effect which this Act will have on the United States economy generally, as well as on such domestic industries, before the provisions of this Act terminate.

(2) In preparing the assessments required under paragraph (1), the Commission shall, to the extent practicable—

(A) analyze the production, trade and consumption of United States products affected by this Act, taking into consideration employment, profit levels, and use of productive facilities with respect to the domestic industries concerned, and such other economic factors in such industries as it considers relevant, including prices, wages, sales, inventories, patterns of demand, capital investment, obsolescence of equipment, and diversification of production; and

(B) describe the nature and extent of any significant change in employment, profit levels, and use of productive facilities, and such other conditions as it deems relevant in the domestic industries concerned, which it believes are attributable to this Act.

(c) Time of submission of reports; public participation

(1) Each report required under subsection (a) of this section shall be submitted to the Congress and to the President before the close of the nine-month period beginning on the day after the last day of the period covered by the report.

(2) The Commission shall provide opportunity for the submission by the public, either orally or in writing, or both, of information relating to matters that will be addressed in the reports.

(Pub. L. 98-67, title II, § 215, Aug. 5, 1983, 97 Stat. 393.)

References in Text

This Act, referred to in subsecs. (a) and (b), probably should be "this title" meaning title II of Pub. L. 98-67, Aug. 5, 1983, 97 Stat. 384, which is classified principally to this chapter. For complete classification of title II to the Code, see Short Title note set out under section 2701 of this title and Tables.

Section 2706(b) of this title, referred to in subsec. (a)(2), was in the original "section 216(b)" which is classified to section 2705 of this title, but was translated as meaning section 218(b) as the probable intent of Congress.

§ 2705. Impact study by Secretary of Labor

The Secretary of Labor, in consulation[5] with other appropriate Federal agencies, shall undertake a continuing review and analysis of the impact which the implementation of the provisions of this chapter have with respect to United States labor; and shall make an annual written report to Congress on the results of such review and analysis.

(Pub. L. 98-67, title II, § 216, Aug. 5, 1983, 97 Stat. 394.)

§ 2706. Effective date; termination of duty-free treatment

(a) This chapter shall take effect on August 5, 1983.

(b) No duty-free treatment extended to beneficiary countries under this chapter shall remain in effect after September 30, 1995.

(Pub. L. 98-67, title II, § 218, Aug. 5, 1983, 97 Stat. 395.)

References in Text

This chapter, referred to in text, was in the original "this subtitle" meaning subtitle A (§§ 211-218) of title II of Pub. L. 98-67 which enacted this chapter, amended section 1202 of this title, repealed section 2582 of this title, and enacted provisions set out as notes under sections 1202, 1319, 2251, and 2703 of this title and section 1311 of Title 33, Navigation and Navigable Waters. For complete classification of subtitle A to the Code, see Tables.

Section Referred to in Other Sections

This section is referred to in section 2704 of this title.

CHAPTER 16—WINE TRADE

Sec.

2801. Congressional findings and purposes.
2802. Definitions.
2803. Designation of major wine trading countries.
2804. Actions to reduce or eliminate tariff and nontariff barriers affecting United States wine.
  (a) Consultations with major wine trading countries.

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[4] See References in Text note below.

[5] So in original. Probably should be "consultation".

Sec.
(b) Reports to Congress on actions taken to expand export opportunities.
(c) Enforcement of rights.
2805. Required consultations.
2806. United States wine export promotion.

§ 2801. Congressional findings and purposes

(a) Congress finds that—

(1) there is a substantial imbalance in international wine trade resulting, in part, from the relative accessibility enjoyed by foreign wines to the United States market while the United States wine industry faces restrictive tariff and nontariff barriers in virtually every existing or potential foreign market;

(2) the restricted access to foreign markets and the continued low prices for United States wine and grape products adversely affect the economic position of our Nation's winemakers and grape growers, as well as all other domestic sectors that depend upon wine production;

(3) the competitive position of United States wine in international trade has been weakened by foreign trade practices, high domestic interest rates, and unfavorable foreign exchange rates;

(4) wine consumption per capita is very low in many major non-wine producing markets and the demand potential for United States wine is significant; and

(5) the United States winemaking industry has the capacity and the ability to export substantial volumes of wine and an increase in United States wine exports will create new jobs, improve this Nation's balance of trade, and otherwise strengthen the national economy.

(b) The purposes of this chapter are—

(1) to provide wine consumers with the greatest possible choice of wines from wine-producing countries;

(2) to encourage the initiation of an export promotion program to develop, maintain, and expand foreign markets for United States wine; and

(3) to achieve greater access to foreign markets for United States wine and grape products through the reduction or elimination of tariff barriers and nontariff barriers to (or other distortions of) trade in wine.

(Pub. L. 98-573, title IX, § 902, Oct. 30, 1984, 98 Stat. 3047.)

Short Title

Section 901 of title IX of Pub. L. 98-573 provided that: "This title [enacting this chapter] may be cited as the 'Wine Equity and Export Expansion Act of 1984'."

§ 2802. Definitions

For purposes of this chapter—

(1) The term "Committees" means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

(2) The term "grape product" means grapes and any product (other than wine) made from grapes, including, but not limited to, raisins and grape juice, whether or not concentrated.

(3) The term "major wine trading country" means any foreign country, or group of foreign countries, designated as such under section 2803 of this title.

(4) The phrase "nontariff barrier to (or other distortion of)", in the context of trade in United States wine, includes any measure implemented by the government of a major wine trading country that either gives a competitive advantage to the wine industry of that country or restricts the importation of United States wine into that country.

(5) The term "Trade Representative" means the United States Trade Representative.

(6) The term "United States wine" means wine produced within the customs territory of the United States.

(7) The term "wine" means any fermented alcoholic beverage that—

(A) is made from grapes or other fruit;

(B) contains not less than 0.5 percent alcohol by volume and not more than 24 percent alcohol by volume, including all dilutions and mixtures thereof by whatever process produced; and

(C) is for nonindustrial use.

(Pub. L. 98-573, title IX, § 903, Oct. 30, 1984, 98 Stat. 3048.)

§ 2803. Designation of major wine trading countries

(a) The Trade Representative shall designate as a major wine trading country each foreign country, or group of foreign countries represented as an economic union, that, in the judgment of the Trade Representative—

(1) is a potential significant market for United States wine; and

(2) maintains tariff barriers or nontariff barriers to (or other distortions of) trade in United States wine.

(b) In deciding, for purposes of subsection (a)(2) of this section, whether a foreign country or group of countries maintains nontariff barriers to (or other distortions of) trade in United States wine, the Trade Representative shall take into account—

(1) the review and report required under section 854(a) of the Trade Agreements Act of 1979 (19 U.S.C. 2135 note);

(2) such relevant actions that may have been taken by that country or group since that review was conducted; and

(3) such information as may be submitted under section 2805 of this title by representatives of the wine and grape products industries in the United States, as well as other sources.

(Pub. L. 98-573, title IX, § 904, Oct. 30, 1984, 98 Stat. 3048.)

References in Text

Section 854(a) of the Trade Agreements Act of 1979, referred to in subsec. (b)(1), is section 854(a) of Pub. L. 96-39, title VIII, July 26, 1979, 93 Stat. 294, which is set out as a note under section 2135 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2802, 2805 of this title.

§ 2804. Actions to reduce or eliminate tariff and nontariff barriers affecting United States wine

(a) Consultations with major wine trading countries

The President shall direct the Trade Representative to enter into consultations with each major wine trading country to seek a reduction or elimination of that country's tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine.

(b) Reports to Congress on actions taken to expand export opportunities

(1) the [1] President shall notify each of the Committees regarding the extent and effect of the efforts undertaken since the submission of the report required under section 854(a) of the Trade Agreements Act of 1979 [19 U.S.C. 2135 note], and during the 12-month period beginning on October 30, 1984, to expand opportunities in each major wine trading country for exports of United States wine. Such notification, which shall be in the form of a separate written report (that must be submitted within 30 days after the close of that 12-month period) for each major wine trading country, shall include—

(A) a description of each act, policy, and practice (and of its legal basis and operation) in that country that constitutes a tariff barrier or nontariff barrier to (or other distortion of) trade in United States wine (and that description shall be based upon an updating of the report that was submitted to the Congress under section 854(a) of the Trade Agreements Act of 1979);

(B) an assessment of the extent to which each such act, policy, or practice is subject to international agreements to which the United States is a party;

(C) information with respect to any action taken, or proposed to be taken, under existing authority to eliminate or reduce each such act, policy, or practice, including, but not limited to—

(i) any action under the Trade Act of 1974 [19 U.S.C. 2101 et seq.], and

(ii) any negotiation or consultation with any foreign government;

(D) if action referred to in subparagraph (C) was not taken, an explanation of the reasons therefore; [2] and

(E) recommendations to the Congress of any additional legislative authority or other action which the President believes is necessary and appropriate to obtain the elimination or reduction of foreign tariff barriers or nontariff barriers to (or other distortions of) trade in United States wine.

(2) The reports required under paragraph (1) shall be developed and coordinated by the Trade Representative through the interagency trade organization established by section 1872(a) of this title.

(c) Enforcement of rights

If the President, after taking into account information and advice received under subsections (a) and (b) of this section, section 2805 of this title or from other sources, determines that action is appropriate to respond to any act, policy, or practice of a major wine trading country constitutes a tariff barrier or nontariff barrier to (or other distortion of) trade in United States wine and—

(1) is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement; or

(2) is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce;

the President, shall take all appropriate and feasible action under the Trade Act of 1974 [19 U.S.C. 2101 et seq.] to enforce the rights of the United States under any such trade agreement or to obtain the elimination of such act, policy, or practice.

(Pub. L. 98-573, title IX, § 905, Oct. 30, 1984, 98 Stat. 3049.)

REFERENCES IN TEXT

Section 854(a) of the Trade Agreements Act of 1979, referred to in subsec. (b)(1), is section 854(a) of Pub. L. 96-39, title VIII, July 26, 1979, 93 Stat. 294, which is set out as a note under section 2135 of this title.

The Trade Act of 1974, referred to in subsecs. (b)(1)(C)(i) and (c), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter 12 (§ 2101 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2805 of this title.

§ 2805. Required consultations

The Trade Representative shall consult with the Committees and with representatives of the wine and grape products industries in the United States—

(1) before identifying tariff barriers and nontariff barriers to (or other distortions of) trade in United States wine and designating major wine trading countries under section 2803 of this title;

(2) in developing the reports required under section 2804(b) of this title; and

(3) for purposes of determining whether action by the President is appropriate under any provision of the Trade Act of 1974 [19 U.S.C. 2101 et seq.] with respect to any act, policy, or practice referred to in section 2804(b)(1) of this title.

(Pub. L. 98-573, title IX, § 906, Oct. 30, 1984, 98 Stat. 3050.)

REFERENCES IN TEXT

The Trade Act of 1974, referred to in par. (3), is Pub. L. 93-618, Jan. 3, 1975, 88 Stat. 1978, as amended, which is classified principally to chapter 12 (§ 2101 et seq.) of this title. For complete classification of this Act to the Code, see References in Text note set out under section 2101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2803, 2804 of this title.

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[1] So in original. Probably should be "The".

[2] So in original. Probably should be "therefor;".

§ 2806. United States wine export promotion

In order to develop, maintain, and expand foreign markets for United States wine, the President is encouraged to—

(1) utilize, for the fiscal year ending September 30, 1985, the authority provided under section 135 of the Omnibus Budget Reconciliation Act of 1982 [7 U.S.C. 612c note] to make available sufficient funds to initiate, in cooperation with nongovernmental trade associations representative of United States wineries, an export promotion program for United States;[3] and

(2) request, for each subsequent fiscal year, an appropriation for such a wine export promotion program that will not be at the expense of any appropriations requested for export promotion programs involving other agriculture commodities.

(Pub. L. 98-573, title IX, § 907, Oct. 30, 1984, 98 Stat. 3050.)

REFERENCES IN TEXT

Section 135 of the Omnibus Budget Reconciliation Act of 1982, referred to in par. (1), is section 135 of Pub. L. 97-253, title I, Sept. 8, 1982, 96 Stat. 772, which is set out as a note under section 612c of Title 7, Agriculture.

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[3] So in original. Probably should be "United States wine;".

TITLE 20—EDUCATION

Chap. Sec.
52. Education for Economic Security 3901
53. Emergency Immigrant Education Assistance 4101
54. Leadership in Educational Administration 4201

CROSS REFERENCES

Maritime Education and Training, see section 1295 et seq. of Title 46, Appendix, Shipping.

CHAPTER 2—TEACHING OF AGRICULTURAL, TRADE, HOME ECONOMICS, AND INDUSTRIAL SUBJECTS

§ 11. Annual appropriations

APPROPRIATIONS UNDER VOCATIONAL EDUCATION ACT OF 1963

Pub. L. 90-576, title I, § 104, Oct. 16, 1968, 82 Stat. 1091, as amended by Pub. L. 91-230, title VII, § 709, Apr. 13, 1970, 84 Stat. 189; Pub. L. 94-482, title II, § 203(c)(1), as added Pub. L. 95-40, § 1(29), June 3, 1977, 91 Stat. 207; Pub. L. 98-524, § 4(h), Oct. 19, 1984, 98 Stat. 2489, provided that: "Funds appropriated by the first section of the Smith-Hughes Act (that is the Act approved February 23, 1917, 39 Stat. 929, as amended (20 U.S.C. 11-15, 16-28)), shall be considered as funds appropriated pursuant to section 3 of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2302]."

Pub. L. 94-482, title II, § 203(c)(2), as added by Pub. L. 95-40, § 1(29), June 3, 1977, 91 Stat. 207, provided that: "The amendments made by this section [amending this note and sections 817, 952, and 953 of Title 29, Labor] shall be effective on and after October 1, 1977."

CHAPTER 3—SMITHSONIAN INSTITUTION, NATIONAL MUSEUMS AND ART GALLERIES

SUBCHAPTER I—CHARTER PROVISIONS

§ 50. Reception and arrangement of specimens and objects of art

FRED LAWRENCE WHIPPLE OBSERVATORY; PURCHASE OF LAND

Pub. L. 98-73, Aug. 11, 1983, 97 Stat. 406, provided: "That the Smithsonian Institution is authorized to purchase land in Santa Cruz County, Arizona, for the permanent headquarters of the Fred Lawrence Whipple Observatory.

"SEC. 2. Effective October 1, 1984, there is authorized to be appropriated $150,000 to carry out the purposes of this Act."

SUBCHAPTER II—NATIONAL GALLERY OF ART

§ 71. Designation of site

GENERAL POST OFFICE BUILDING; TRANSFER TO SMITHSONIAN INSTITUTION FOR USE AS ART GALLERIES; RELOCATION OF UNITED STATES INTERNATIONAL TRADE COMMISSION

Pub. L. 98-523, Oct. 19, 1984, 98 Stat. 2433, provided: "That at such time as it is declared to be excess property pursuant to section 2(d) of this Act, the Administrator of General Services (hereinafter in this Act referred to as the 'Administrator') is authorized to transfer to the Smithsonian Institution, in accordance with section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483), without reimbursement, and for use by the Smithsonian Institution for certain art galleries and related functions, the General Post Office Building with any attached underground structures and the site of such building, located between Seventh and Eighth Streets Northwest and E and F Streets Northwest, in the District of Columbia.

"SEC. 2. (a) The Administrator, at the earliest practicable date, shall relocate all operations of the United States International Trade Commission (hereinafter in this Act referred to as the 'Commission') to a building in downtown Washington, District of Columbia. The Administrator's determination as to such relocation shall be based on studies and investigations in which the Chairman of the Commission shall have full opportunity to consult and cooperate with the Administrator. Such consultation shall include opportunity for the Chairman to participate jointly with the Administrator in surveys of available buildings and to submit views and recommendations to the Administrator with respect to space suitable for the Commission's operations. The Administrator shall advise the Chairman in writing of the building to which the operations of the Commission are to be relocated. The Administrator's determination of such relocation shall not take effect for a period of at least sixty days after the date such determination is made and the Chairman is advised of the building to which the operations of the Commission are to be relocated. In the event the Chairman disagrees with the Administrator's determination of such relocation, the Chairman, within thirty days after the Chairman is advised of the building to which the operations of the Commission are to be relocated, may make a written request for review of such determination to the Administrator, and the Administrator shall conduct a formal review of such determination.

"(b) The Administrator and the Chairman shall each report separately in writing to the Committees on Environment and Public Works, Finance, Rules and Administration, and Governmental Affairs of the Senate and to the Committees on Public Works and Transportation, Ways and Means, House Administration, and Government Operations of the House of Representatives not later than sixty days after the date of enactment of this Act [Oct. 19, 1984] and every thirty days thereafter on the status of the relocation required by this section.

"(c) During the period in which the Commission and the United States Postal Service continue to occupy the General Post Office Building referred to in the first section of this Act, the Administrator shall maintain such building in order to prevent its deterioration and to assure that conditions therein are safe and the building is presentable and suitable to the normal operations of the Commission and such Service.

"(d) Upon accomplishment of the relocation required by subsection (a) of this section, the Administrator shall declare the property referred to in the first section of this Act to be excess property as defined in section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

"Sec. 3. There is authorized to be appropriated to the Board of Regents of the Smithsonian Institution $40,000,000 for fiscal years beginning after September 30, 1984, for renovation and repair, after the transfer made under the first section of this Act, of the General Post Office Building referred to in such section. Any portion of the sums appropriated under this section may be transferred to the General Services Administration which, in consultation with the Smithsonian Institution, is authorized to enter into contracts and take such other action, to the extent of the sums so transferred to it, as may be necessary to carry out such renovation and repair. No contract for such renovation or repair shall be advertised or entered into before the end of the period of thirty days of continuous session of Congress beginning on the date the Smithsonian Institution submits to the Committees on Public Works and Transportation and House Administration of the House of Representatives and the Committees on Environment and Public Works and Rules and Administration of the Senate the plans and advanced engineering and design for such renovation and repair. For purposes of this section, continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session."

SUBCHAPTER V—JOHN F. KENNEDY CENTER FOR THE PERFORMING ARTS

§ 76h. Bureau, board of trustees, and advisory committee

Short Title of 1984 Amendment

Pub. L. 98-473, title I, § 101(c), Oct. 12, 1984, 98 Stat. 1837, 1876, provided that: "The following [amending section 76o of this title] may be cited as 'The John F. Kennedy Center Act Amendments of 1984'."

§ 76j. Presentations, programs, facilities for activities, and memorial in honor of the late President; restriction on additional memorials

(a) The Board shall—

(1) present classical and contemporary music, opera, drama, dance, and poetry from this and other countries,

(2) present lectures and other programs,

(3) develop programs for children and youth and the elderly (and for other age groups as well) in such arts designed specifically for their participation, education, and recreation,

(4) provide facilities for other civic activities at the John F. Kennedy Center for the Performing Arts,

(5) provide within the John F. Kennedy Center for the Performing Arts a suitable memorial in honor of the late President.

(b)(1) Except as provided in paragraph (2) of this subsection, the Board shall assure that after December 2, 1983, no additional memorials or plaques in the nature of memorials shall be designated or installed in the public areas of the John F. Kennedy Center for the Performing Arts.

(2) Paragraph (1) of this subsection shall not apply to—

(A) any plaque acknowledging a gift from a foreign country;

(B) any plaque on a theater chair or a theater box acknowledging the gift of such chair or box; and

(C) any inscription on the marble walls in the north or south galleries, the Hall of States, or the Hall of Nations acknowledging a major contribution;

which plaque or inscription is permitted under policies of the Board in effect on December 2, 1983.

(3) For purposes of this subsection, testimonials and benefit performances shall not be construed to be memorials.

(Pub. L. 85-874, § 4, Sept. 2, 1958, 72 Stat. 1699; Pub. L. 88-260, § 1(3), Jan. 23, 1964, 78 Stat. 4; Pub. L. 98-205, § 4, Dec. 2, 1983, 97 Stat. 1388.)

Amendments

1983—Pub. L. 98-205 designated existing provisions as subsec. (a) and added subsec. (b).

§ 76o. Borrowing authority to finance parking facilities

(a) Revenue bonds

To finance necessary parking facilities for the Center, the Board may issue revenue bonds to the Secretary of the Treasury payable from revenues accruing to the Board. The total face value of all bonds so issued shall not be greater than $20,400,000. Such obligations shall have maturities agreed upon by the Board and the Secretary of the Treasury but not in excess of fifty years. Such obligations may be redeemable at the option of the Board before maturity in such manner as may be stipulated in such obligations, but the obligations thus redeemed shall not be refinanced by the Board. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Board to be issued under this section and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31 and the purposes for which securities may be issued under chapter 31 of title 31 are extended to include any purchases of the Board's obligations under this section.

(b) Interest

Effective as of October 12, 1984, the obligations of the Board incurred under subsection (a) of this section shall bear no interest, and the requirement of the Board to pay the unpaid interest which has accrued on such obligations is terminated.

(c) Kennedy Center Revenue Bond Sinking Fund

There is hereby established in the Treasury of the United States a sinking fund, the Kennedy Center Revenue Bond Sinking Fund (hereinafter referred to as the "Fund"), which shall be used to retire the obligations of the Board incurred under subsection (a) of this section upon the respective maturities of such obligations. The Board shall pay into the Fund, beginning on January 1, 1987 and ending on January 1, 2016, the annual sum of $200,000 in amortization of the principal amount of the obligations. Such sums shall be invested by the Secretary of the Treasury in public debt securities with maturities suitable for the needs of the Fund and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to and form a part of the Fund. Moneys in the Fund shall be used exclusively to retire the obligations of the Board incurred under subsection (a) of this section. Adjustments of not greater than plus or minus 5 per centum may be made from time to time in the annual payments to the Fund in order to correct any gains or deficiencies as a result of fluctuations in interest rates over the life of the investments: *Provided, however,* That a final adjustment shall be made between the Board and the Secretary of the Treasury at the end of the amortization period to correct any overall gain or deficiency in the Fund. The terms of this adjustment shall be covered by a memorandum of understanding between the Board and the Secretary of the Treasury to be consummated on or before the time the initial payment into the Fund is made.

(As amended Pub. L. 98-473, title I, § 101(c), Oct. 12, 1984, 98 Stat. 1837, 1876.)

AMENDMENTS

1984—Pub. L. 98-473 designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, struck out provisions relating to interest on bonds, and added subsecs. (b) and (c).

SUBCHAPTER IX—CANAL ZONE BIOLOGICAL AREA

§ 79d. Deposit of receipts into Treasury; disbursements

All moneys received by donation, subscription, fees, or otherwise, except the moneys appropriated pursuant to section 79e of this title, for carrying out the purposes of this subchapter shall be deposited into the Treasury as trust funds and are appropriated for such purposes. Disbursements of such funds shall be made by the Secretary of the Treasury through the Fiscal Service on requisitions or vouchers signed by or on authority of the Smithsonian Institution.

(July 2, 1940, ch. 516, § 6, 54 Stat. 725; 1940 Reorg. Plan No. III, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231; 1946 Reorg. Plan No. 3, § 801, eff. July 16, 1946, 11 F.R. 7877, 60 Stat. 1101.)

TRANSFER OF FUNCTIONS

The Division of Disbursements in the Treasury Department was consolidated in the Fiscal Service of that Department by Reorg. Plan No. III of 1940, § 1(a)(1), eff. June 30, 1940, 5 F.R. 2107, 54 Stat. 1231, set out in the Appendix to Title 5, Government Organization and Employees. See section 306 of Title 31, Money and Finance.

§ 79e. Authorization of appropriations

There are authorized to be appropriated annually, from money in the Treasury of the United States not otherwise appropriated, such sums as are necessary for the administration of this subchapter and for the maintenance of laboratory or other facilities provided for carrying out the purposes of this subchapter.

(July 2, 1940, ch. 516, § 7, 54 Stat. 725; Oct. 20, 1965, Pub. L. 89-280, § 1, 79 Stat. 1012; Oct. 19, 1979, Pub. L. 96-89, § 1, 93 Stat. 697; July 22, 1983, Pub. L. 98-57, § 1, 97 Stat. 293.)

AMENDMENTS

1983—Pub. L. 98-57 struck out ", not to exceed $750,000" after "such sums".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 2 of Pub. L. 98-57 provided that: "The provision in the first section of this Act [amending this section] shall take effect on October 1, 1983."

CHAPTER 6—AMERICAN PRINTING HOUSE FOR THE BLIND

§ 101. Permanent trust fund; annual appropriations

LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982, 1983, AND 1984

Pub. L. 97-35, title VI, § 605(a), Aug. 13, 1981, 95 Stat. 485, as amended by Pub. L. 98-199, § 16(b), Dec. 2, 1983, 97 Stat. 1374, provided that: "The total amount of appropriations to carry out the Act of March 3, 1979 [1879] (20 Stat. 468) [this chapter], relating to the American Printing House for the Blind, shall not exceed $5,000,000 for each of the fiscal years 1982 and 1983, and $5,500,000 for fiscal year 1984."

CHAPTER 8—HOWARD UNIVERSITY

SUBCHAPTER II—ENDOWMENT

Sec.
130aa. Definitions.
130aa-1. Program authorized.
130aa-2. Investments.
130aa-3. Withdrawals and expenditures.
  (a) Defrayment of expenses; restrictions on use of income or corpus; limits on withdrawals or expenditures.
  (b) Authority of Secretary; withdrawal or expenditure beyond limits; circumstances demonstrating necessity.
  (c) Repayment of Federal share of amounts improperly expended or withdrawn; endowment fund corpus; income.
130aa-4. Enforcement.
130aa-5. Authorization of appropriations.

SUBCHAPTER I—GENERAL PROVISIONS

CODIFICATION

Sections 121 to 130 of this title have been editorially designated as subchapter I of this chapter.

§ 123. Annual appropriations; inspection by Secretary of Education

Annual appropriations are authorized to aid in the construction, development, improvement, endowment, and maintenance of the university, no part of which shall be used for religious instruction. The university shall at all times be open to inspection by the Secretary of Education and shall be inspected by the said Secretary at least once each year.

(As amended Oct. 17, 1984, Pub. L. 98-480, title II, § 208, 98 Stat. 2247.)

Amendments

1984—Pub. L. 98-480 added "endowment," after "improvement,".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-480 effective Oct. 1, 1984, see section 209 of Pub. L. 98-480, set out as an Effective Date note under section 130aa of this title.

Limitation on Authorization of Appropriations for Fiscal Years 1982, 1983, and 1984

Pub. L. 97-35, title V, § 503, Aug. 13, 1981, 95 Stat. 442, as amended by Pub. L. 98-95, § 4(b), Sept. 26, 1983, 97 Stat. 711, provided that: "The total amount of appropriations to carry out the Act of March 2, 1867 (14 Stat. 439) [only section 8 of that Act (this section) is classified to the Code], shall not exceed $145,200,000 for each of the fiscal years 1982 and 1983 and $159,700,000 for fiscal year 1984."

SUBCHAPTER II—ENDOWMENT

§ 130aa. Definitions

For purposes of this subchapter—

(1) the term "endowment fund" means a fund, or a tax exempt foundation, established and maintained by Howard University for the purpose of generating income for its support, but which shall not include real estate;

(2) the term "endowment fund corpus" means an amount equal to the grants awarded under this subchapter plus an amount equal to such grants provided by Howard University;

(3) the term "endowment fund income" means an amount equal to the total value of the endowment fund established under this subchapter minus the endowment fund corpus;

(4) the term "Secretary" means the Secretary of Education; and

(5) the term "University" means the Howard University established by the Act of March 2, 1867.

(Pub. L. 98-480, title II, § 202, Oct. 17, 1984, 98 Stat. 2245.)

References in Text

The Act of March 2, 1867, referred to in par. (5), is act Mar. 2, 1867, ch. 162, 14 Stat. 438, as amended. Section 8 of this Act is classified to section 123 of this title. For complete classification of this Act to the Code, see Tables.

Effective Date

Section 209 of title II of Pub. L. 98-480 provided that: "This title [enacting this subchapter, amending section 123 of this title, and enacting provisions set out as a note under this section] shall take effect on October 1, 1984."

Short Title

Section 201 of title II of Pub. L. 98-480 provided that: "This title [enacting this subchapter, amending section 123 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Howard University Endowment Act'."

§ 130aa-1. Program authorized

(a) The Secretary is authorized to establish an endowment program, in accordance with the provisions of this subchapter, for the purpose of establishing or increasing endowment funds, providing additional incentives to promote fundraising activities, and encouraging independence and self-sufficiency at the University.

(b)(1) From the funds appropriated pursuant to this subchapter for endowments in any fiscal year for the University, the Secretary is authorized to make grants to Howard University. The Secretary may enter into agreements with the University and include in any agreement made pursuant to this subchapter such provisions deemed necessary by the Secretary to assure that the purposes of this subchapter will be achieved.

(2) The University may receive a grant under this section only if it has deposited in the endowment fund established under this subchapter an amount equal to such grant and has adequately assured the Secretary that it will administer the endowment fund in accordance with the requirements of this subchapter. The source of funds for this institutional match shall not include Federal funds or funds derived from an existing endowment fund.

(3) The period of any grant under this section shall not exceed twenty years, and during such period the University shall not withdraw or expend any of its endowment fund corpus. Upon the expiration of any grant period, the University may use the endowment fund corpus plus any endowment fund income for any educational purpose.

(Pub. L. 98-480, title II, § 203, Oct. 17, 1984, 98 Stat. 2245.)

Section Referred to in Other Sections

This section is referred to in section 130aa-5 of this title.

§ 130aa-2. Investments

(a) The University shall invest its endowment fund corpus and endowment fund income in those low-risk instruments and securities in which a regulated insurance company may invest under the law of the District of Columbia, such as federally insured bank savings account or comparable interest bearing account, certificate of deposit, money market fund, mutual fund, or obligations of the United States.

(b) The University, in investing its endowment fund corpus and income, shall exercise the judgment and care, under circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of his own business affairs.

(Pub. L. 98-480, title II, § 204, Oct. 17, 1984, 98 Stat. 2246.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 130aa-4 of this title.

§ 130aa-3. Withdrawals and expenditures

(a) Defrayment of expenses; restrictions on use of income or corpus; limits on withdrawals or expenditures

The University may withdraw and expend its endowment fund income to defray any expenses necessary to its operation, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, technical assistance, and research. No endowment fund income or corpus may be used for any type of support of the executive officers of the University or for any commercial enterprise or endeavor entered into after January 1, 1981. Except as provided in subsection (b) of this section, the University shall not, in the aggregate, withdraw or expend more than 50 per centum of the total aggregate endowment fund income earned prior to the time of withdrawal or expenditure.

(b) Authority of Secretary; withdrawal or expenditure beyond limits; circumstances demonstrating necessity

The Secretary is authorized to permit the University to withdraw or expend more than 50 per centum of its total aggregate endowment income whenever the University demonstrates such withdrawal or expenditure is necessary because of—

(A) a financial emergency, such as a pending insolvency or temporary liquidity problem;

(B) a life-threatening situation occasioned by a natural disaster or arson; or

(C) another unusual occurrence or exigent circumstance.

(c) Repayment of Federal share of amounts improperly expended or withdrawn; endowment fund corpus; income

(1) If the University withdraws or expends more than the endowment fund income authorized by this section, the University shall repay the Secretary an amount equal to 50 per centum of the amount improperly expended (representing the Federal share thereof).

(2) The University shall not withdraw or expend any endowment fund corpus. If the University withdraws or expends any endowment fund corpus, the University shall repay the Secretary an amount equal to 50 per centum of the amount withdrawn or expended (representing the Federal share thereof) plus any income earned thereon.

(Pub. L. 98-480, title II, § 205, Oct. 17, 1984, 98 Stat. 2246.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 130aa-4 of this title.

§ 130aa-4. Enforcement

(a) After notice and an opportunity for a hearing, the Secretary is authorized to terminate and recover any grant awarded under this subchapter if the University—

(1) withdraws or expends any endowment fund corpus, or any endowment fund income in excess of the amount authorized by section 130aa-3 of this title;

(2) fails to invest its endowment fund corpus or income in accordance with the investment standards set forth in section 130aa-2 of this title; or

(3) fails to account properly to the Secretary concerning investments and expenditures of its endowment fund corpus or income.

(b) If the Secretary terminates a grant under subsection (a) of this section, the University shall return to the Treasury of the United States an amount equal to the sum of the original grant or grants under this subchapter [1] plus any income earned thereon. The Secretary may direct the University to take such other appropriate measures to remedy any violation of this subchapter and to protect the financial interest of the United States.

(Pub. L. 98-480, title II, § 206, Oct. 17, 1984, 98 Stat. 2247.)

CODIFICATION

This subchapter, the first time it appears in subsec. (b), was in the original "this Act" which was translated as reading "this title", meaning title II of Pub. L. 98-480, Oct. 17, 1984, 98 Stat. 2236, as the probable intent of Congress.

§ 130aa-5. Authorization of appropriations

There is authorized to be appropriated $2,000,000 for the purposes authorized under section 130aa-1 of this title. Funds appropriated under this section shall remain available until expended.

(Pub. L. 98-480, title II, § 207, Oct. 17, 1984, 98 Stat. 2247.)

CHAPTER 13—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES

SUBCHAPTER I—ASSISTANCE FOR LOCAL EDUCATIONAL AGENCIES IN AREAS AFFECTED BY FEDERAL ACTIVITY

§ 237. Federal contributions

(a) Federal acquisition of property within school district as financial burden entitling for contribution

Where the Secretary, after consultation with any local educational agency and with the appropriate State educational agency, determines for any fiscal year ending prior to October 1, 1988—

[See main edition for text of (1) to (3)]

then the local educational agency shall be entitled to receive for such fiscal year such amount as, in the judgment of the Secretary, is equal to the continuing Federal responsibility for the additional financial burden with respect to current expenditures placed on such agency by such acquisition of property. Such amount shall not exceed the amount which, in the judgment of the Secretary, such agency would have derived in such year, and would have had available for current expenditures, from the property acquired by the United States (such amount to be determined without regard to any improvements or other changes made in or on such property since such acquisition).

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[1] See Codification note below.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Oct. 19, 1984, Pub. L. 98-511, title III, § 301(a)(1), 98 Stat. 2388.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-511 substituted "1988" for "1983" in provisions preceding par. (1).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

EFFECTIVE DATE OF 1963 AMENDMENT

Section 303, formerly § 33 of Pub. L. 88-210, as renumbered by Pub. L. 90-576, title I, § 101(a)(1), Oct. 16, 1968, 82 Stat. 1064, which provided that the amendments made by sections 31 and 32 (amending sections 237, 238, 239, 633, 644, and 645 of this title) shall be effective July 1, 1963, was repealed in the general revision of Pub. L. 88-210 by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435.

LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1985 THROUGH 1988; AVAILABILITY OF FUNDS FOR CERTAIN PROGRAMS

Pub. L. 97-35, title V, § 505(a)(1), Aug. 13, 1981, 95 Stat. 442, as amended by Pub. L. 98-94, title XII, § 1255(a)(1), (2), Sept. 24, 1983, 97 Stat. 700; Pub. L. 98-511, title III, § 301(a)(4)(B), Oct. 19, 1984, 98 Stat. 2388, provided that: "The total amount of appropriations to make payments under the Act of September 30, 1950 (Public Law 874, 81st Congress) [this chapter] shall not exceed $740,000,000 for fiscal year 1985, $760,000,000 for fiscal year 1986, $780,000,000 for fiscal year 1987, and $800,000,000 for fiscal year 1988. Funds available for section 7 of such Act for each such fiscal year shall also be available for section 16 of the Act of September 23, 1950 (Public Law 815, 81st Congress) [section 646 of this title]."

REDUCTION IN ENTITLEMENTS DUE TO INSUFFICIENCY OF AMOUNTS APPROPRIATED FOR FISCAL YEARS 1985 THROUGH 1988

Pub. L. 97-35, title V, § 505(a)(3), Aug. 13, 1981, 95 Stat. 442, as amended by Pub. L. 98-94, title XII, § 1255(a)(3)(A), Sept. 24, 1983, 97 Stat. 701; Pub. L. 98-511, title III, § 301(a)(4)(C), Oct. 19, 1984, 98 Stat. 2388, provided that: "If the amount appropriated for making payments under such Act [this chapter] for fiscal year 1985, 1986, 1987, or 1988 is not sufficient to pay in full the sum of the entitlements established under section 2 of such Act [this section], then the amount of each such entitlement shall be ratably reduced. If, for any fiscal year in which such a reduction is required, additional amounts are made available for making such payments, then such entitlements shall be increased on the same basis as they were reduced."

§ 238. Payments to local school agencies

[*See main edition for text of* (*a*)]

(b) Children of persons who reside or work on Federal property, who are on active duty in uniformed services, or who are refugees

For the purpose of computing the amount to which a local educational agency is entitled under this section for any fiscal year ending prior to October 1, 1988, the Secretary shall, in addition to any determination made with respect to such agency under subsection (a) of this section, determine the number of children (other than children with respect to whom a determination is made for such fiscal year under subsection (a) of this section) who were in average daily attendance at the schools of such agency, and for whom such agency provided free public education, during such fiscal year and who, while in attendance at such schools, either—

[*See main edition for text of* (*1*) *to* (*3*)]

For such purpose, with respect to a local educational agency, in the case of any fiscal year ending prior to October 1, 1988, the Secretary shall also determine the number of children (other than children to whom subsection (a) of this section or the preceding sentence applies) who were in average daily attendance at the schools of such agency and for whom such agency provided free public education, during such fiscal year, and who, while in attendance at such schools resided with a parent who was, at any time during the three-year period immediately preceding the beginning of the fiscal year for which the determination is made, a refugee who meets the requirements of clauses (A) and (B) of section 2601(b)(3) of title 22, except that the Secretary shall not include in his determination under this sentence for any fiscal year any child with respect to whose education a payment was made under section 2601(b)(4) of title 22.

(c) Eligibility for payments; waiver of paragraph (1)(B) requirement

[*See main edition for text of* (*1*)]

(2)(A)(i) If a local educational agency is eligible for a payment for any fiscal year by the operation of clause (B) of paragraph (1), it shall continue to be so eligible for the two succeeding fiscal years even if such agency fails to meet the requirement of such clause (B) during such succeeding fiscal years, except that the number of children determined for the second such succeeding fiscal year with respect to such agency for the purpose of any clause in paragraph (1) of subsection (d) of this section shall not exceed 50 per centum of the number of children determined with respect to such agency for the purpose of that clause for the last fiscal year during which such agency was so eligible.

(ii) If the Secretary determines with respect to any local educational agency for any fiscal year that—

(I) such agency does not meet the requirement of clause (B) of paragraph (1); and

(II) the application of such requirement, because of exceptional circumstances, would defeat the purposes of this subchapter;

the Secretary is authorized to waive such requirement with respect to such agency.

[*See main edition for text of* (*B*)]

(d) Amount of payments; special education programs, entitlement; criteria; local contribution rate; formula; special determination for territories; "handicapped children", "State", and "average per pupil expenditure" defined

[*See main edition for text of* (*1*)]

(2)(A) Repealed. Pub. L. 95-561, title X, § 1004, Nov. 1, 1978, 92 Stat. 2307.

(B) If the Secretary determines that—

[*See main edition for text of* (*i*) *to* (*iv*)]

the Secretary shall increase the amount computed under paragraph (1) with respect to such agency for such fiscal year to the extent necessary to enable such agency to provide a level of education equivalent to that maintained in such comparable school districts. Subject to the provisions of subsection (h) of this section, the Secretary shall not, under the preceding sentence, increase the amount computed under paragraph (1) with respect to any local educational agency for any fiscal year to an amount which exceeds the product of—

(I) the amount the Secretary determines to be the cost per pupil of providing a level of education maintained in such comparable school districts during such fiscal year,

multiplied by—

(II) the number of children determined with respect to such agency for such year under either subsection (a) or subsection (b) of this section, or both,

minus the amount of State aid which the Secretary determines to be available with respect to such children for the fiscal year for which the computation is being made. In carrying out the provisions of this subparagraph, the Secretary shall not prorate the amounts computed under this subparagraph attributable to the number of children determined under subsection (a) or (b) of this section, or both.

[*See main edition for text of* (*C*) *and* (*D*)]

(E)(i) The amount of the entitlement of any local educational agency under this section for fiscal year 1982 with respect to children determined under subsection (b) of this section with respect to such agency shall be the amount determined under paragraph (1) with respect to such children multiplied by 66⅔ per centum.

(ii) The amount of the entitlement of any local educational agency under this section for any of the fiscal years 1983 through 1988 with respect to children determined under subsection (b) of this section with respect to such agency shall be the amount determined under paragraph (1) with respect to such children multiplied by 33⅓ per centum.

[*See main edition for text of* (*3*); (*e*) *to* (*g*)]

(h) Special provisions

Any local educational agency for which the boundaries of the school district of such agency are coterminous with the boundaries of a military installation and which is not eligible to receive payments under subsection (d)(2)(B) of this section shall receive 100 percent of the amounts to which such agency is entitled under subsection (a) of this section.

(As amended Sept. 24, 1983, Pub. L. 98-94, title XII, § 1255(b), 97 Stat. 701; Oct. 19, 1984, Pub. L. 98-511, title III, §§ 301(a)(1)-(3), 303(a), 98 Stat. 2388; Nov. 8, 1984, Pub. L. 98-619, title III, § 300, 98 Stat. 3323.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-511, § 301(a)(1), substituted "October 1, 1988" for "October 1, 1983" in two places.

Subsec. (c)(2)(A). Pub. L. 98-511, § 301(a)(3), struck out cl. (i), which provided that cl. (B) of par. (1) would not operate to make any local educational agency eligible for a payment under this section for any fiscal year unless the number of children with respect to whom determination was made under subsecs. (a) and (b) of this section respecting such agency for that fiscal year was at least ten, and redesignated as cls. (i) and (iii) as (i) and (ii), respectively.

Subsec. (d)(2)(B). Pub. L. 98-511, § 303(a)(1), (2)(A), and Pub. L. 98-619 made identical amendments by substituting "Subject to the provisions of subsection (h) of this section, the Secretary shall not" for "The Secretary shall not" and by adding at the end provisions prohibiting proration of amounts attributable to the number of children.

Subsec. (d)(2)(E). Pub. L. 98-511, § 301(a)(2), substituted in cl. (ii) "any of the fiscal years 1983 through 1988" for "fiscal year 1983 or 1984", and struck out cl. (iii) which provided that the amount of the entitlement of any local educational agency under this section for fiscal year 1985 or any succeeding fiscal year with respect to children determined under subsec. (b) of this section with respect to such agency would be zero.

Subsec. (h). Pub. L. 98-511, § 303(a)(2)(B), and Pub. L. 98-619 each added a subsec. (h) which were identical.

1983—Subsec. (d)(2)(E)(ii). Pub. L. 98-94, § 1255(b)(1), inserted "or 1984" after "fiscal year 1983".

Subsec. (d)(2)(E)(iii). Pub. L. 98-94, § 1255(b)(2), substituted "fiscal year 1985" for "fiscal year 1984".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

APPROPRIATIONS NOT AUTHORIZED FOR FISCAL YEARS 1985 THROUGH 1988 FOR CERTAIN ENTITLEMENTS AND SPECIAL PROGRAMS

Section 505(b) of Pub. L. 97-35, as amended by Pub. L. 98-94, title XII, § 1255(a)(3)(B), Sept. 24, 1983, 97 Stat. 701; Pub. L. 98-511, title III, § 301(a)(4)(C), Oct. 19, 1984, 98 Stat. 2388, provided that: "No funds are authorized to be appropriated for fiscal year 1985, 1986, 1987, or 1988 for the purpose of making payments—

"(1) on the basis of entitlements determined under section 3(e) or 4 of such Act [section 238(e) or 239 of this title]; or

"(2) under section 4A or 6 of such Act [section 239a or 241 of this title]."

§ 239. Sudden and substantial increases in attendance

(a) Determination by Secretary; amount of contribution

If the Secretary determines for any fiscal year ending prior to October 1, 1988—

[*See main edition for text of (1) to (3)*]

then such agency shall be entitled to receive for such fiscal year an amount equal to the product of—

[*See main edition for text of (A) and (B)*]

For the next fiscal year (except where the determination under the preceding sentence has been made with respect to the fiscal year ending June 30, 1973) such agency shall be entitled to receive 50 per centum of such product reduced by the amount of such product which is attributable to children with respect to whom such agency is, or upon application would be, entitled to receive any payment under section 238 of this title for such fiscal year, but not to exceed for such year the amount which the Secretary determines to be necessary to enable such agency, with the State, local, and other Federal funds (exclusive of funds available under subchapter II of this chapter) available to it for such purpose, to provide a level of education equivalent to that maintained in the school districts in such State which in his judgment are generally comparable to the school district of such agency. The determinations whether an increase has occurred for purposes of clause (1) of this subsection and whether such increase meets the 5 per centum requirement contained in such clause, for any fiscal year, shall be made on the basis of estimates by the Secretary made prior to the close of such year, except that an underestimate made by the Secretary pursuant to the foregoing provisions of this sentence shall not operate to deprive an agency of its entitlement to any payments under this section to which it would be entitled had the estimate been accurate. The determination under clause (B) of this subsection shall be made by the Secretary after considering the current expenditures per child in providing free public education in those school districts in the State which, in the judgment of the Secretary, are generally comparable to the school district of the local educational agency for which the computation is being made.

[*See main edition for text of (b) to (e)*]

(As amended Oct. 19, 1984, Pub. L. 98-511, title III, § 301(a)(1), 98 Stat. 2388.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-511 substituted "1988" for "1983" in first sentence.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 240. Payments

[*See main edition for text of (a) and (b)*]

(c) Adjustments where necessitated by appropriations

If the sums appropriated for any fiscal year for making payments on the basis of entitlements established under sections 237, 238, and 239 of this title for that year are not sufficient to pay in full the total amounts which the Secretary estimates all local educational agencies are entitled to receive under such sections for such year, the Secretary shall allocate such sums among local educational agencies and make payments to such agencies as follows:

[*See main edition for text of (1) to (3)*]

No allocation may be made pursuant to paragraph (2) or (3) and no payment may be paid on the basis of any such allocation unless allocations are made pursuant to paragraph (1) and payments are made on the basis of such allocations. No allocation may be made pursuant to any clause of paragraph (2)(A) and no payment may be made on the basis of any such allocation unless allocations are made pursuant to all of the clauses of such paragraph and payments are made on the basis of such allocations.

[*See main edition for text of (d) to (g)*]

(h) Treatment of administrative school district within State as local educational agency for purpose of determining amount of payment; restrictions

If any legislation enacted after March 31, 1983, affects the determination of amounts of payments made on the basis of entitlements established under sections 237, 238, and 239 of this title by placing any additional restriction on payments based on the concentration of children counted under subsection (a) or (b) of section 238 of this title in the schools of a local educational agency, such rstriction shall be applied, in the case of any State (other than a territory or possession of the United States) within which there is only one local educational agency, by treating each administrative school district within such State as a local educational agency (solely for the purpose of computing the amount of such payments). Treating such an administrative school district as a local educational agency under the preceding sentence shall not result, during fiscal year 1984, 1985, or 1986, in an increase of more than 10 per centum in the amount of funds paid to such State above the amount which would otherwise be paid to such State for such fiscal year.

(As amended Oct. 31, 1983, Pub. L. 98-139, title III, § 300, 97 Stat. 889; Dec. 8, 1983, Pub. L. 98-211, § 23, 97 Stat. 1419; Aug. 22, 1984, Pub. L. 98-396, title I, § 101, 98 Stat. 1393; Oct. 19, 1984, Pub. L. 98-511, title III, § 303(b)(1), 98 Stat. 2389.)

AMENDMENTS

1984—Subsecs. (c), (h). Pub. L. 98-396 and Pub. L. 98-511 made identical amendments by designating as subsec. (h) former provisions of susec. (c) relating to legislation enacted after Mar. 31, 1983, which places an additional restriction on payments based on the concentration of children in the schools of a local educational agency and a limitation on the increase in the amount of funds paid to certain States in fiscal year 1984, 1985, or 1986.

1983—Subsec. (c). Pub. L. 98-211 added provision that if any legislation enacted after March 31, 1983, affects the determination of amounts of payments made on the basis of entitlements established under sections 237, 238, and 239 of this title by placing any additional restriction on payments based on the concentration of children counted under subsection (a) or (b) of section 238 of this title in the schools of a local educational agency, such restriction shall be applied, in the case of any State (other than a territory or possession of the United States) within which there is only one local educational agency, by treating each administrative school district within such State as a local educational agency (solely for the purpose of computing the amount of such payments), and that treating such an administrative school district as a local educational agency under the preceding sentence shall not result, during fiscal year 1984, 1985, or 1986, in an increase of more than 10 per centum in the amount of funds paid to such State above the amount which would otherwise be paid to such State for such fiscal year.

Pub. L. 98-139 temporarily amended subsec. (c) by adding provision at the end thereof which was substantially identical to the provisions added by Pub. L. 98-211. See Effective and Termination Dates of 1983 Amendment note below.

Effective Date of 1984 Amendments

Section 303(b)(2) of Pub. L. 98-511 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall be effective December 8, 1983."

Section 101 of Pub. L. 98-396 provided in part that: "This amendment [amending this section] shall be effective December 8, 1983."

Effective and Termination Dates of 1983 Amendment

Section 300 of Pub. L. 98-139 provided in part that the amendment of subsec. (c) of this section by Pub. L. 98-139 by inserting the provision relating to additional restrictions on payments is effective for the duration of the provisions of Pub. L. 98-139, the Department of Education Appropriation Act, 1984, which covered the fiscal year ending Sept. 30, 1984, and further provided that "This provision shall no longer be in effect upon enactment into public law of similar language by the duly recognized authorization committees; further this provision shall not result in an increase to the State of Hawaii in an amount in excess of 50 per centum of that which the State would have received without the enactment of this provision." For enactment of similar language, see 1983 Amendment notes set out above.

Collection of Overpayments

Section 302 of Pub. L. 98-511 provided that: "In the case of any local educational agency which the Secretary of Education determines has received, for any fiscal year after fiscal year 1976, an overpayment under section 2 of the Act of September 30, 1950 (20 U.S.C. 237) as a consequence of a recomputation of need based on revised data, the Secretary shall not require more than 10 percent of the amount of the overpayment to be repaid (or deducted from current payments) in any fiscal year."

§ 241. Education of children where local agencies cannot supply facilities

Dependents of Federal Aviation Administration Personnel

Provisions authorizing the expenditure of certain funds appropriated for the Federal Aviation Administration for (1) except as otherwise authorized by this chapter, expenses of primary and secondary schooling for dependents of Federal Aviation Administration personnel stationed outside the continental United States at costs for any given area not in excess of those of the Department of Defense for the same area, when it is determined by the Secretary that the schools, if any, available in the locality are unable to provide adequately for the education of such dependents and (2) transportation of said dependents between schools serving the area which they attend and their places of residence when the Secretary, under such regulations as may be prescribed, determines that such schools are not accessible by public means of transportation on a regular basis were contained in the following appropriation acts:

Oct. 12, 1984, Pub. L. 98-473, title I, § 101(i) (title III, § 303), 98 Stat. 1944, 1961.

Aug. 15, 1983, Pub. L. 98-78, title III, § 303, 97 Stat. 470.

§ 241-1. Assistance for current school expenditures in cases of certain disasters

(a) Eligibility requirements; terms; duration; maximum amount

In any case in which—

(1)(A) the President determines with respect to any local educational agency (including for the purpose of this section any other public agency which operates schools providing technical, vocational, or other special education to children of elementary or secondary school age) that such agency is located in whole or in part within an area which after August 30, 1965, and prior to October 1, 1988, has suffered a major disaster as the result of any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which, in the determination of the President pursuant to sections 5122(2) and 5141 of title 42, is or threatens to be of sufficient severity or magnitude to warrant disaster assistance by the Federal Government; or

(B) the Secretary determines with respect to any such agency that public elementary or secondary school facilities of such agency have been destroyed or seriously damaged prior to October 1, 1988 as a result of flood, hurricane, earthquake, storm, fire, or other catastrophe, except any such catastrophe caused by negligence or malicious action; and

[See main edition for text of (2)]

and if the Secretary determines with respect to such agency that—

[See main edition for text of (3) and (4)]

the Secretary may provide to such agency the additional assistance necessary to provide free public education to the children attending the schools of such agency, upon such terms and in such amounts (subject to the provisions of this section) as the Secretary may consider to be in the public interest. Such additional assistance may be provided for a period not greater than a five-fiscal-year period beginning with the fiscal year in which it is determined pursuant to clause (1) of this subsection that such agency suffered a disaster. The amount so provided for any fiscal year shall not exceed the amount which the Secretary determines to be necessary to enable such agency, with the State, local, and other Federal funds available to it for such purpose, to provide a level of education equivalent to that maintained in the schools of such agency prior to the occurrence of such disaster, taking into account the additional costs reasonably necessary to carry out the provisions of clause (4) of this subsection. The amount, if any, so provided for the second, third, and fourth fiscal years following the fiscal year in which it is so determined that such agency has suffered a disaster shall not exceed 75 per centum, 50 per centum, and 25 per centum, respectively, of the amount so provided for the first fiscal year following such determination.

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Oct. 19, 1984, Pub. L. 98-511, title III, § 301(a)(1), 98 Stat. 2388.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-511 substituted "October 1, 1988" for "October 1, 1983" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

MINIMUM NEED CRITERIA FOR RECEIPT OF ASSISTANCE

Pub. L. 98-396, title I, § 101, Aug. 22, 1984, 98 Stat. 1393, provided in part: "That no payments shall be made under section 7 of said Act [act Sept. 30, 1950, as amended (20 U.S.C. 241-1)] to any local educational agency whose need for assistance under that section fails to exceed the lesser of $10,000 or 5 per centum of the district's current operating expenditures during the fiscal year preceding the one in which the disaster occurred."

SUBCHAPTER III—FINANCIAL ASSISTANCE TO LOCAL EDUCATIONAL AGENCIES FOR EDUCATION OF INDIAN CHILDREN

§ 241aa. Congressional declaration of policy

[*See main edition for text of* (*a*)]

(b) Grants to local educational agencies

The Secretary shall, in order to effectuate the policy set forth in subsection (a) of this section, carry out a program of making grants to local educational agencies which are entitled to payments under this subchapter and which have submitted, and had approved, applications therefor, in accordance with the provisions of this subchapter.

(Sept. 30, 1950, ch. 1124, title III, § 302, as added June 23, 1972, Pub. L. 92-318, title IV, § 411(a), 86 Stat. 335, and amended Nov. 1, 1978, Pub. L. 95-561, title XI, § 1142(a), 92 Stat. 2329; Oct. 19, 1984, Pub. L. 98-511, title V, § 513(a)(8), 98 Stat. 2400.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-511 substituted "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 241bb. Grants to local educational agencies

(a) Entitlement; computation; average per pupil expenditure

(1) For any fiscal year for which appropriations are authorized under section 241ff of this title, the Secretary shall determine the number of Indian children who were enrolled in the schools of a local educational agency, and for whom such agency provided free public education, during such fiscal year.

(2)(A) From the sums appropriated under section 241ff(a) of this title for any fiscal year, the Secretary shall allocate to each local educational agency which has an application approved under this subchapter an amount which bears the same ratio to such sums as the product of (i) the number of eligible Indian children (as determined under paragraph (1)), multiplied by (ii) the average per pupil expenditure per agency (as determined under subparagraph (c) [1]), bears to the sum of such products for all such local educational agencies.

[*See main edition for text of* (*B*) *and* (*C*)]

(b) Non-local educational agencies

(1) In addition to the sums appropriated for any fiscal year for grants to local educational agencies under this subchapter, there is hereby authorized to be appropriated for any fiscal year an amount not in excess of 10 per centum of the amount appropriated for payments on the basis of entitlements computed under subsection (a) of this section for that fiscal year, for the purpose of enabling the Secretary to provide financial assistance in accordance with the provisions of this subchapter to schools which—

(A) are located on or near reservations; and

(B)(i) are not local educational agencies; or

(ii) have not been local educational agencies for more than three years.

(2) The requirements of clause (A) of paragraph (1) shall not apply to any school serving Indian children in California, Oklahoma or Alaska.

(c) Demonstration projects

In addition to the sums appropriated for any fiscal year for grants to local educational agencies under this subchapter, there is hereby authorized to be appropriated for any fiscal year an amount not in excess of 10 per centum of the amount appropriated for payments on the basis of entitlements computed under subsection (a) of this section for that fiscal year, for the purpose of enabling the Secretary to make grants on a competitive basis to local educational agencies to support demonstration projects and programs which are designed to plan for and improve education opportunities for Indian children, except that the Secretary shall reserve a portion not to exceed 25 per centum of such funds to make grants for demonstration projects examining the special educational and culturally related academic needs that arise in school districts with high concentrations of Indian children.

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[1] So in original. Probably should be "subparagraph (C)".

(Sept. 30, 1950, ch. 1124, title III, § 303, as added June 23, 1972, Pub. L. 92–318, title IV, § 411(a), 86 Stat. 335, and amended Aug. 21, 1974, Pub. L. 93–380, title VI, §§ 631(b), 632(b), 88 Stat. 585, 586; Apr. 21, 1976, Pub. L. 94–273, § 3(5), 90 Stat. 376; Nov. 1, 1978, Pub. L. 95–561, title XI, §§ 1141(b), 1143, 92 Stat. 2328, 2329; Oct. 19, 1984, Pub. L. 98–511, title V, § 513(a)(1)–(3), (8), 98 Stat. 2399, 2400.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–511, § 513(a)(1), (8), substituted "For any fiscal year for which appropriations are authorized under section 241ff of this title, the Secretary" for "For the purpose of computing the amount to which a local educational agency is entitled under this subchapter for any fiscal year ending prior to October 1, 1983, the Commissioner".

Subsec. (a)(2)(A). Pub. L. 98–511, § 513(a)(2), substituted "From the sums appropriated under section 241ff(a) of this title for any fiscal year, the Secretary shall allocate to each local educational agency which has an application approved under this subchapter an amount which bears the same ratio to such sums as the product of (i) the number of eligible Indian children (as determined under paragraph (1)), multiplied by (ii) the average per pupil expenditure per agency (as determined under subparagraph (c)), bears to the sum of such products for all such local educational agencies" for "The amount of the grant to which a local educational agency is entitled under this subchapter for any fiscal year shall be an amount equal to (i) the average per pupil expenditure for such agency (as determined under subparagraph (c)) multiplied by (ii) the sum of the number of children determined under paragraph (1)".

Subsec. (b). Pub. L. 98–511, § 513(a)(3), (8), designated existing provisions as par. (1), in par. (1) as so designated substituted "Secretary" for "Commissioner" and designated part of existing provisions as subpars. (A) and (B), and added par. (2).

Subsec. (c). Pub. L. 98–511, § 513(a)(8), substituted "Secretary" for "Commissioner" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98–511, set out as a note under section 2701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 241bb–1, 241dd, 1221g of this title.

§ 241cc. Uses of Federal funds

Grants under this subchapter may be used, in accordance with applications approved under section 241dd of this title, for—

[*See main edition for text of (1)*]

(2) the establishment, maintenance, and operation of programs, including, in accordance with special regulations of the Secretary, minor remodeling of classroom or other space used for such programs and acquisition of necessary equipment, specially designed to meet the special educational or culturally related academic needs, or both, of Indian children.

(Sept. 30, 1950, ch. 1124, title III, § 304, as added June 23, 1972, Pub. L. 92–318, title IV, § 411(a), 86 Stat. 335, and amended Nov. 1, 1978, Pub. L. 95–561, title XI, § 1142(b), 92 Stat. 2329; Oct. 19, 1984, Pub. L. 98–511, title V, § 513(a)(8), 98 Stat. 2400.)

AMENDMENTS

1984—Par. (2). Pub. L. 98–511 substituted "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98–511, set out as a note under section 2701 of this title.

§ 241dd. Conditions for approval of grants

(a) Applications for grants; contents

A grant under this subchapter, except as provided in section 241bb(b) of this title, may be made only to a local educational agency or agencies, and only upon application to the Secretary at such time or times, in such manner, and containing or accompanied by such information as the Secretary deems necessary. Such application shall—

[*See main edition for text of (1) to (6)*]

(7) provide for making an annual report and such other reports, in such form and containing such information, as the Secretary may reasonably require to carry out his functions under this subchapter and to determine the extent to which funds provided under this subchapter have been effective in improving the educational opportunities of Indian students in the area served, and for keeping such record and for affording such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports.

(b) Requirement of compliance with certain provisions

An application by a local educational agency or agencies for a grant under this subchapter may be approved only if it is consistent with the applicable provisions of this subchapter and—

(1) meets the requirements set forth in subsection (a) of this section;

(2) provides that the program or project for which application is made—

[*See main edition for text of (A)*]

(B) has been developed—

[*See main edition for text of (i)*]

(ii) with the participation and written approval of a committee composed of, and selected by, parents of children participating in the program (including persons acting in loco parentis other than school administrators or officials) for which assistance is sought, teachers, and, where applicable, secondary school students of which at least half the members shall be such parents;

[*See main edition for text of (C), (3)*]

(c) Approval of amended applications

Amendments of applications shall, except as the Secretary may otherwise provide by or pursuant to regulations, be subject to approval in the same manner as original applications.

(Sept. 30, 1950, ch. 1124, title III, § 305, as added June 23, 1972, Pub. L. 92-318, title IV, § 411(a), 86 Stat. 336, and amended Nov. 1, 1978, Pub. L. 95-561, title XI, § 1144, 92 Stat. 2329; Oct. 19, 1984, Pub. L. 98-511, title V, § 513(a)(4), (8), 98 Stat. 2399, 2400.)

Amendments

1984—Subsec. (a). Pub. L. 98-511, § 513(a)(8), substituted "Secretary" for "Commissioner" two places in the provisions preceding par. (1) and two places in par. (7).

Subsec. (b)(2)(B)(ii). Pub. L. 98-511, § 513(a)(4), substituted "written approval" for "approval".

Subsec. (c). Pub. L. 98-511, § 513(a)(8), substituted "Secretary" for "Commissioner".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 241ee. Payments

(a) Amounts paid to approved educational agencies

The Secretary shall, subject to the provisions of section 241ff of this title, from time to time pay to each local educational agency which has had an application approved under section 241dd of this title, an amount equal to the amount estimated to be expended by such agency in carrying out activities under this application.

(b) Limitations

[*See main edition for text of (1)*]

(2) No payments shall be made under this subchapter to any local educational agency for any fiscal year unless the State educational agency finds that the combined fiscal effort (as determined in accordance with regulations of the Secretary of Education) of that agency and the State with respect to the provision of free public education by that agency for the preceding fiscal year was not less than 90 per centum of such combined fiscal effort for that purpose for the second preceding fiscal year. In addition, the Secretary may waive this requirement for exceptional circumstances for one year only.

(Sept. 30, 1950, ch. 1124, title III, § 306, as added June 23, 1972, Pub. L. 92-318, title IV, § 411(a), 86 Stat. 337, and amended Nov. 1, 1978, Pub. L. 95-561, title XI, § 1150(f), 92 Stat. 2333; Aug. 22, 1984, Pub. L. 98-396, title I, § 101, 98 Stat. 1390; Oct. 19, 1984, Pub. L. 98-511, title V, § 513(a)(8), 98 Stat. 2400.)

Amendments

1984—Subsec. (a). Pub. L. 98-511 substituted "Secretary" for "Commissioner".

Subsec. (b)(2). Pub. L. 98-396 substituted "Secretary of Education" for "Commissioner", substituted "90 per centum of such combined fiscal effort" for "such combined fiscal effort", and added provision that the Secretary may waive the requirement of this paragraph for exceptional circumstances for one year only.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 241ff. Authorization of appropriations; adjustments

(a) For the purpose of making payments under this subchapter, there are authorized to be appropriated (1) for each of the fiscal years ending prior to October 1, 1986, such sums as may be necessary, and (2) for each of the fiscal years 1987, 1988, and 1989, an amount not to exceed the amount appropriated for such purpose for fiscal year 1986.

(b) The Secretary may reallocate, in such manner as will best assist in advancing the purposes of this subchapter, any amount which the Secretary determines, based upon estimates made by local educational agencies, will not be needed by any such agency to carry out its approved project.

(Sept. 30, 1950, ch. 1124, title III, § 307, as added June 23, 1972, Pub. L. 92-318, title IV, § 411(a), 86 Stat. 337, and amended Nov. 1, 1978, Pub. L. 95-561, title XI, § 1145, 92 Stat. 2330; Oct. 19, 1984, Pub. L. 98-511, title V, § 513(a)(5), 98 Stat. 2399.)

Amendments

1984—Subsec. (a). Pub. L. 98-511 substituted authorization of appropriations provision for prior provision for adjustments where necessitated by appropriations, resulting in either reduction of maximum amounts or increase of reduced amounts.

Subsec. (b). Pub. L. 98-511 revised reallocation provision to eliminate internal reference to subsec. (a) provision which called for adjustments where necessitated by appropriations, resulting in reduction of maximum amounts or increase of reduced amounts and substituted reference to "Secretary" for "Commission" as authorized to make the adjustments.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

Fiscal Year 1985 Appropriations Limitation

Section 513(e) of Pub. L. 98-511 provided that: "Notwithstanding the provisions of any authorization of appropriations amended by this section [amending sections 241aa, 241bb, 241cc to 241ff, 1211a, 1221g, 3385a, and 3385b of this title] the total amount which may be appropriated pursuant to all such authorizations (amended by this section) shall not exceed $100,000,000 for fiscal year 1985."

Section Referred to in Other Sections

This section is referred to in sections 241bb, 241ee of this title.

CHAPTER 16—PUBLIC LIBRARY SERVICES AND CONSTRUCTION

SUBCHAPTER III—INTERLIBRARY COOPERATION AND RESOURCE SHARING

Sec.
355e-3. Resource sharing.
    (a) Statewide plan.
    (b) Recommendations.
    (c) Long-range program; identification of objectives; elements of program.

Sec.
- (d) Participating libraries; reimbursement of expenses.

355f to 358. Omitted.

SUBCHAPTER IV—LIBRARY SERVICES FOR INDIAN TRIBES

361. Findings and purpose; authorization of grants.
- (a) Findings.
- (b) Purpose.
- (c) Grants for services to Indians living on or near reservations.
- (d) Special project grants.

362. Use of funds.
- (a) Permitted uses of funds.
- (b) Maintenance of funding level.
- (c) Restricted collections of tribal cultural materials.

363. Applications for library services to Indians.
364. Plans for library services to Indians.
365. Coordination with other programs for Indians.

SUBCHAPTER V—FOREIGN LANGUAGE MATERIALS ACQUISITION

371. Grants for foreign language material acquisition.
- (a) Duty of Secretary.
- (b) Selection of recipients.
- (c) Funding limitation.

SUBCHAPTER VI—LIBRARY LITERACY PROGRAMS

375. State and local library grants.
- (a) Duty of Secretary; grants for support of literacy programs.
- (b) Purposes of grants to State libraries.
- (c) Purposes of grants to local libraries.
- (d) Selection of recipients.
- (e) Funding limitation.

§ 351. Declaration of policy

(a) It is the purpose of this chapter to assist the States in the extension and improvement of public library services to areas and populations of the States which are without such services or to which such services are inadequate and to assist Indian tribes in planning and developing library services to meet their needs. It is the further purpose of this chapter to assist with (1) public library construction and renovation; (2) improving State and local public library services for older Americans, and for handicapped, institutionalized, and other disadvantaged individuals; (3) strengthening State library administrative agencies; (4) promoting interlibrary cooperation and resource sharing among all types of libraries; (5) strengthening major urban resource libraries; and (6) increasing the capacity of libraries to keep up with rapidly changing information technology.

(b) Nothing in this chapter shall be construed to interfere with State and local initiative and responsibility in the conduct of library services. The administration of libraries, the selection of personnel and library books and materials, and, insofar as consistent with the purposes of this chapter, the determination of the best uses of the funds provided under this chapter shall be reserved to the States and their local subdivisions and Indian tribes.

(As amended Oct. 17, 1984, Pub. L. 98–480, title I, § 102, 98 Stat. 2236.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–480, § 102(a), added reference to assisting Indian tribes in planning and developing library services to meet their needs, designated existing provisions as cls. (1) to (5), in cl. (1) as so designated added reference to library renovation, in cl. (2) as so designated substituted provisions relating to the improvement of State and local public library services for older Americans, and for handicapped, institutionalized, and other disadvantaged individuals for provisions relating to the improvement of such other State library services as library services for physically handicapped, institutionalized, and disadvantaged persons, in cl. (4) as so designated added reference to resource sharing, and added cl. (6).

Subsec. (b). Pub. L. 98–480, § 102(b), inserted reference to Indian tribes.

SHORT TITLE OF 1984 AMENDMENT

Section 101(a) of title I of Pub. L. 98–480 provided that: "This title [enacting sections 355e–3, 361 to 365, 371 and 375 of this title, amending sections 351 to 351f, 352, 353, 354, 355a, 355b, 355c, 355e, and 355e–2 of this title and enacting provisions set out as notes under this section and section 355b of this title] may be cited as the 'Library Services and Construction Act Amendments of 1984'."

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE OF 1984 AMENDMENT

Section 101(b) of Pub. L. 98–480 provided that: "The Congress finds that—

"(1) the role of libraries has expanded to include (A) providing programs to meet the needs of special segments of the population, including librarian training and outreach programs, (B) providing literacy training for illiterate and functionally illiterate adults, and (C) sharing resources and materials among a wide variety of libraries;

"(2) it has become necessary to expand the role of libraries as information centers for their communities, utilizing improved and new technologies and resources to meet the increasing need for information services and educational resources of Americans in a rapidly changing economy;

"(3) funding for construction of new libraries and renovation of existing libraries is essential to ensure continuation of library services for the public;

"(4) attention should be paid to the needs of small and rural community libraries and information centers because these facilities are often underfunded and understaffed and as a consequence cannot adequately serve the needs of the community; and

"(5) the scope and purpose of the Library Services and Construction Act [this chapter] should therefore be revised to include a more comprehensive range of programs which may receive funds thereunder and to ensure the extension of services to minorities and other populations that would otherwise be unable to use regular library facilities."

§ 351a. Definitions

The following definitions shall apply to this chapter:

(1) "Secretary" means the Secretary of Education.

(2) "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). Such term includes remodeling to meet standards under the Act of August 12, 1968, commonly known as the "Architectural Barriers Act of 1968" [42 U.S.C. 4151 et seq.], re-

modeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

[*See main edition for text of (3) to (6)*]

(7) "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

[*See main edition for text of (8)*]

(9) "State institutional library services" means the providing of books and other library materials, and of library services, to (A) inmates, patients, or residents of penal institutions, reformatories, residential training schools, orphanages, or general or special institutions or hospitals operated or substantially supported by the State, or (B) students in residential schools for the physically handicapped (including mentally retarded, hearing impaired, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired persons who by reason thereof require special education) operated or substantially supported by the State.

[*See main edition for text of (10)*]

(11) "Basic State plan" means the document which gives assurances that the officially designated State library administrative agency has the fiscal and legal authority and capability to administer all aspects of this chapter; provides assurances for establishing the State's policies, priorities, criteria, and procedures necessary to the implementation of all programs under provisions of this chapter; and submits copies for approval as required by regulations promulgated by the Secretary.

(12) "Long-range program" means the comprehensive five-year program which identifies a State's library needs and sets forth the activities to be taken toward meeting the identified needs supported with the assistance of Federal funds made available under this chapter. Such long-range programs shall be developed by the State library administrative agency and shall specify the State's policies, criteria, priorities, and procedures consistent with this chapter as required by the regulations promulgated by the Secretary and shall be updated as library progress requires.

(13) "Annual program" means the projects which are developed and submitted to describe the specific activities to be carried out annually toward achieving fulfillment of the long-range program. These annual programs shall be submitted in such detail as required by regulations promulgated by the Secretary.

(14) "Major urban resource library" means any public library located in a city having a population of 100,000 or more individuals, as determined by the Secretary.

(15) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, as determined by the Secretary after consultation with the Secretary of the Interior.

(16) "Hawaiian native" means any individual any of whose ancestors were natives prior to 1778 in the area which now comprises the State of Hawaii.

(June 19, 1956, ch. 407, § 3, as added Dec. 30, 1970, Pub. L. 91-600, § 2(b), 84 Stat. 1660, and amended Oct. 19, 1973, Pub. L. 93-133, § 4(a), 87 Stat. 466; Oct. 7, 1977, Pub. L. 95-123, § 4(b), 91 Stat. 1095; Oct. 17, 1984, Pub. L. 98-480, title I, § 103(a), (b)(1), 98 Stat. 2237.)

REFERENCES IN TEXT

The Act of August 12, 1968, commonly known as the "Architectural Barriers Act of 1968", referred to in par. (2), is Pub. L. 90-480, Aug. 12, 1968, 82 Stat. 718, as amended, which is classified generally to chapter 51 (§ 4151 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4151 of Title 42 and Tables.

The Alaskan Native Claims Settlement Act, referred to in par. (15), probably means the Alaska Native Claims Settlement Act, Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1984—Par. (1). Pub. L. 98-480, § 103(a)(1), substituted "'Secretary' means the Secretary of Education" for "'Commissioner' means the Commissioner of Education".

Par. (2). Pub. L. 98-480, § 103(a)(2), added provision that the term "construction" includes remodeling to meet standards under the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries.

Par. (7). Pub. L. 98-480, § 103(a)(3), added reference to the Northern Mariana Islands.

Par. (9)(B). Pub. L. 98-480, § 103(a)(4), substituted "hearing impaired" for "hard of hearing, deaf" and "orthopedically impaired" for "crippled".

Pars. (11) to (14). Pub. L. 98-480, § 103(b)(1), substituted "Secretary" for "Commissioner".

Pars. (15), (16). Pub. L. 98-480, § 103(a)(5), added pars. (15) and (16).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351d, 351e, 355b of this title.

§ 351b. Authorization and availability of appropriations; advance funding method

(a) Authorization and availability

There are authorized to be appropriated—

(1) for the purpose of making grants as provided in subchapter I, $75,000,000 for fiscal year 1985, $80,000,000 for fiscal year 1986, $85,000,000 for fiscal year 1987, $90,000,000 for fiscal year 1988, and $95,000,000 for fiscal year 1989;

(2) for the purpose of making grants as provided in subchapter II, $50,000,000 for each of the fiscal years 1985, 1986, 1987, 1988, and 1989;

(3) for the purpose of making grants as provided in subchapter III, $20,000,000 for fiscal year 1985, $25,000,000 for fiscal year 1986, $30,000,000 for fiscal year 1987, $35,000,000 for fiscal year 1988, and $30,000,000 for fiscal year 1989;

(4) for the purpose of making grants as provided in subchapter V, $1,000,000 for each of the fiscal years 1985, 1986, 1987, and 1988; and

(5) for the purpose of making grants as provided in subchapter VI, $5,000,000 for each of the fiscal years 1985, 1986, 1987, and 1988.

There shall be available for the purpose of making grants under subchapter IV for each of the fiscal years 1985, 1986, 1987, 1988, and 1989, 1.5 per centum of the amount appropriated pursuant to each of clauses (1), (2), and (3) for each such fiscal year. There shall be available for the purpose of making grants under section 351c(d) of this title for such fiscal years 0.5 per centum of the amount appropriated pursuant to each of such clauses for each such fiscal year.

(b) Availability

Notwithstanding any other provision of law, unless enacted in express limitation of the provisions of this subsection, any sums appropriated pursuant to subsection (a) of this section shall (1), in the case of sums appropriated pursuant to paragraphs (1) and (3) thereof, be available for obligation and expenditure for the period of time specified in the Act making such appropriation, and (2), in the case of sums appropriated pursuant to paragraph (2) thereof, subject to regulations of the Secretary promulgated in carrying out the provisions of section 351c(b) of this title, be available for obligation and expenditure for the year specified in the Appropriation Act and for the next succeeding year.

(c) Notice of available funding; transition to advance funding method

(1) For the purpose of affording adequate notice of funding available under this chapter, appropriations under this chapter are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year for which they are first available for obligation.

(2) In order to effect a transition to the advance funding method of timing appropriation action, the provisions of this subsection shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(June 19, 1956, ch. 407, § 4, as added Dec. 30, 1970, Pub. L. 91-600, § 2(b), 84 Stat. 1662, and amended May 3, 1973, Pub. L. 93-29, title VIII, § 801(b), 87 Stat. 58; Oct. 7, 1977, Pub. L. 95-123, § 2, 91 Stat. 1095; Oct. 17, 1984, Pub. L. 98-480, title I, §§ 103(b)(1), 4, 98 Stat. 2237.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-480, § 4(a), added provision following numbered paragraphs making available for the purpose of making grants under subchapter IV of this chapter for each of the fiscal years 1985, 1986, 1987, 1988, and 1989, 1.5 per centum of the amount appropriated pursuant to each of pars. (1), (2), and (3) for each such fiscal year, and making available for the purpose of making grants under section 351c(d) of this title for such fiscal years 0.5 per centum of the amount appropriated pursuant to each of such pars. for each such fiscal year.

Subsec. (a)(1). Pub. L. 98-480, § 4(a), substituted provisions authorizing appropriations of $75,000,000 for fiscal year 1985, $80,000,000 for fiscal year 1986, $85,000,000 for fiscal year 1987, $90,000,000 for fiscal year 1988, and $95,000,000 for fiscal year 1989 for provisions authorizing appropriations of $112,000,000 for the fiscal year ending June 30, 1972, $117,600,000 for the fiscal year ending June 30, 1973, $123,500,000 for the fiscal year ending June 30, 1974, $129,675,000 for the fiscal year ending June 30, 1975, $137,150,000 for the fiscal year ending June 30, 1976, $110,000,000 for fiscal year 1978, $140,000,000 for fiscal year 1979, and $150,000,000 for fiscal year 1980 and each of the two succeeding fiscal years.

Subsec. (a)(2). Pub. L. 98-480, § 4(a), substituted provisions authorizing appropriations of $50,000,000 for each of the fiscal years 1985, 1986 1987, 1988, and 1989 for provisions authorizing appropriations of $80,000,000 for the fiscal year ending June 30, 1972, $84,000,000 for the fiscal year ending June 30, 1973, $88,000,000 for the fiscal year ending June 30, 1974, $92,500,000 for the fiscal year ending June 30, 1975, $97,000,000 for the fiscal year ending June 30, 1976, and such sums as necessary for fiscal year 1978 through fiscal year 1981, and $97,000,000 for fiscal year 1982.

Subsec. (a)(3). Pub. L. 98-480, § 4(a), substituted provisions authorizing appropriations of $20,000,000 for fiscal year 1985, $25,000,000 for fiscal year 1986, $30,000,000 for fiscal year 1987, $35,000,000 for fiscal year 1988, and $30,000,000 for fiscal year 1989 for provisions which had authorized appropriations of $15,000,000 for the fiscal year ending June 30, 1972, $15,750,000 for the fiscal year ending June 30, 1973, $16,500,000 for the fiscal year ending June 30, 1974, $17,300,000 for the fiscal year ending June 30, 1975, $18,200,000 for the fiscal year ending June 30, 1976, $15,000,000 for fiscal year 1978, and $20,000,000 for fiscal year 1979 and each of the three succeeding fiscal years.

Subsec. (a)(4). Pub. L. 98-480, § 4(a), substituted provisions authorizing appropriations of $1,000,000 for each of the fiscal years 1985, 1986, 1987, and 1988 for the purpose of making grants as provided in subchapter V of this chapter for provisions which had authorized appropriation of such sums as necessary for each fiscal year ending prior to Oct. 1, 1982, for the purpose of making grants to States to enable them to carry out public library service programs for older persons authorized by former provisions of subchapter IV of this chapter.

Subsec. (a)(5). Pub. L. 98-480, § 4(a), added par. (5).

Subsec. (b). Pub. L. 98-480, § 103(b)(1), substituted "Secretary" for "Commissioner".

Subsec. (c). Pub. L. 98-480, § 4(b), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351c, 351e, 352, 353, 354, 355b, 355c, 355e-1, 355e-2, 371, 375 of this title.

§ 351c. Allotments to States and Indian tribes

(a) Minimum allotments; population basis for distribution of remaining funds

(1) From the sums appropriated pursuant to clause (1), (2), or (3) of section 351b(a) of this title for any fiscal year, the Secretary shall allot the minimum allotment, as determined under paragraph (3) of this subsection, to each State. Any sums remaining after minimum allotments have been made shall be allotted in the manner set forth in paragraph (2) of this subsection.

(2) From the remainder of any sums appropriated pursuant to clause (1), (2), or (3) of section 351b(a) of this title for any fiscal year, the Secretary shall allot to each State such part of such remainder as the population of the State bears to the population of all the States.

(3) For the purposes of this subsection, the "minimum allotment" shall be—

(A) with respect to appropriations for the purposes of subchapter I of this chapter, $200,000 for each State, except that it shall be $40,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(B) with respect to appropriations for the purposes of subchapter II of this chapter, $100,000 for each State, except that it shall be $20,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; and

(C) with respect to appropriations for the purposes of subchapter III of this chapter, $40,000 for each State, except that it shall be $10,000 in the case of Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

If the sums appropriated pursuant to clause (1), (2), or (3) of section 351b(a) of this title for any fiscal year are insufficient to fully satisfy the aggregate of the minimum allotments for that purpose, each of such minimum allotments shall be reduced ratably.

(4) The population of each State and of all the States shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

[*See main edition for text of* (5)]

(b) Reallotment of funds

The amount of any State's allotment under subsection (a) of this section for any fiscal year from any appropriation made pursuant to clause (1), (2), or (3) [1] of section 351b(a) of this title which the Secretary deems will not be required for the period and the purpose for which such allotment is available for carrying out the State's annual program shall be available for reallotment from time to time on such dates during such year as the Secretary shall fix. Such amount shall be available for reallotment to other States in proportion to the original allotments for such year to such States under subsection (a) of this section but with such proportionate amount for any of such other State being reduced to the extent that it exceeds the amount which the Secretary estimates the State needs and will be able to use for such period of time for which the original allotments were made and the total of such reductions shall be similarly reallotted among the States not suffering such a reduction. Any amount reallotted to a State under this subsection for any fiscal year shall be deemed to be a part of its allotment for such year pursuant to subsection (a) of this section.

(c) Indian tribes

(1) From the sums available pursuant to the second sentence of section 351b(a) of this title for any fiscal year, the Secretary shall allot an equal amount to each Indian tribe. Grants from such allotted amounts shall be made to Indian tribes which have submitted approved applications under section 363 of this title.

(2) Any allotted funds for which an Indian tribe does not apply, or applies but does not qualify, shall be reallocated by the Secretary among Indian tribes which have submitted approved plans under section 364 of this title. In making such allocations (A) no funds shall be allocated to an Indian tribe unless such funds will be administered by a librarian, and (B) the Secretary shall take into account the needs of Indian tribes for such allocations to carry out the activities described in section 362(b) of this title.

(d) Organization serving and representing Hawaiian natives

(1) From the sums available pursuant to the last sentence of section 351b(a) of this title for any fiscal year, the Secretary shall make grants to organizations primarily serving and representing Hawaiian natives that are recognized by the Governor of the State of Hawaii.

(2) Grants under this subsection shall be made on the basis of applications and plans submitted by such organizations that are consistent with the requirements imposed pursuant to sections 363 and 364 of this title. Funds made available by grants under this subsection may be used for the purposes specified in clauses (1) through (8) of section 362(a) of this title. Section 362(c) of this title shall apply with respect to the cultural materials of Hawaiian natives.

(June 19, 1956, ch. 407, § 5, as added Dec. 30, 1970, Pub. L. 91-600, § 2(b), 84 Stat. 1662, and amended May 3, 1973, Pub. L. 93-29, title VIII, § 801(c), 87 Stat. 58; Oct. 17, 1984, Pub. L. 98-480, title I, §§ 103(b)(1), 105, 98 Stat. 2237, 2238.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-480, §§ 103(b)(1), 105(2), substituted "clause (1), (2), or (3)" for "paragraph (1), (2), (3), or (4)" and "Secretary" for "Commissioner".

Subsec. (a)(2). Pub. L. 98-480, §§ 103(b)(1), 105(2), substituted "clause (1), (2), or (3)" for "paragraph (1), (2), (3), or (4)" and "Secretary" for "Commissioner".

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[1] See 1984 Amendment note below.

Subsec. (a)(3). Pub. L. 98-480, § 105(2), substituted "clause (1), (2), or (3)" for "paragraph (1), (2), (3), or (4)" in last sentence.

Subsec. (a)(3)(A) to (C). Pub. L. 98-480, § 105(3), inserted "the Northern Mariana Islands," after "the Virgin Islands,".

Subsec. (a)(3)(D). Pub. L. 98-480, § 105(4), struck out subpar. (D) which provided for a minimum allotment of $40,000 for each State, except that such allotment would be $10,000 in the case of Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands, with respect to appropriations for the purposes of subchapter IV of this chapter.

Subsec. (a)(4). Pub. L. 98-480, § 103(b)(1), substituted "Secretary" for "Commissioner".

Subsec. (b). Pub. L. 98-480, § 105(5), which directed that subsec. (b) be amended by substituting "clause (1), (2), or (3)" for "paragraph (1), (2), or (3)" was executed by substituting "clause (1), (2), or (3)" for "paragraph (1), (2), (3), or (4)" as the probable intent of Congress.

Pub. L. 98-480, § 103(b)(1), substituted "Secretary" for "Commissioner" in three places.

Subsecs. (c), (d). Pub. L. 98-480, § 105(6), added subsecs. (c) and (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351b, 351d, 351e, 353, 355b, 355e-1, 361, 363, 364 of this title.

§ 351d. Plans and programs

(a) Prerequisites for allotment of basic State plan in effect, submission of annual program, and establishment of State Advisory Council on Libraries

Any State desiring to receive its allotment for any purpose under this chapter for any fiscal year shall (1) have in effect for such fiscal year a basic State plan as defined in section 351a(11) of this title and meeting the requirements set forth in subsection (b) of this section, (2) submit an annual program as defined in section 351a(13) of this title for the purposes for which allotments are desired, meeting the appropriate requirements set forth in subchapters I, II, and III of this chapter, and shall submit (no later than July 1, 1972) a long-range program as defined in section 351a(12) of this title for carrying out the purposes of this chapter as specified in subsection (d) of this section, and (3) establish a State Advisory Council on Libraries which meets the requirements of section 351a(8) of this title.

(b) Provisions of plan

A basic State plan under this chapter shall—

[See main edition for text of (1) and (2)]

(3) provide satisfactory assurance that the State agency administering the plan (A) will make such reports, in such form and containing such information, as the Secretary may reasonably require to carry out his functions under this chapter and to determine the extent to which funds provided under this chapter have been effective in carrying out its purposes, including reports of evaluations made under the State plans, and (B) will keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness and verification of such reports; and

(4) provide that priority will be given to programs and projects—

(A) that improve access to public library resources and services for the least served populations in the State, including programs for individuals with limited English-speaking proficiency or handicapping conditions, and programs and projects in urban and rural areas;

(B) that serve the elderly;

(C) that are designed to combat illiteracy; and

(D) that increase services and access to services through effective use of technology.

(c) Approval of basic State plan by Secretary

(1) The Secretary shall not approve any basic State plan pursuant to this chapter for any fiscal year unless—

[See main edition for text of (A) and (B), (2)]

(3) The Secretary shall not finally disapprove any basic State plan submitted pursuant to subsection (a)(1) of this section, or any modification thereof, without first affording the State reasonable notice and opportunity for hearing.

(d) Long-range State programs; development; provisions

The long-range program of any State for carrying out the purposes of this chapter shall be developed in consultation with the Secretary and shall—

[See main edition for text of (1) to (4)]

Such program shall be developed with advice of the State advisory council and in consultation with the Secretary and shall be made public as it is finally adopted.

(e) Termination or limitation of payments to States by Secretary; procedure; grounds

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State agency administering a program submitted under this chapter, finds—

[See main edition for text of (1) and (2)]

then, until he is satisfied that there is no longer any such failure to comply, after appropriate notice to such State agency, he shall make no further payments to the State under this chapter or shall limit payments to programs or projects under, or parts of, the programs not affected by the failure, or shall require that payments by such State agency under this chapter shall be limited to local or other public library agencies not affected by the failure.

(f) Judicial review of Secretary's final actions; procedure

(1) If any State is dissatisfied with the Secretary's final action with respect to the approval of a plan submitted under this chapter or with his final action under subsection (e) of this section such State may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court

to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon take new or modified findings of fact and may modify his previous action, and shall certify to the court the record of further proceedings.

(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(g) Indian tribes; allotments and allocations

(1) Any Indian tribe desiring to receive its allotment under section 351c(c)(1) of this title shall submit an application to the Secretary in accordance with section 363 of this title.

(2) Any Indian tribe desiring to receive an additional allocation under section 351c(c)(2) of this title shall submit a plan in accordance with section 364 of this title.

(June 19, 1956, ch. 407, § 6, as added Dec. 30, 1970, Pub. L. 91-600, § 2(b), 84 Stat. 1663, and amended May 3, 1973, Pub. L. 93-29, title VIII, § 801(c), 87 Stat. 59; Aug. 21, 1974, Pub. L. 93-380, title VIII, § 841(b), 88 Stat. 609; Oct. 17, 1984, Pub. L. 98-480, title I, §§ 103(b), 106, 98 Stat. 2237, 2239.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-480, § 106(2), substituted "subchapters I, II, and III" for "subchapters I, II, III, and IV".

Subsec. (b)(3). Pub. L. 98-480, § 103(b)(1), substituted "Secretary" for "Commissioner" in two places.

Subsec. (b)(4). Pub. L. 98-480, § 106(3), substituted provisions enumerating the types of programs and projects to be given priority by a State plan under this chapter for provisions which required that the State plan under this chapter set forth the criteria to be used in determining the adequacy of public library services in geographical areas and for groups of persons in the State, including criteria designed to assure that priority would be given to programs or projects which served urban and rural areas with high concentrations of low-income families, and to programs and projects which served areas with high concentrations of persons of limited English-speaking ability (as defined in section 3223(a) of this title).

Subsecs. (c)(1), (3), (d), (e). Pub. L. 98-480, § 103(b)(1), substituted "Secretary" for "Commissioner" wherever appearing.

Subsec. (f). Pub. L. 98-480, § 103(b), substituted "Secretary's" for "Commissioner's" in par. (1) and substituted "Secretary" for "Commissioner" two places in par. (1), three places in par. (2), and in par. (3).

Subsec. (g). Pub. L. 98-480, § 106(4), added subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351a, 351e, 352, 353, 354, 355a, 355c, 355e, 355e-2, 355e-3, 3223 of this title.

§ 351e. Payments

(a) Prerequisites for payment

From the allotments available therefor under section 351c of this title from appropriations pursuant to clause (1), (2), or (3) of section 351b(a) of this title, the Secretary shall pay to each State which has a basic State plan approved under section 351d(a)(1) of this title, an annual program and a long-range program as defined in section 351a(12) and (13) of this title an amount equal to the Federal share of the total sums expended by the State and its political subdivisions in carrying out such plan, except that no payments shall be made from appropriations pursuant to such paragraph (1) for the purposes of subchapter I of this chapter to any State (other than the Trust Territory of the Pacific Islands) for any fiscal year unless the Secretary determines that—

[See main edition for text of (1) and (2)]

(b) Federal share; promulgation by Secretary

(1) For the purpose of this section, the "Federal share" for any State shall be, except as is provided otherwise in subchapter III of this chapter, 100 per centum less the State percentage, and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of all the States (excluding Puerto Rico, Guam, American Samoa, and [1] the Northern Mariana Islands [2] the Virgin Islands, and the Trust Territory of the Pacific Islands), except that (A) the Federal share shall in no case be more than 66 per centum, or less than 33 per centum, and (B) the Federal share for Puerto Rico, Guam, American Samoa, and [1] the Northern Mariana Islands [2] and the Virgin Islands shall be 66 per centum, and (C) the Federal share for the Trust Territory of the Pacific Islands shall be 100 per centum.

(2) The "Federal share" for each State shall be promulgated by the Secretary within sixty days after the beginning of the fiscal year ending June 30, 1971, and of every second fiscal year thereafter, on the basis of the average per capita incomes of each of the States and of all the States (excluding Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands), for the three most recent consecutive years for which satisfactory data are available to him from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years beginning after the promulgation.

(c) Indian tribes

From the sums available pursuant to the second sentence of section 351b(a) of this title, the Secretary shall pay to each Indian tribe which has an approved application under section 363 of this title an amount equal to such tribe's allotment under section 351c(c)(1) of this title and shall pay to each Indian tribe which has an approved plan under section 364 of this title an amount equal to such tribe's additional allocation under section 351d(g)(2) of this title, except that such additional allocation shall not exceed 80 percent of the cost of carrying out such plan.

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[1] So in original. The word "and" probably should not appear.

[2] So in original. Probably should be followed by a comma.

(June 19, 1956, ch. 407, § 7, as added Dec. 30, 1970, Pub. L. 91-600, § 2(b), 84 Stat. 1665, and amended May 3, 1973, Pub. L. 93-29, title VIII, § 801(d), 87 Stat. 59; Oct. 17, 1984, Pub. L. 98-480, title I, §§ 103(b)(1), 107, 98 Stat. 2237, 2239.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-480, §§ 103(b)(1), 107(2), substituted "clause (1), (2), or (3)" for "paragraph (1), (2), (3), or (4)" and "Secretary" for "Commissioner" in two places.

Subsec. (b)(1). Pub. L. 98-480, § 107(3), (4), substituted "subchapter III" for "subchapter III and subchapter IV" and inserted "and the Northern Mariana Islands" after "American Samoa," in two places.

Subsec. (b)(2). Pub. L. 98-480, §§ 103(b)(1), 107(5), substituted "Secretary" for "Commissioner" and inserted "the Northern Mariana Islands," after "the Virgin Islands,".

Subsec. (c). Pub. L. 98-480, § 107(6), added subsec. (c).

§ 351f. Administrative costs

A State may expend funds received under subchapters I and II for administrative costs in connection with programs and activities carried out under subchapters I, II, and III, but such administrative expenditures under such subchapters for any fiscal year may not exceed the greater of (1) 6 per centum of the sum of the amounts allotted to such State under such subchapters for such fiscal year, or (2) $60,000.

(As amended Oct. 17, 1984, Pub. L. 98-480, title I, § 108, 98 Stat. 2240.)

AMENDMENTS

1984—Pub. L. 98-480 substituted provisions authorizing States to expend funds received under subchapters I and II for administrative costs in connection with programs and activities under subchapters I, II, and III, in amounts not to exceed the greater of 6 percent of the amounts allotted to such State thereunder for such fiscal year or $60,000 for provisions which required States to provide matching amounts for such expenditures from non-Federal sources.

SUBCHAPTER I—LIBRARY SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 351b, 351c, 351d, 351e, 351f, 361 of this title.

§ 352. Grants to States for library services

The Secretary shall carry out a program of making grants from sums appropriated pursuant to section 351b(a)(1) of this title to States which have approved basic State plans under section 351d of this title and have submitted annual programs under section 354 of this title—

(1) for the extension of public library services to areas and populations without such services and the improvement of such services to areas and populations to ensure that such services are adequate to meet user needs and to make library services accessible to individuals who, by reason of distance, residence, handicap, age, literacy level, or other disadvantage, are unable to receive the benefits of public library services regularly made available to the public;

(2) for adapting public library services to meet particular needs of individuals within the States;

(3) for assisting libraries to serve as community information referral centers;

(4) for assisting libraries in providing literacy programs for adults and school dropouts in cooperation with other agencies and organizations, if appropriate;

(5) for strengthening State library administrative agencies; and

(6) for strengthening major urban resource libraries.

(June 19, 1956, ch. 407, title I, § 101, formerly § 3, 70 Stat. 293; Aug. 31, 1960, Pub. L. 86-679, § 1, 74 Stat. 571; renumbered and amended Feb. 11, 1964, Pub. L. 88-269, §§ 1(a)(2), 2, 7(a), 78 Stat. 11, 13; July 19, 1966, Pub. L. 89-511, § 3, 80 Stat. 313; Dec. 30, 1970, Pub. L. 91-600, § 2(b), 84 Stat. 1666; Oct. 7, 1977, Pub. L. 95-123, § 4(c), 91 Stat. 1096; Oct. 17, 1984, Pub. L. 98-480, title I, §§ 103(b)(1), 109, 98 Stat. 2237, 2240.)

AMENDMENTS

1984—Pub. L. 98-480, § 109, designated part of existing provisions as pars. (1), (2), (5), and (6), in par. (1), as so designated, substituted reference to improvement of services to ensure that such services are adequate to meet user needs for reference to improvement of services in areas in which such services are inadequate and reference to handicap, age, and literacy level for reference to physical handicap, respectively, in par. (5) as so designated substituted reference to strengthening State library administrative agencies for reference to improving and strengthening library administrative agencies, and added pars. (3) and (4).

Pub. L. 98-480, § 103(b)(1), substituted "Secretary" for "Commissioner".

§ 353. Uses of Federal funds

(a) Development of programs and projects to extend library services to physically handicapped, disadvantaged areas, etc.; expanding services of major urban resource libraries; limitation on grants

Funds appropriated pursuant to paragraph (1) of section 351b(a) of this title shall be available for grants to States from allotments under section 351c(a) of this title for the purpose of paying the Federal share of the cost of carrying out State plans submitted and approved under sections 351d and 354 of this title. Except as is provided in subsection (b) of this section, grants to States under this subchapter may be used solely—

(1) for planning for, and taking other steps leading to the development of, programs and projects designed to assist libraries to serve as community centers for information and referral and to extend and improve library services, as provided in clause (2);

[*See main edition for text of* (2) *and* (3)]

No grant may be made under clause (3) of this subsection unless the major urban resource library provides services to users throughout the regional area in which such library is located.

(b) Payment of costs of administering State plans, planning for and evaluation of library services, dissemination of information concerning library services, etc.; increase capacity of State library administrative agencies

Subject to the provisions of section 351f of this title and such limitations and criteria as the Secretary shall establish by regulation, grants to States under this subchapter may be used (1) to pay the cost of administering the State plans submitted and approved under this chapter (including obtaining the services of consultants), statewide planning for and evaluation of library services, dissemination of information concerning library services, and the activities of such advisory groups and panels as may be necessary to assist the State library administrative agency in carrying out its functions under this subchapter, and (2) for strengthening the capacity of State library administrative agencies for meeting the needs of the people of the States.

(c) Reservation of allotments

(1) Subject to such criteria as the Secretary shall establish by regulation, in any fiscal year in which sums appropriated pursuant to paragraph (1) of section 351b(a) of this title exceed $60,000,000, each State which is subject to the provisions of this subsection shall reserve that portion of the allotment of each State attributable to the amount in excess of $60,000,000 in that fiscal year in the manner required in paragraph (2).

(2)(A) In each State having one or more cities with a population of 100,000 or more individuals, as determined by the Secretary, and in which the aggregate population of such cities does not exceed 50 percent of the total population of the State, the portion of the excess amount specified in paragraph (1) shall be reserved for the purposes described in subsection (a)(3) of this section in accordance with clause (2) of section 354 of this title in an amount which bears the same ratio to the total of such excess amount as the aggregate population of such cities bears to the total population of such State.

(B) In each State having one or more cities with a population of 100,000 or more individuals, as determined by the Secretary, and in which the aggregate population of such cities exceeds 50 percent of the total population of the State, 50 percent of the excess amount specified in paragraph (1) shall be reserved for the purposes described in subsection (a)(3) of this section in accordance with clause (2) of section 354 of this title.

(C) Any State which does not include any city with a population of 100,000 or more individuals, as determined by the Secretary, shall not be subject to the provisions of this subsection.

(June 19, 1956, ch. 407, title I, § 102, formerly § 4, 70 Stat. 293; Aug. 1, 1956, ch. 852, § 25(a), 70 Stat. 911; Aug. 31, 1960, Pub. L. 86-679, § 2, 74 Stat. 571; Sept. 25, 1962, Pub. L. 87-688, § 5(a)(1), 76 Stat. 587; renumbered and amended Feb. 11, 1964, Pub. L. 88-269, §§ 1(b), 3, 7(a), 78 Stat. 11, 12, 13; July 19, 1966, Pub. L. 89-511, §§ 4, 12(a), 80 Stat. 313, 318; Dec. 30, 1970, Pub. L. 91-600, § 2(b), 84 Stat. 1667; Oct. 7, 1977, Pub. L. 95-123, §§ 3(b), 4(d), (e), 91 Stat. 1095, 1096; Oct. 17, 1984, Pub. L. 98-480, title I, §§ 103(b)(1), 110, 98 Stat. 2237, 2240.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-480, § 110, inserted "assist libraries to serve as community centers for information and referral and to" after "designed to".

Subsecs. (b), (c). Pub. L. 98-480, § 103(b)(1), substituted "Secretary" for "Commissioner" wherever appearing.

§ 354. Annual State program for library services; submission; contents; limitation on reduction of funds; ratable reduction

Any State desiring to receive a grant from its allotment for the purposes of this subchapter for any fiscal year shall, in addition to having submitted, and having had approved, a basic State plan under section 351d of this title, submit for that fiscal year an annual program for library services. Such program shall be submitted at such time, in such form, and contain such information as the Secretary may require by regulation, and shall—

[See main edition for text of (1) and (2)]

(3) set forth the criteria used in allocating such funds among such purposes, which criteria shall insure that the State will expend from Federal, State, and local sources an amount not less than the amount expended by the State from such sources for State institutional library services, and library services to the physically handicapped and institutionalized individuals during the second fiscal year preceding the fiscal year for which the determination is made;

(4) describe the uses of funds for programs for the elderly, which may include (A) the training of librarians to work with the elderly; (B) the conduct of special library programs for the elderly particularly for the elderly who are handicapped; (C) the purchase of special library materials for use by the elderly; (D) the payment of salaries for elderly persons who wish to work in libraries as assistants on programs for the elderly; (E) the provision of in-home visits by librarians and other library personnel to the elderly; (F) the establishment of outreach programs to notify the elderly of library services available to them; and (G) the furnishing of transportation to enable the elderly to have access to library services;

(5) describe the manner in which funds for programs for handicapped individuals will be used to make library services more accessible to such individuals;

(6) include such information, policies, and procedures as will assure that the activities to be carried out during that year are consistent with the long-range program; and

(7) include an extension of the long-range program, taking into consideration the results of evaluations.

No State shall, in carrying out the provisions of clause (2) of this section, reduce the amount paid to an urban resource library below the amount that such library received in the year preceding the year for which the determination is made under such clause (2). The amount which a State is required to expend pursuant to clause (3) of this section shall be ratably reduced to the extent that Federal allocations to the State are reduced.

(June 19, 1956, ch. 407, title I, § 103, formerly § 5, 70 Stat. 293; renumbered and amended Feb. 11, 1964, Pub. L. 88-269, §§ 1(c), 4, 7(a), 78 Stat. 11, 12, 13; Dec. 30, 1970, Pub. L. 91-600, § 2(b), 84 Stat. 1667; Oct. 7, 1977, Pub. L. 95-123, §§ 4(f), 5, 91 Stat. 1096, 1097; Oct. 17, 1984, Pub. L. 98-480, title I, §§ 103(b)(1), 111, 98 Stat. 2237, 2241.)

Amendments

1984—Pub. L. 98-480, §§ 103(b)(1), 111, substituted "Secretary" for "Commissioner" in provisions preceding par. (1), inserted "and institutionalized individuals" after "handicapped" in par. (3), added pars. (4) and (5) and redesignated former pars. (4) and (5) as (6) and (7), respectively; and added provision at the end that the amount which a State is required to expend pursuant to par. (3) shall be ratably reduced to the extent that Federal allocations to the State are reduced.

SUBCHAPTER II—PUBLIC LIBRARY CONSTRUCTION

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 351b, 351c, 351d, 351f, 361 of this title; title 42 section 3338.

§ 355a. Grants to States for public library construction

The Secretary shall carry out a program of making grants to States which have had approved a basic State plan under section 351d of this title and have submitted a long-range program and submit annually appropriately updated programs under section 355c of this title for the construction of public libraries.

(June 19, 1956, ch. 407, title II, § 201, as added Feb. 11, 1964, Pub. L. 88-269, § 7(a), 78 Stat. 13, and amended July 19, 1966, Pub. L. 89-511, § 6, 80 Stat. 313; Dec. 30, 1970, Pub. L. 91-600, § 2(b), 84 Stat. 1668; Oct. 17, 1984, Pub. L. 98-480, title I, § 103(b)(1), 98 Stat. 2237.)

Amendments

1984—Pub. L. 98-480 substituted "Secretary" for "Commissioner".

§ 355b. Federal share

(a) Payment; uses of Federal funds

Funds appropriated pursuant to paragraph (2) of section 351b(a) of this title shall be available for grants to States from allotments under section 351c(a) of this title for the purpose of paying the Federal share of the cost of construction projects carried under State plans. Such grants shall be used for the construction (as defined in section 351a(2) of this title) of public libraries.

(b) Limit on Federal share

For the purposes of subsection (a) of this section, the Federal share of the cost of construction of any project assisted under this subchapter shall not exceed one-half of the total cost of such project.

(c) Recovery of value of grant

If, within 20 years after completion of construction of any library facility which has been constructed in part with funds made available under this subchapter—

(1) the recipient (or its successor in title or possession) ceases or fails to be a public or nonprofit institution, or

(2) the facility ceases to be used as a library facility, unless the Secretary determines that there is good cause for releasing the institution from its obligation,

the United States shall be entitled to recover from such recipient (or successor) an amount which bears the same ratio to the value of the facility at that time (or part thereof constituting an approved project or projects) as the amount of the Federal grant bore to the cost of such facility (or part thereof). The value shall be determined by the parties or by action brought in the United States district court for the district in which the facility is located.

(As amended Oct. 17, 1984, Pub. L. 98-480, title I, § 112(a), (b)(1), 98 Stat. 2241.)

Amendments

1984—Subsec. (a). Pub. L. 98-480, § 112(a), (b)(1), designated existing provisions as subsec. (a), and in subsec. (a) as so designated, substituted provision that such grants shall be used for the construction (as defined in section 351a(2) of this title) of public libraries for provision that such grants were to be used solely for the construction of public libraries, for the remodeling of public libraries necessary to meet standards adopted pursuant to the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968, and for remodeling designed to conserve energy in the operation of public libraries under approved State plans.

Subsecs. (b), (c). Pub. L. 98-480, § 112(b)(1), added subsecs. (b) and (c).

Effective Date of 1984 Amendment

Section 112(b)(2) of Pub. L. 98-480 provided that: "Subsection (c) of section 202 of the Act [20 U.S.C. 355b(c)] as added by the amendment made by paragraph (1) of this subsection shall apply to any facility constructed prior to or after the date of enactment of this Act [Oct. 17, 1984] with funds made available under title II of the Act [20 U.S.C. 355a et seq.]."

§ 355c. Annual State program for construction of public libraries; submission; contents

[See main edition for text of first par.]

Such projects shall be submitted at such time and contain such information as the Secretary may require by regulation and shall—

[See main edition for text of (1) to (4)]

(June 19, 1956, ch. 407, title II, § 203, as added Feb. 11, 1964, Pub. L. 88-269, § 7(a), 78 Stat. 13, and amended Apr. 13, 1970, Pub. L. 91-230, title IV, § 401(g)(3), 84 Stat. 174; Dec. 30, 1970, Pub.

L. 91-600, § 2(b), 84 Stat. 1668; Oct. 17, 1984, Pub. L. 98-480, title I, § 103(b)(1), 98 Stat. 2237.)

Amendments

1984—Pub. L. 98-480 substituted "Secretary" for "Commissioner" in second par.

SUBCHAPTER III—INTERLIBRARY COOPERATION AND RESOURCE SHARING

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 351b, 351c, 351d, 351e, 351f, 361 of this title.

§ 355e. Grants to States for interlibrary cooperation and resource sharing

The Secretary shall carry out a program of making grants to States which have an approved basic State plan under section 351d of this title, have submitted a long-range program and an annual program under section 355e-2 of this title for interlibrary cooperation programs, and have submitted long-range and annual programs which are directed toward eventual compliance with the requirements of section 355e-3 of this title.

(June 19, 1956, ch. 407, title III, § 301, as added July 19, 1966, Pub. L. 89-511, § 9, 80 Stat. 314, and amended Dec. 30, 1970, Pub. L. 91-600, § 2(b), 84 Stat. 1668; Oct. 17, 1984, Pub. L. 98-480, title I, §§ 103(b)(1), 113(b), 98 Stat. 2237, 2242.)

Amendments

1984—Pub. L. 98-480 substituted "Secretary" for "Commissioner", substituted "section 351d of this title," for "section 351d of this title and have submitted", and inserted ", and have submitted long-range and annual programs which are directed toward eventual compliance with the requirements of section 355e-3 of this title".

§ 355e-2. Annual State program for interlibrary cooperation; submission; contents

Any State desiring to receive a grant from its allotment for the purposes of this subchapter for any fiscal year shall, in addition to having submitted, and having had approved, a basic State plan under section 351d of this title, submit for that fiscal year an annual program for interlibrary cooperation. Such program shall be submitted at such time, in such form, and contain such information as the Secretary may require by regulation and shall comply with the requirements of section 355e-3 of this title, shall—

[*See main edition for text of* (*1*) *and* (*2*)]

(June 19, 1956, ch. 407, title III, § 303, as added July 19, 1966, Pub. L. 89-511, § 9, 80 Stat. 314, and amended Nov. 24, 1967, Pub. L. 90-154, § 1, 81 Stat. 509; Dec. 30, 1970, Pub. L. 91-600, § 2(b), 84 Stat. 1669; Oct. 17, 1984, Pub. L. 98-480, title I, §§ 103(b)(1), 113(c), 98 Stat. 2237, 2242.)

Amendments

1984—Pub. L. 98-480, in second sentence, substituted "Secretary" for "Commissioner" and inserted "shall comply with the requirements of section 355e-3 of this title," after "by regulation and".

§ 355e-3. Resource sharing

(a) Statewide plan

The long-range program and annual program of each State shall include a statewide resource sharing plan which is directed toward eventual compliance with the provisions of this section.

(b) Recommendations

In developing the State basic and long-range programs, the State library agency with the assistance of the State advisory council on libraries shall consider recommendations from current and potential participating institutions in the interlibrary and resource sharing programs authorized by this subchapter.

(c) Long-range program; identification of objectives; elements of program

The State's long-range program shall identify interlibrary and resource sharing objectives to be achieved during the period covered by the basic and long-range plans required by section 351d of this title. The long-range program may include—

(1) criteria for participation in statewide resource sharing to ensure equitable participation by libraries of all types that agree to meet requirements for resource sharing;

(2) an analysis of the needs for development and maintenance of bibliographic access, including data bases for monographs, serials, and audiovisual materials;

(3) an analysis of the needs for development and maintenance of communications systems for information exchange among participating libraries;

(4) an analysis of the needs for development and maintenance of delivery systems for exchanging library materials among participating libraries;

(5) a projection of the computer and other technological needs for resource sharing;

(6) an identification of means which will be required to provide users access to library resources, including collection development and maintenance in major public, academic, school, and private libraries serving as resource centers;

(7) a proposal, where appropriate, for the development, establishment, demonstration, and maintenance of intrastate multitype library systems;

(8) an analysis of the State's needs for development and maintenance of links with State and national resource sharing systems; and

(9) a description of how the evaluations required by section 351d(d) of this title will be conducted.

(d) Participating libraries; reimbursement of expenses

Libraries participating in resource sharing activities under this section may be reimbursed for their expenses in loaning materials to public libraries.

(June 19, 1956, ch. 407, title III, § 304, as added Oct. 17, 1984, Pub. L. 98-480, title I, § 113(d), 98 Stat. 2242.)

PRIOR PROVISIONS

A prior section 355e-3, act June 19, 1956, ch. 407, title III, § 304, as added July 19, 1966, Pub. L. 89-511, § 9, 80 Stat. 314, which set forth the criteria for approval by the Commissioner of State plans for interlibrary cooperation, was omitted in the general revision of this chapter by Pub. L. 91-600, § 2(b), Dec. 30, 1970, 84 Stat. 1660, effective after June 30, 1971.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 355e, 355e-2 of this title.

SUBCHAPTER IV—LIBRARY SERVICES FOR INDIAN TRIBES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 351b of this title.

§ 361. Findings and purpose; authorization of grants

(a) Findings

The Congress finds that—

(1) most Indian tribes receive little or no funds under subchapters I, II, and III of this chapter;

(2) Indian tribes and reservations are generally considered to be separate nations and seldom are eligible for direct library allocations from States;

(3) the vast majority of Indians living on or near reservations do not have access to adequate libraries or have access to no libraries at all; and

(4) this subchapter is therefor[1] required specifically to promote special efforts to provide Indian tribes with library services.

(b) Purpose

It is therefor[1] the purpose of this subchapter (1) to promote the extension of public library services to Indian people living on or near reservations; (2) to provide incentives for the establishment and expansion of tribal library programs; and (3) to improve the administration and implementation of library services for Indians by providing funds to establish and support ongoing library programs.

(c) Grants for services to Indians living on or near reservations

The Secretary shall carry out a program of making grants from allotments under section 351c(c)(1) of this title to Indian tribes that have submitted an approved application under section 363 of this title for library services to Indians living on or near reservations.

(d) Special project grants

The Secretary shall carry out a program of making special project grants from funds available under section 351c(c)(2) of this title to Indian tribes that have submitted approved plans for the provision of library services as described in section 364 of this title.

(June 19, 1956, ch. 407, title IV, § 401, as added Oct. 17, 1984, Pub. L. 98-480, title I, § 114, 98 Stat. 2243.)

PRIOR PROVISIONS

A prior section 361, acts June 19, 1956, ch. 407, title IV, § 401, as added May 3, 1973, Pub. L. 93-29, title VIII, § 801(a), 87 Stat. 57, and amended Oct. 17, 1984, Pub. L. 98-480, title I, § 103(b)(1), 98 Stat. 2237, which related to grants to States for older readers services, was omitted in the general revision of this subchapter by section 114 of Pub. L. 98-480.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 362 of this title.

§ 362. Use of funds

(a) Permitted uses of funds

Funds made available by grant under subsection (c) or (d) of section 361 of this title may be used for—

(1) inservice or preservice training of Indians as library personnel;

(2) purchase of library materials;

(3) conduct of special library programs for Indians;

(4) salaries of library personnel;

(5) construction, purchase, renovation, or remodeling of library buildings and facilities;

(6) transportation to enable Indians to have access to library services;

(7) dissemination of information about library services;

(8) assessment of tribal library needs; and

(9) contracts to provide public library services to Indians living on or near reservations or to accomplish any of the activities described in clauses (1) through (8).

(b) Maintenance of funding level

Any tribe that supports a public library system shall continue to expend from Federal, State, and local sources an amount not less than the amount expended by the tribe from such sources for public library services during the second fiscal year preceding the fiscal year for which the determination is made.

(c) Restricted collections of tribal cultural materials

Nothing in this chapter shall be construed to prohibit restricted collections of tribal cultural materials with funds made available under this chapter.

(June 19, 1956, ch. 407, title IV, § 402, as added Oct. 17, 1984, Pub. L. 98-480, title I, § 114, 98 Stat. 2243.)

PRIOR PROVISIONS

A prior section 362, act June 19, 1956, ch. 407, title IV, § 402, as added May 3, 1973, Pub. L. 93-29, title VIII, § 801(a), 87 Stat. 57, which related to use of Federal funds and the amount of the Federal share for the cost of carrying out State plans for the provision of older readers' services, was omitted in the general revision of this subchapter by section 114 of Pub. L. 98-480.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351c, 364 of this title.

§ 363. Applications for library services to Indians

Any Indian tribe which desires to receive its allotment under section 351c(c)(1) of this title shall submit an application which contains such information as the Secretary may require by regulation.

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[1] So in original. Probably should be "therefore".

(June 19, 1956, ch. 407, title IV, § 403, as added Oct. 17, 1984, Pub. L. 98-480, title I, § 114, 98 Stat. 2244.)

PRIOR PROVISIONS

A prior section 363, acts June 19, 1956, ch. 407, title IV, § 403, as added May 3, 1973, Pub. L. 93-29, title VIII, § 801(a), 87 Stat. 58, and amended Oct. 17, 1984, Pub. L. 98-480, title I, § 103(b)(1), 98 Stat. 2237, which related to State annual programs for library services for the elderly, was omitted in the general revision of this subchapter by section 114 of Pub. L. 98-480.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351c, 351d, 351e, 361 of this title.

§ 364. Plans for library services to Indians

Any Indian tribe which desires to receive a special project grant from funds available under section 351c(c)(2) of this title shall submit a plan for library services on or near an Indian reservation. Such plans shall be submitted at such time, in such form, and contain such information as the Secretary may require by regulation and shall set forth a program for the year under which funds paid to the Indian tribe will be used, consistent with—

(1) a long-range program, and

(2) the purposes set forth in section 362(a) of this title.

(June 19, 1956, ch. 407, title IV, § 404, as added Oct. 17, 1984, Pub. L. 98-480, title I, § 114, 98 Stat. 2244.)

PRIOR PROVISIONS

A prior section 364, acts June 19, 1956, ch. 407, title IV, § 404, as added May 3, 1973, Pub. L. 93-29, title VIII, § 801(a), 87 Stat. 58, and amended Oct. 1, 1973, Pub. L. 93-113, title VI, § 601(d), 87 Stat. 416; Oct. 17, 1984, Pub. L. 98-480, title I, § 103(b)(1), 98 Stat. 2237, which related to administrative coordination between programs for older readers services under this subchapter with other programs for older Americans, was omitted in the general revision of this subchapter by section 114 of Pub. L. 98-480.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 351c, 351d, 351e, 361 of this title.

§ 365. Coordination with other programs for Indians

The Secretary, with the Secretary of the Interior, shall coordinate programs under this subchapter with the programs assisted under the various Acts and programs administered by the Department of the Interior that pertain to Indians.

(June 19, 1956, ch. 407, title IV, § 405, as added Oct. 17, 1984, Pub. L. 98-480, title I, § 114, 98 Stat. 2244.)

SUBCHAPTER V—FOREIGN LANGUAGE MATERIALS ACQUISITION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 351b of this title.

§ 371. Grants for foreign language material acquisition

(a) Duty of Secretary

The Secretary shall carry out a program of making grants from sums appropriated pursuant to section 351b(a)(4) of this title to State and local public libraries for the acquisition of foreign language materials.

(b) Selection of recipients

Recipients of grants under this subchapter shall be selected on a competitive basis.

(c) Funding limitation

No grant under this subchapter for any fiscal year shall exceed $15,000.

(June 19, 1956, ch. 407, title V, § 501, as added Oct. 17, 1984, Pub. L. 98-480, title I, § 115, 98 Stat. 2244.)

PRIOR PROVISIONS

Prior subchapter V of this chapter, comprising sections 356 to 358 of this title, was omitted in the general revision of this chapter by Pub. L. 91-600, § 2(b), Dec. 30, 1970, 84 Stat. 1660, effective after June 30, 1971. For further details, see Codification note set out under section 355f of this title.

SUBCHAPTER VI—LIBRARY LITERACY PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 351b of this title.

§ 375. State and local library grants

(a) Duty of Secretary; grants for support of literacy programs

The Secretary shall carry out a program of making grants from sums appropriated pursuant to section 351b(a)(5) of this title to State and local public libraries for the purposes of supporting literacy programs.

(b) Purposes of grants to State libraries

Grants to State public libraries under this subchapter shall be for the purposes of—

(1) coordinating and planning library literacy programs; and

(2) making arrangements for training librarians and volunteers to carry out such programs.

(c) Purposes of grants to local libraries

Grants to local public libraries shall be for the purposes of—

(1) promoting the use of the voluntary services of individuals, agencies, and organizations in providing literacy programs;

(2) acquisition of materials for literacy programs; and

(3) using library facilities for such programs.

(d) Selection of recipients

Recipients of grants under this subchapter shall be selected on a competitive basis.

(e) Funding limitation

No grant under this subchapter for any fiscal year shall exceed $25,000.

(June 19, 1956, ch. 407, title VI, § 601, as added Oct. 17, 1984, Pub. L. 98-480, title I, § 115, 98 Stat. 2245.)

CHAPTER 19—SCHOOL CONSTRUCTION IN AREAS AFFECTED BY FEDERAL ACTIVITIES

§ 631. Declaration of purpose; authorization of appropriations

LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982, 1983, AND 1984

Pub. L. 97-35, title V, § 504, Aug. 13, 1981, 95 Stat. 442, which limited annual authorization of appropriations for fiscal years 1982 through 1984 to "$20,000,000", was repealed by Pub. L. 98-511, title III, § 301(a)(4)(A), Oct. 19, 1984, 98 Stat. 2388.

§ 633. Dates for filing applications; priorities

The Secretary shall from time to time set dates by which applications for payments under this chapter with respect to construction projects must be filed, except that the last such date with respect to applications for payments on account of children referred to in paragraphs (2) or (3) of section 635(a) of this title shall be not later than September 30, 1988. The Secretary shall by regulation prescribe an order of priority, based on relative urgency of need, to be followed in approving applications in the event the funds appropriated under this chapter and remaining available on any such date for payment to local educational agencies are less than the Federal share of the cost of the projects with respect to which applications have been filed prior to such date (and for which funds under this chapter have not already been obligated). Only applications meeting the conditions for approval under this chapter (other than section 636(b)(2)(C) of this title) shall be considered applications for purposes of the preceding sentence. Such order of priority shall provide that applications for payments based upon increases in the number of children residing on, or residing with a parent employed on, property which is part of a low-rent housing project assisted under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] shall not be approved for any fiscal year until all other applications under paragraphs (2) and (3) of subsection (a) of section 635 of this title have been approved for that fiscal year.

(As amended Oct. 19, 1984, Pub. L. 98-511, title III, § 301(b)(1), 98 Stat. 2388.)

AMENDMENTS

1984—Pub. L. 98-511 substituted "1988" for "1983".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 640. Children for whom local agencies are unable to provide education

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 632, 644, 645, 646 of this title; title 10 section 2006.

§ 646. Assistance in cases of certain disasters

(a) Eligibility requirements; maximum amount; form, terms and conditions

In any case in which—

(1)(A) the President determines with respect to any local educational agency (including for the purpose of this section any other public agency which operates schools providing technical, vocational, or other special education to children of elementary or secondary school age) that such agency is located in whole or in part within an area which, after August 30, 1965, and prior to October 1, 1988, has suffered a major disaster as the result of any flood, drought, fire, hurricane, earthquake, storm, or other catastrophe which, in the determination of the President pursuant to sections 5122(2) and 5141 of title 42, is or threatens to be of sufficient severity or magnitude to warrant disaster assistance by the Federal Government; or

[*See main edition for text of* (*B*), (*2*)]

and if the Secretary determines with respect to such agency that—

[*See main edition for text of* (*3*) *to* (*6*)]

the Secretary may provide the additional assistance necessary to enable such agency to provide such facilities, upon such terms and in such amounts (subject to the provisions of this section) as the Secretary may consider to be in the public interest; but such additional assistance, plus the amount which he determines to be available from State, local, and other Federal sources (including funds available under other provisions of this chapter), and from the proceeds of insurance, may not exceed the cost of construction incident to the restoration or replacement of the school facilities destroyed or damaged as a result of the disaster. For the purpose of the preceding sentence, the phrase "cost of construction incident to the restoration or replacement of the school facilities" includes such additional amounts as the Secretary may approve in order to assure that the facilities, as restored or replaced, will afford appropriate protection against personal injuries resulting from a disaster.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Oct. 19, 1984, Pub. L. 98-511, title III, § 301(b)(2), 98 Stat. 2388.)

AMENDMENTS

1984—Subsec. (a)(1)(A). Pub. L. 98-511 substituted "1988" for "1983".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

CHAPTER 20A—NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

§ 681. Statement of purpose; authorization of appropriations

LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982, 1983, AND 1984

Pub. L. 97-35, title VI, § 605(c), Aug. 13, 1981, 95 Stat. 486, as amended by Pub. L. 98-199, § 16(d), Dec. 2, 1983, 97 Stat. 1374, provided that: "The total amount of appropriations to carry out the National Technical Institute for the Deaf Act [this chapter] shall not exceed $26,300,000 for each of the fiscal years 1982 and 1983, and $28,000,000 for the fiscal year 1984."

CHAPTER 20B—GALLAUDET COLLEGE

SUBCHAPTER I—CONTINUATION AND ADMINISTRATION

§ 691. Gallaudet College; successor to Columbia Institution for the Deaf

CODIFICATION

Section is also set out in D.C. Code, § 31-1805.

§ 691a. Statement of purposes

CODIFICATION

Section is also set out in D.C. Code, § 31-1806.

§ 691b. Property rights; outstanding liabilities and obligations; conveyance or mortgage of property

CODIFICATION

Section is also set out in D.C. Code, § 31-1807.

§ 691c. Gifts of property to Gallaudet College

CODIFICATION

Section is also set out in D.C. Code, § 31-1808.

§ 691d. Board of Directors; appointment; composition; terms; removal

CODIFICATION

Section is also set out in D.C. Code, § 31-1809.

§ 691e. Powers of Board of Directors

CODIFICATION

Section is also set out in D.C. Code, § 31-1810.

§ 691f. Financial transactions and accounts; annual report to Secretary of Education

CODIFICATION

Section is also set out in D.C. Code, § 31-1811.

§ 691g. Authorization of appropriations

CODIFICATION

Section is also set out in D.C. Code, § 31-1812.

§ 691h. Supervision by Secretary of Education

CODIFICATION

Section is also set out in D.C. Code, § 31-1803.

SUBCHAPTER II—MODEL SECONDARY SCHOOL FOR THE DEAF

§ 693. Authorization of appropriations

CODIFICATION

Section is also set out in D.C. Code, § 31-1821.

§ 693a. Definitions

CODIFICATION

Section is also set out in D.C. Code, § 31-1822.

§ 693b. Agreement with Gallaudet College to establish model secondary school

CODIFICATION

Section is also set out in D.C. Code, § 31-1823.

SUBCHAPTER III—DEMONSTRATION ELEMENTARY SCHOOL FOR THE DEAF

§ 695. Gallaudet College authorized to operate Kendall School as demonstration elementary school

CODIFICATION

Section is also set out in D.C. Code, § 31-1831.

§ 695a. Definitions

CODIFICATION

Section is also set out in D.C. Code, § 31-1832.

§ 695b. Authorization of appropriations

CODIFICATION

Section is also set out in D.C. Code, § 31-1833.

§ 695c. Design and construction of facilities

CODIFICATION

Section is also set out in D.C. Code, § 31-1834.

CHAPTER 25—PAY AND PERSONNEL PROGRAM FOR OVERSEAS TEACHERS

§ 904. Leave

(a) Entitlement; amount

Subject to the regulations prescribed and issued by the Secretary of Defense under section 902 of this title, each teacher (other than an individual employed as a substitute teacher) shall be entitled to cumulative leave, with pay, which shall accrue at the rate of one day for each calendar month, or part thereof, of a school year, except that if the school year includes more than eight months, any such teacher who shall have served for the entire school year shall be entitled to ten days of cumulative leave with pay.

[*See main edition for text of* (b) *to* (g)]

(As amended Pub. L. 98-369, div. B, title II, § 2204, July 18, 1984, 98 Stat. 1059.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 struck out provisions which had directed that not more than seventy-five days of leave could be accumulated to the credit of a teacher at any one time under this subsection.

CHAPTER 25A—OVERSEAS DEFENSE DEPENDENTS' EDUCATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3442, 3489 of this title; title 37 sections 429, 430.

CHAPTER 26—SUPPORT AND SCHOLARSHIP IN HUMANITIES AND ARTS; MUSEUM SERVICES

SUBCHAPTER I—NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Sec.
955a. Omitted.
955b. National Medal of Arts.
  (a) Establishment.
  (b) Award of Medal; conditions; recipients; presentation ceremonies.
  (c) Availability of funds.
957a. Omitted.

SUBCHAPTER II—MUSEUM SERVICES

963a. Omitted.

SUBCHAPTER I—NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

§ 951. Congressional declaration of purpose

The Congress hereby finds and declares—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) that museums are vital to the preservation of our cultural heritage and should be supported in their role as curator of our national consciousness;

(7) that the world leadership which has come to the United States cannot rest solely upon superior power, wealth, and technology, but must be solidly founded upon worldwide respect and admiration for the Nation's high qualities as a leader in the realm of ideas and of the spirit; and

(8) that, in order to implement these findings, it is desirable to establish a National Foundation on the Arts and the Humanities.

(Pub. L. 89-209, title I, § 2, Sept. 29, 1965, 79 Stat. 845; Pub. L. 91-346, § 2, July 20, 1970, 84 Stat. 443; Pub. L. 93-133, § 2(a)(1), Oct. 19, 1973, 87 Stat. 462; redesignated title I and amended Pub. L. 98-306, §§ 2, 3, May 31, 1984, 98 Stat. 223.)

AMENDMENTS

1984—Cls. (6) to (8). Pub. L. 98-306, § 3, added cl. (6) and redesignated former cls. (6) and (7) as (7) and (8), respectively.

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-306 provided that: "This Act [enacting section 955b of this title and section 310 of Title 25, Indians, amending sections 951-955, 956, 957, 958-960, 962, 963, 964, and 967 of this title, amending provisions set out as a note under this section and repealing provisions set out as notes under sections 960 and 967 of this title] may be cited as the 'National Foundation on the Arts and the Humanities Act Amendments of 1983'."

SHORT TITLE

Section 1 of title I of Pub. L. 89-209, as redesignated and amended by Pub. L. 98-306, § 2, May 31, 1984, 98 Stat. 223, provided that: "This title [enacting this subchapter, amending sections 784 to 786 of this title, repealing section 789 of this title, and enacting provisions formerly set out as a note under section 785 of this title] may be cited as the 'National Foundation on the Arts and the Humanities Act of 1965'."

§ 952. Definitions

[*See main edition for text*]

(Pub. L. 89-209, title I, § 3, Sept. 29, 1965, 79 Stat. 845; Pub. L. 90-348, §§ 1, 7, June 18, 1968, 82 Stat. 184, 187; Pub. L. 91-346, § 3, July 20, 1970, 84 Stat. 443; Pub. L. 93-133, § 2(a)(2), Oct. 19, 1973, 87 Stat. 462; Pub. L. 96-496, title I, § 101, Dec. 4, 1980, 94 Stat. 2583; redesignated title I, Pub. L. 98-306, § 2, May 31, 1984, 98 Stat. 223.)

§ 953. National Foundation on the Arts and the Humanities

(a) Establishment; composition

There is established a National Foundation on the Arts and the Humanities (hereinafter referred to as the "Foundation"), which shall be composed of a National Endowment for the Arts, a National Endowment for the Humanities,,[1] a Federal Council on the Arts and the Humanities, and an Institute of Museum Services (hereinafter established).

(b) Purpose

The purpose of the Foundation shall be to develop and promote a broadly conceived national policy of support for the humanities and the arts in the United States, and for institutions which preserve the cultural heritage of the United States pursuant to this subchapter.

[*See main edition for text of* (c)]

(Pub. L. 89-209, title I, § 4, Sept. 29, 1965, 79 Stat. 846; redesignated title I and amended Pub. L. 98-306, §§ 2, 4, May 31, 1984, 98 Stat. 223.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-306, § 4(a), substituted ", a Federal Council" for "and a Federal Council" and added ", and an Institute of Museum Services".

Subsec. (b). Pub. L. 98-306, § 4(b), added ", and for institutions which preserve the cultural heritage of the United States".

§ 954. National Endowment for the Arts

[*See main edition for text*]

(Pub. L. 89-209, title I, § 5, Sept. 29, 1965, 79 Stat. 846; Pub. L. 90-83, § 10(b), Sept. 11, 1967, 81 Stat. 223; Pub. L. 90-348, §§ 2, 3, June 18, 1968, 82 Stat. 185; Pub. L. 91-346, §§ 4, 5(a)(1), (2), 6, 7, July 20, 1970, 84 Stat. 443, 445; Pub. L. 93-133, § 2(a)(3), (4), Oct. 19, 1973, 87 Stat. 462; Pub. L. 94-462, title I, §§ 101, 102, title III, § 301(a), title IV, § 401(a), Oct. 8, 1976, 90 Stat. 1971, 1978, 1980; Pub. L. 96-496, title I, §§ 102, 109(a), (b), Dec. 4, 1980, 94 Stat. 2583, 2591; redesignated title I, Pub. L. 98-306, § 2, May 31, 1984, 98 Stat. 223.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 959, 960 of this title.

§ 955. National Council on the Arts

[*See main edition for text of* (a) *and* (b)]

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[1] So in original.

(c) Terms of office; vacancies

Each member shall hold office for a term of six years, and the terms of office shall be staggered. The terms of office of all Council members shall expire on the third day of September in the year of expiration. No member shall be eligible for reappointment during the two-year period following the expiration of his term. Any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed. Notwithstanding any other provision of this subsection, a member shall serve after the expiration of his term until his successor takes office.

[*See main edition for text of* (*d*) *to* (*f*)]

(Pub. L. 89-209, title I, § 6, Sept. 29, 1965, 79 Stat. 849; Pub. L. 90-348, § 4, June 18, 1968, 82 Stat. 185; Pub. L. 91-346, § 5(b), July 20, 1970, 84 Stat. 444; Pub. L. 93-133, § 2(a)(5), Oct. 19, 1973, 87 Stat. 463; Pub. L. 94-462, title I, § 103(a), Oct. 8, 1976, 90 Stat. 1971; Pub. L. 96-496, title I, § 103, Dec. 4, 1980, 94 Stat. 2584; redesignated title I and amended Pub. L. 98-306, §§ 2, 5(a), May 31, 1984, 98 Stat. 223, 224.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-306, § 5(a), added "Notwithstanding any other provision of this subsection, a member shall serve after the expiration of his term until his successor takes office."

§ 955a. Omitted

CODIFICATION

Section, Pub. L. 98-146, title II, § 201, Nov. 4, 1983, 97 Stat. 949, which provided that persons serving on the National Council on the Arts continue until their successors are qualified for office, was omitted as superseded. See section 955(c) of this title as amended by Pub. L. 98-306. Similar provisions were contained in Pub. L. 97-394, title II, § 201, Dec. 30, 1982, 96 Stat. 1994.

§ 955b. National Medal of Arts

(a) Establishment

There is hereby established a National Medal of Arts, which shall be a medal of such design as is deemed appropriate by the President, on the basis of recommendations submitted by the National Council on the Arts, and which shall be awarded as provided in subsection (b) of this section.

(b) Award of Medal; conditions; recipients; presentation ceremonies

(1) The President shall from time to time award the National Medal of Arts, on the basis of recommendations from the National Council on the Arts, to individuals or groups who in the President's judgment are deserving of special recognition by reason of their outstanding contributions to the excellence, growth, support, and availability of the arts in the United States.

(2) Not more than twelve of such medals may be awarded in any calendar year.

(3) An individual may be awarded the National Medal of Arts only if at the time such award is made such individual—

(A) is a citizen or other national of the United States; or

(B) is an alien lawfully admitted to the United States for permanent residence who (i) has filed an application or petition for naturalization in the manner prescribed by section 1445 of title 8 and (ii) is not permanently ineligible to become a citizen of the United States.

(4) A group may be awarded the National Medal of Arts only if such group is organized or incorporated in the United States.

(5) The presentation of the National Medal of Arts shall be made by the President with such ceremonies as the President may deem proper, including attendance by appropriate Members of Congress.

(c) Availability of funds

Funds made available to the National Endowment for the Arts shall be used to carry out this section.

(Pub. L. 98-306, § 13, May 31, 1984, 98 Stat. 225.)

CODIFICATION

Section was enacted as part of the National Foundation on the Arts and the Humanities Act Amendments of 1983, and not as part of the National Foundation on the Arts and the Humanities Act of 1965 which comprises this subchapter.

§ 956. National Endowment for the Humanities

[*See main edition for text*]

(Pub. L. 89-209, title I, § 7, Sept. 29, 1965, 79 Stat. 850; Pub. L. 90-83, § 10(b), Sept. 11, 1967, 81 Stat. 223; Pub. L. 91-346, § 8, July 20, 1970, 84 Stat. 445; Pub. L. 93-133, §§ 2(a)(6), 3, Oct. 19, 1973, 87 Stat. 464, 465; Pub. L. 94-462, title I, §§ 104(a), 105, title III, § 301(b), Oct. 8, 1976, 90 Stat. 1971, 1974, 1979; Pub. L. 96-496, title I, §§ 104, 109(c) Dec. 4, 1980, 94 Stat. 2584, 2591; redesignated title I, Pub. L. 98-306, § 2, May 31, 1984, 98 Stat. 223.)

§ 957. National Council on the Humanities

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Term of office; vacancies; reappointment

Each member shall hold office for a term of six years, except that (1) the members first taking office shall serve, as designated by the President, nine for terms of two years, nine for terms of four years, and eight for terms of six years, and (2) any member appointed to fill a vacancy shall serve for the remainder of the term for which his predecessor was appointed. No member shall be eligible for reappointment during the two-year period following the expiration of his term. Notwithstanding any other provisions of this subsection, a member shall serve after the expiration of his term until his successor takes office.

[*See main edition for text of* (*d*) *to* (*f*)]

(Pub. L. 89-209, title I, § 8, Sept. 29, 1965, 79 Stat. 851; Pub. L. 90-348, § 4, June 18, 1968, 82 Stat. 186; Pub. L. 91-346, § 5(c), July 20, 1970, 84 Stat. 444; Pub. L. 93-133, § 2(a)(7), Oct. 19, 1973, 87 Stat. 464; Pub. L. 94-462, title I,

§ 103(b), Oct. 8, 1976, 90 Stat. 1971; Pub. L. 96-496, title I, § 105, Dec. 4, 1980, 94 Stat. 2587; redesignated title I and amended Pub. L. 98-306, §§ 2, 5(b), May 31, 1984, 98 Stat. 223, 224.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-306, § 5(b), added "Notwithstanding any other provisions of this subsection, a member shall serve after the expiration of his term until his successor takes office."

§ 957a. Omitted

CODIFICATION

Section, Pub. L. 98-146, title II, § 201, Nov. 4, 1983, 97 Stat. 949, which directed that persons serving on the National Council on the Humanities continue until their successors are qualified for office, was omitted as superseded. See section 957(c) of this title, as amended by Pub. L. 98-306. Similar provisions were contained in Pub. L. 97-394, title II, § 201, Dec. 30, 1982, 96 Stat. 1994.

§ 958. Federal Council on the Arts and the Humanities

[See main edition for text of (a)]

(b) Composition; Chairman, designation by President; changes in membership to meet changes in programs or executive branch organization

The Council shall be composed of the Chairman of the National Endowment for the Arts, the Chairman of the National Endowment for the Humanities, the Director of the Institute of Museum Services, the Secretary of Education, the Secretary of the Smithsonian Institution, the Director of the National Science Foundation, the Librarian of Congress, the Director of the National Gallery of Art, the Chairman of the Commission of Fine Arts, the Archivist of the United States, the Commissioner, Public Buildings Service, General Services Administration, the Commissioner on Aging, a member designated by the Director of the United States Information Agency and a member designated by the Secretary of the Interior, a member designated by the Chairman of the Senate Commission on Art and Antiquities, and a member designated by the Speaker of the House. The President shall designate the Chairman of the Council from among the members. The President is authorized to change the membership of the Council from time to time as he deems necessary to meet changes in Federal programs or executive branch organization.

(c) Functions

The Council shall—

[See main edition for text of (1) to (3)]

(4) promote coordination between the programs and activities of the Foundation and related programs and activities of other Federal agencies;

[See main edition for text of (5) and (6); (d) and (e)]

(Pub. L. 89-209, title I, § 9, Sept. 29, 1965, 79 Stat. 851; Pub. L. 91-346, § 9, July 20, 1970, 84 Stat. 446; Pub. L. 93-133, § 2(a)(8), Oct. 19, 1973, 87 Stat. 464; Pub. L. 94-462, title II, § 208, Oct. 8, 1976, 90 Stat. 1977; 1977 Reorg. Plan No. 2, § 7(a)(12), 42 F.R. 62461, 91 Stat. 1637; Pub. L. 96-496, title I, §§ 106, 109(d), Dec. 4, 1980, 94 Stat. 2587, 2591; Pub. L. 97-241, title III, § 303(b), Aug. 24, 1982, 96 Stat. 291; redesignated title I and amended Pub. L. 98-306, §§ 2, 6, May 31, 1984, 98 Stat. 223, 224.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-306, § 6(a), added "the Director of the Institute of Museum Services,".

Subsec. (c)(4). Pub. L. 98-306, § 6(b), struck out "and the Institute of Museum Services" after "Foundation".

§ 959. Administrative provisions

[See main edition for text]

(Pub. L. 89-209, title I, § 10, Sept. 29, 1965, 79 Stat. 852; Pub. L. 90-348, § 5, June 18, 1968, 82 Stat. 186; Pub. L. 91-346, §§ 5(a)(3), 10, 11, July 20, 1970, 84 Stat. 443, 446; Pub. L. 93-133, § 2(a)(9), (10), Oct. 19, 1973, 87 Stat. 465; Pub. L. 96-496, title I, § 107, Dec. 4, 1980, 94 Stat. 2588; redesignated title I, Pub. L. 98-306, § 2, May 31, 1984, 98 Stat. 223.)

§ 960. Authorization of appropriations

(a) Contracts, grants-in-aid, and loans to groups, individuals, public agencies, and private nonprofit organizations; transfer of unused funds; availability of appropriations; guidelines

(1)(A) For the purpose of carrying out section 954(c) of this title, there are authorized to be appropriated to the National Endowment for the Arts $115,500,000 for fiscal year 1981, $127,000,000 for fiscal year 1982, $140,000,000 for fiscal year 1983, $128,500,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985. Of the sums so appropriated for any fiscal year, not less than 20 per centum shall be for carrying out section 954(g) of this title.

(B) For the purpose of carrying out section 956(c) of this title, there are authorized to be appropriated to the National Endowment for the Humanities $114,500,000 for fiscal year 1981, $126,000,000 for fiscal year 1982, $138,500,000 for fiscal year 1983, $127,000,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985. Of the sums so appropriated for any fiscal year, not less than 20 per centum shall be for carrying out section 956(f) of this title.

[See main edition for text of (C)]

(2)(A) There are authorized to be appropriated for each fiscal year ending before October 1, 1985, to the National Endowment for the Arts an amount equal to the sum of—

[See main edition for text of (i) and (ii)]

except that the amounts so appropriated to the National Endowment for the Arts shall not exceed $18,500,000 for fiscal year 1981, $18,500,000 for fiscal year 1982, $18,500,000 for fiscal year 1983, $10,000,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985.

(B) There are authorized to be appropriated for each fiscal year ending before October 1, 1985, to the National Endowment for the Humanities an amount equal to the sum of—

[*See main edition for text of* (*i*) *and* (*ii*)]

except that the amounts so appropriated to the National Endowment for the Humanities shall not exceed $12,500,000 for fiscal year 1981, $14,000,000 for fiscal year 1982, $15,000,000 for fiscal year 1983, $11,500,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985.

(3)(A) There are authorized to be appropriated for each fiscal year ending before October 1, 1985, to the National Endowment for the Arts an amount equal to the sum of—

[*See main edition for text of* (*i*) *and* (*ii*)]

except that the amounts so appropriated to such Endowment shall not exceed $27,000,000 for fiscal year 1981, $30,000,000 for fiscal year 1982, $32,500,000 for fiscal year 1983, $28,000,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985.

(B) There are authorized to be appropriated for each fiscal year ending before October 1, 1985, to the National Endowment for the Humanities an amount equal to the sum of—

[*See main edition for text of* (*i*) *and* (*ii*)]

except that the amounts so appropriated to such Endowment shall not exceed $30,000,000 for fiscal year 1981, $33,000,000 for fiscal year 1982, $36,000,000 for fiscal year 1983, $20,000,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985.

[*See main edition for text of* (*C*) *and* (*D*), (*4*); (*b*) *and* (*c*)]

(d) Prohibition of grants to production workshops using admission proceeds for unauthorized purposes

No grant shall be made under this subchapter to a workshop (other than a workshop conducted by a school, college, or university) for a production for which a direct or indirect admission charge is asked if the proceeds, after deducting reasonable costs, are used for purposes other than assisting the grantee to develop high standards of artistic excellence or encourage greater appreciation of the arts and humanities by our citizens.

(Pub. L. 89-209, title I, § 11, Sept. 29, 1965, 79 Stat. 853; Pub. L. 90-348, § 6, June 18, 1968, 82 Stat. 187; Pub. L. 91-346, §§ 5(a)(4), 12, July 20, 1970, 84 Stat. 444, 446; Pub. L. 93-133, § 2(a)(11), Oct. 19, 1973, 87 Stat. 465; Pub. L. 94-462, title I, § 106(a), title III, § 302, title IV, § 401(b), Oct. 8, 1976, 90 Stat. 1974, 1980, 1981; Pub. L. 94-555, title II, § 219(b), Oct. 19, 1976, 90 Stat. 2629; Pub. L. 96-496, title I, § 108, Dec. 4, 1980, 94 Stat. 2589; redesignated title I and amended Pub. L. 98-306, §§ 2, 7, May 31, 1984, 98 Stat. 223, 224.)

AMENDMENTS

1984—Subsec. (a)(1)(A). Pub. L. 98-306, § 7(a)(1)(A), substituted "$128,500,000 for fiscal year 1984, and such sums as may be necessary" for "$154,000,000 for fiscal year 1984, and $170,000,000".

Subsec. (a)(1)(B). Pub. L. 98-306, § 7(a)(1)(B), substituted "$127,000,000 for fiscal year 1984, and such sums as may be necessary" for "$152,000,000 for fiscal year 1984, and $167,500,000".

Subsec. (a)(2)(A). Pub. L. 98-306, § 7(a)(2)(A), substituted "$10,000,000 for fiscal year 1984, and such sums as may be necessary" for "$20,000,000 for fiscal year 1984, and $22,500,000".

Subsec. (a)(2)(B). Pub. L. 98-306, § 7(a)(2)(B), substituted "$11,500,000 for fiscal year 1984, and such sums as may be necessary" for "$16,500,000 for fiscal year 1984, and $18,500,000".

Subsec. (a)(3)(A). Pub. L. 98-306, § 7(a)(3)(A), substituted "$28,000,000 for fiscal year 1984, and such sums as may be necessary" for "$36,000,000 for fiscal year 1984, and $40,000,000".

Subsec. (a)(3)(B). Pub. L. 98-306, § 7(a)(3)(B), substituted "$20,000,000 for fiscal year 1984, and such sums as may be necessary" for "$40,000,000 for fiscal year 1984, and $44,000,000".

Subsec. (d). Pub. L. 98-306, § 7(b), added "under this subchapter".

LIMITATION ON AUTHORIZATION OF APPROPRIATIONS TO THE NATIONAL ENDOWMENT FOR THE ARTS AND THE NATIONAL ENDOWMENT FOR THE HUMANITIES FOR FISCAL YEARS 1982, 1983, AND 1984

Pub. L. 97-35, title V, §§ 523, 524, Aug. 13, 1981, 95 Stat. 449, which provided that the total amount of appropriations to the National Endowment for the Arts shall not exceed $119,300,000 for each of the fiscal years 1982, 1983, and 1984, and to the National Endowment for the Humanities shall not exceed $113,700,000 for each of the fiscal years 1982, 1983, and 1984, were repealed by Pub. L. 98-306, § 12, May 31, 1984, 98 Stat. 225.

SUBCHAPTER II—MUSEUM SERVICES

§ 962. Institute of Museum Services; establishment

There is hereby established within the National Foundation on the Arts and the Humanities, an Institute of Museum Services. The Institute shall consist of a National Museum Services Board and a Director of the Institute.

(Pub. L. 94-462, title II, § 203, Oct. 8, 1976, 90 Stat. 1975; Pub. L. 96-496, title II, § 201(a), Dec. 4, 1980, 94 Stat. 2591; Pub. L. 98-306, § 8, May 31, 1984, 98 Stat. 225.)

AMENDMENTS

1984—Pub. L. 98-306 substituted "within the National Foundation on the Arts and the Humanities" for ", within the Department of Education".

§ 963. National Museum Service Board

(a) Appointment of voting and nonvoting members

[*See main edition for text of* (*1*)]

(2)(A) In addition to members appointed by the President under paragraph (1), the following persons shall serve as members of the Board—

[*See main edition for text of* (*i*) *and* (*ii*)]

(iii) the Secretary of the Smithsonian Institution; and

(iv) the Director of the National Science Foundation.

(B) The members of the Board listed in clause (i) through clause (iv) of subparagraph (A) shall be nonvoting members.

(b) Term of office; vacancies; reappointment

The term of office of the appointed members of the Board shall be five years, except that—

[*See main edition for text of* (*1*) *and* (*2*)]

Any appointed member who has been a member of the Board for more than seven consecutive years shall thereafter be ineligible for reappointment to the Board during the three-year period following the expiration of the last such consecutive year. Notwithstanding any other provision of this subsection, a member shall serve after the expiration of his term of office until his successor takes office.

(c) Designation of Chairman; quorum

The Chairman of the Board shall be designated by the President from among the appointed members of the Board. Except as provided in subsection (d)(2) of this section, eight appointed members of the Board shall constitute a quorum.

(d) Meetings of Board

The Board shall meet at the call of the Chairman, except that—

(1) it shall meet not less than four times each year; and

(2) it shall meet whenever one-third of the appointed members request a meeting in writing, in which event seven of the appointed members shall constitute a quorum.

[*See main edition for text of* (*e*) *to* (*g*)]

(As amended Pub. L. 98–306, § 9, May 31, 1984, 98 Stat. 225.)

AMENDMENTS

1984—Subsec. (a)(2)(A)(v). Pub. L. 98–306, § 9(a)(1), struck out cl. (v), which read "the Secretary of Education".

Subsec. (a)(2)(B). Pub. L. 98–306, § 9(a)(2), substituted "clause (iv)" for "clause (v)".

Subsec. (b). Pub. L. 98–306, § 9(b), added "Notwithstanding any other provision of this subsection, a member shall serve after the expiration of his term of office until his successor takes office."

Subsec. (c). Pub. L. 98–306, § 9(c), substituted "Except as provided in subsection (d)(2) of this section, eight" for "Eight".

Subsec. (d)(2). Pub. L. 98–306, § 9(d), substituted "seven" for "eight".

§ 963a. Omitted

Section, Pub. L. 98–146, title II, § 201, Nov. 4, 1983, 97 Stat. 949, which directed that persons serving on the Museum Services Board continue until their successors are qualified for office, was omitted as superseded. See section 963(b) of this title as amended by Pub. L. 98–306. Similar provisions were contained in Pub. L. 97-394, title II, § 201, Dec. 30, 1982, 96 Stat. 1994.

§ 964. Director of Institute

(a) Appointment and compensation; delegation of functions

[*See main edition for text of* (*1*)]

(2) The Director shall not delegate any of his functions to any other officer who is not directly responsible to the Director.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98–306, § 10, May 31, 1984, 98 Stat. 225.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98–306 struck out "The Director shall report directly to the Secretary of Education with respect to the activities of the Institute."

§ 965. Grants to museums to increase and improve services

INSTITUTE OF MUSEUM SERVICES REGULATIONS

Pub. L. 98-146, title II, § 201, Nov. 4, 1983, 97 Stat. 949, provided in part: "That regulations of the Institute shall require (1) an appeal process for applications rejected because of technical deficiency, (2) reconsideration of applications upon receipt of materials in a timely manner if the application was rejected because material did not accompany the application, and (3) waivers of certain records under circumstances which would require such waivers: *Provided further*, That no regulations may be established that prohibit grants to any institution which is a recipient of a challenge grant from either the National Endowment for the Arts or the National Endowment for the Humanities."

Similar provisions were contained in the following prior appropriation act:

Pub. L. 97–394, § 201, Dec. 30, 1982, 96 Stat. 1994.

§ 967. Authorization of appropriations

(a) For the purpose of making grants under section 965(a) of this title, there are authorized to be appropriated $25,000,000 for fiscal year 1981, $30,000,000 for fiscal year 1982, $35,000,000 for fiscal year 1983, $20,150,000 for fiscal year 1984, and such sums as may be necessary for fiscal year 1985.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98–306, § 11, May 31, 1984, 98 Stat. 225.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–306 substituted "$20,150,000 for fiscal year 1984, and such sums as may be necessary" for "$40,000,000 for fiscal year 1984, and $45,000,000".

LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982, 1983, AND 1984

Pub. L. 97-35, title V, § 521, Aug. 13, 1981, 95 Stat. 449, which provided that the total amount of appropriations to carry out this subchapter could not exceed $9,600,000 for each of the fiscal years 1982, 1983, and 1984, was repealed by Pub. L. 98-306, § 12, May 31, 1984, 98 Stat. 225.

CHAPTER 28—HIGHER EDUCATION RESOURCES AND STUDENT ASSISTANCE

SUBCHAPTER III—INSTITUTIONAL AID

PART C—CHALLENGE GRANTS FOR INSTITUTIONS ELIGIBLE FOR ASSISTANCE UNDER PART A OR PART B

Sec.
1065a. Endowment grants.
(a) Congressional declaration of purpose; definitions.

Sec.

- (b) Authority to award grants; institution eligibility; conditions; foundations.
- (c) Requisite assurances by institution; investment of endowment fund corpus and income; withdrawal of funds; conditions and limitations.
- (d) Withdrawal of endowment fund corpus; repayment.
- (e) Audit and examination.
- (f) Eligibility of institutions; considerations and priorities.
- (g) Applications for assistance.
- (h) Termination of grant award; recovery of grant funds; notice and hearing.

SUBCHAPTER IV—STUDENT ASSISTANCE

PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

SUBPART 6—FEDERAL MERIT SCHOLARSHIPS

- 1070d-31. Congressional statement of purpose.
- 1070d-32. Definitions.
- 1070d-33. Scholarships authorized.
    - (a) Grant authority.
    - (b) Duration of award.
    - (c) Eligible institutions.
- 1070d-34. Allocation among States.
- 1070d-35. Agreements.
- 1070d-36. Eligibility of merit scholars.
    - (a) Graduate; public or private secondary school.
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- 1070d-37. Selection of merit scholars.
    - (a) Establishment; criteria.
    - (b) Selection procedures; State educational agency.
    - (c) Consultation; administrators; boards; teachers; counselors; parents.
- 1070d-38. Stipends and scholarship conditions.
    - (a) Amount of stipend.
    - (b) Procedures; assurance that scholar shall pursue course of study.
- 1070d-39. Awards ceremony.
    - (a) Place and manner of award.
    - (b) Completion of selection process and award.
- 1070d-40. Construction of needs provisions.
- 1070d-41. Authorization of appropriations.

SUBPART 7—ASSISTANCE TO INSTITUTIONS OF HIGHER EDUCATION

- 1070e. Payments to institutions of higher education.
    - (a) Cost of education payments.
    - (b) Computation of amount.
    - (c) Applications; contents and manner of filing.
    - (d) Apportionment of appropriations.
- 1070e-1. Veterans' cost-of-instruction payments to institutions of higher education.
    - (a) Eligibility.
    - (b) Computation of amount.
    - (c) Application; contents.
    - (d) Manner of payment.
    - (e) Use of funds.
    - (f) Coordination with Veterans' Administration programs.
    - (g) Administration of program.

SUBCHAPTER V—TEACHER CORPS AND TEACHER TRAINING PROGRAMS

PART E—CARL D. PERKINS SCHOLARSHIP PROGRAM

Sec.

- 1119d. Declaration of purpose; authorization of appropriations.
- 1119d-1. Allocation among States.
    - (a) Ratio.
    - (b) Determination of number of persons.
- 1119d-2. Grant applications.
    - (a) Authorization to make grants.
    - (b) Application requirements.
    - (c) Selection criteria and procedures; present and projected teacher needs.
    - (d) Solicitation of views of agencies, institutions and other parties.
- 1119d-3. Amount and duration of and relation to other assistance.
    - (a) Scholarship amount; duration.
    - (b) Eligibility for student assistance.
    - (c) Cost of attendance; reduction of award.
    - (d) Prohibition; exceeding cost of attendance.
- 1119d-4. Selection of Carl D. Perkins Scholars.
    - (a) Statewide panel; composition; appointment.
    - (b) Eligible students; applications; criteria and procedures; letters of recommendation.
- 1119d-5. Scholarship conditions.
- 1119d-6. Scholarship repayment provisions.
- 1119d-7. Exceptions to repayment provisions.
    - (a) Violation of agreement.
    - (b) Excused from repayment; permanently totally disabled.
- 1119d-8. Federal administration of State programs; judicial review.
    - (a) Disapproval; applications; notice and hearing.
    - (b) Notification of ineligibility; conditions.
    - (c) Judicial review; summons and notice of appeal; findings of fact of Secretary; jurisdiction; review by Supreme Court.

PART F—NATIONAL TALENTED TEACHER FELLOWSHIP PROGRAM

- 1119e. Declaration of purpose.
- 1119e-1. Authorization of appropriations; allocation among States.
- 1119e-2. Talented teacher fellowships.
    - (a) Awards; amount; duration; alternative distribution.
    - (b) Award use.
- 1119e-3. Selection of talented teacher fellowships.
- 1119e-4. Evaluation of applications.
    - (a) Submission of proposals; consultation; local education agencies; recommendations; regulations.
    - (b) Announcement; public ceremony.
- 1119e-5. Fellowship repayment provisions.

SUBCHAPTER I—CONTINUING POSTSECONDARY EDUCATION PROGRAM AND PLANNING

PART A—COMMISSION ON NATIONAL DEVELOPMENT IN POSTSECONDARY EDUCATION

§ 1001. Congressional findings

SHORT TITLE OF 1983 AMENDMENTS

Pub. L. 98-95, § 1, Sept. 26, 1983, 97 Stat. 706, provided: "That this Act [enacting section 1065a of this title, amending section 1069c of this title, enacting provisions set out as a note under section 1132a-1 of this title, and amending provisions set out as notes under sections 123 and 1069c of this title] may be cited as the 'Challenge Grant Amendments of 1983'."

Pub. L. 98-79, § 1, Aug. 15, 1983, 97 Stat. 476, provided: "That this Act [amending sections 1071, 1077, 1077a, 1078, 1078-2, 1083a, 1087-1, 1087-2, 1087cc-1, and 1098 of this title, repealing section 1087-1a of this title, enacting provisions set out as notes under sections 1077, 1077a, 1078, and 1087-1 of this title, and amending provisions set out as notes under sections 1070a, 1078, and 1089 of this title] may be cited as the 'Student Loan Consolidation and Technical Amendments Act of 1983'."

PART B—EDUCATION OUTREACH PROGRAMS

§ 1013. Comprehensive statewide planning

[*See main edition for text of* (a) *to* (c)]

(d) Coordination with other programs

Planning undertaken pursuant to this section shall be coordinated, to the maximum extent feasible, with the planning activities under subpart 4 of part A and part B of subchapter IV of this chapter and section 1092 of this title; the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.]; the Job Training Partnership Act [29 U.S.C. 1501 et seq.]; the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.]; the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.]; the Career Education Incentive Act [20 U.S.C. 2601 et seq.]; the Adult Education Act [20 U.S.C. 1201 et seq.]; the Veterans Readjustment Assistance Act; and other Federal, State, and local activities intended to provide outreach, guidance, counseling, and educational, student aid, and occupational information to persons within the State.

[*See main edition for text of* (e)]

(As amended Pub. L. 98-524, § 4(c)(1), Oct. 19, 1984, 98 Stat. 2488.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (d), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, which is classified generally to chapter 44 (§ 2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-524 which directed the substitution of "the Carl D. Perkins Vocational Education Act" for "the Vocational Education Act of 1963" was executed by substituting the stated phrase for "the Vocational Education Act" as the probable intent of Congress.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of this title.

§ 1014. Information services

[*See main edition for text of* (a)]

(b) Coordination with other programs

Such educational and occupational information and counseling programs shall be coordinated to the maximum extent possible with those authorized by subpart 4 of part A and part B of subchapter IV of this chapter and section 1092 of this title; the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.]; the Job Training Partnership Act [29 U.S.C. 1501 et seq.]; the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.]; the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.]; the Career Education Incentive Act [20 U.S.C. 2601 et seq.]; the Adult Education Act [20 U.S.C. 1201 et seq.]; the Veterans Readjustment Assistance Act; and other Federal, State, and local activities intended to provide outreach, guidance, counseling, and educational, student aid, and occupational information to persons within the State.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-524, § 4(c)(2), Oct. 19, 1984, 98 Stat. 2488.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (b), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, which is classified generally to chapter 44 (§ 2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-524 which directed the substitution of "the Carl D. Perkins Vocational Education Act" for "the Vocational Education Act of 1963" was executed by substituting the stated phrase for "the Vocational Education Act" as the probable intent of Congress.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of this title.

SUBCHAPTER III—INSTITUTIONAL AID

PART A—STRENGTHENING INSTITUTIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1064, 1065, 1065a, 1067, 1068, 1069, 1069a, 1069c of this title.

§ 1058. Definitions

Bureau of Indian Affairs Student Assistance Grants for Postsecondary Education

For the purposes of par. (2)(A)(i) of this section, Indian students receiving student assistance grants from the Bureau of Indian Affairs for postsecondary education are deemed to have received such assistance under subpart 1 of part A of subchapter IV of this chapter by section 1809(c) of Title 25, Indians.

Section Referred to in Other Sections

This section is referred to in sections 1064, 1067 of this title; title 25 section 1809.

Part B—Aid to Institutions With Special Needs

Part Referred to in Other Sections

This part is referred to in sections 1064, 1065, 1065a, 1067, 1068, 1069, 1069a, 1069c of this title.

§ 1061. Definitions

Bureau of Indian Affairs Student Assistance Grants for Postsecondary Education

For the purposes of subsec. (a)(2)(A)(i) of this section, Indian students receiving student assistance grants from the Bureau of Indian Affairs for postsecondary education are deemed to have received such assistance under subpart 1 of part A of subchapter IV of this chapter by section 1809(c) of Title 25, Indians.

Section Referred to in Other Sections

This section is referred to in sections 1064, 1065, 1067 of this title; title 25 section 1809.

§ 1063. Federal share

Section Referred to in Other Sections

This section is referred to in section 1069c of this title.

Part C—Challenge Grants for Institutions Eligible for Assistance Under Part A or Part B

§ 1064. Establishment of program

Section Referred to in Other Sections

This section is referred to in sections 1065, 1065a, 1069c of this title.

§ 1065a. Endowment grants

(a) Congressional declaration of purpose; definitions

(1) The purpose of this section is to establish a program to provide matching grants to eligible institutions of higher education in order to establish or increase endowment funds at such institutions, to provide additional incentives to promote fundraising activities by such institutions, and to foster increased independence and self-sufficiency at such institutions.

(2) For purposes of this section:

(A) The term "endowment fund" means a fund established by State law, by an institution of higher education, or by a foundation which is exempt from taxation and is maintained for the purpose of generating income for the support of the institution, but which shall not include real estate.

(B) The term "endowment fund corpus" means an amount equal to the grant or grants awarded under this section plus an amount equal to such grant or grants provided by the institution.

(C) The term "endowment fund income" means an amount equal to the total value of the endowment fund established under this section minus the endowment fund corpus.

(b) Authority to award grants; institution eligibility; conditions; foundations

(1) From sums available for this section under section 1069c of this title, the Secretary is authorized to award endowment grants to eligible institutions of higher education to establish or increase an endowment fund at such institution. Such grants shall be made only to eligible institutions described in paragraph (4) whose applications have been approved pursuant to subsection (g) of this section.

(2) No institution shall receive a grant under this section, unless such institution has deposited in its endowment fund established under this section an amount equal to the amount of such grant. The source of funds for this institutional match shall not include Federal funds or funds from an existing endowment fund.

(3)(A) The period of a grant under this section shall be not more than twenty years.

(B) During the grant period, an institution may not withdraw or expend any of the endowment fund corpus.

(C) After the termination of the grant period, an institution may use the endowment fund corpus plus any endowment fund income for any educational purpose.

(4)(A) An institution of higher education is eligible to receive a grant under this section if it is an eligible institution as described in section 1064(a)(1) of this title.

(B) No institution shall be ineligible for an endowment grant for a fiscal year by reason of the previous receipt of such a grant, but no institution shall be eligible to receive such a grant for more than two fiscal years out of any period of five consecutive fiscal years.

(5) An endowment grant under this section to an eligible institution year shall—

(A) not be less than $50,000 for any fiscal year; and

(B) not be more than (i) $250,000 for fiscal year 1984; or (ii) $500,000 for fiscal year 1985 or any succeeding fiscal year.

(6)(A) An eligible institution may designate a foundation, which was established for the purpose of raising money for the institution, as the recipient of the grant awarded under this section.

(B) The Secretary shall not award a grant to a foundation on behalf of an institution unless—

(i) the institution assures the Secretary that the foundation is legally authorized to receive the endowment fund corpus and is legally authorized to administer the fund in accordance with this section and any implementing regulations;

(ii) the foundation agrees to administer the fund in accordance with the requirements of this section and any implementing regulation; and

(iii) the institution agrees to be liable for any violation by the foundation of the provisions of this section and any implementing regulations, including any monetary liability that may arise as a result of such violation.

(c) Requisite assurances by institution; investment of endowment fund corpus and income; withdrawal of funds; conditions and limitations

(1) An institution awarded a grant under this section shall enter into an agreement with the Secretary containing satisfactory assurances that it will (A) immediately comply with the matching requirements of subsection (b)(2) of this section, (B) establish an endowment fund independent of any other such fund of the institution, (C) invest the endowment fund corpus, and (D) meet the other requirements of this section.

(2)(A) An institution shall invest the endowment fund corpus and endowment fund income in low-risk securities in which a regulated insurance company may invest under the law of the State in which the institution is located such as a federally insured bank savings account or comparable interest bearing account, certificate of deposit, money market fund, mutual fund, or obligations of the United States.

(B) The institution, in investing the endowment fund established under this section, shall exercise the judgment and care, under the circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of his own affairs.

(3)(A) An institution may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of such college, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, and technical assistance.

(B)(i) Except as provided in clause (ii), an institution may not spend more than 50 per centum of the total aggregate endowment fund income earned prior to the time of expenditure.

(ii) The Secretary may permit an institution to spend more than 50 per centum of the endowment fund income notwithstanding clause (i) if the institution demonstrates such an expenditure is necessary because of (I) a financial emergency, such as a pending insolvency or temporary liquidity problem; (II) a life-threatening situation occasioned by a natural disaster or arson; or (III) another unusual occurrence or exigent circumstance.

(d) Withdrawal of endowment fund corpus; repayment

(1) If at any time an institution withdraws part of the endowment fund corpus, it shall repay to the Secretary an amount equal to 50 per centum of the withdrawn amount, which represents the Federal share, plus income earned thereon. The Secretary may use such repaid funds to make additional endowment grants, or to increase existing endowment grants, to other eligible institutions.

(2) If an institution expends more of the endowment fund income than is permitted under subsection (c) of this section, the grantee shall repay the Secretary an amount equal to 50 per centum of the amount improperly expended (representing the Federal share thereof). The Secretary may use such repaid fund to make additional endowment grants, or to increase existing endowment grants, to other eligible institutions.

(e) Audit and examination

An institution receiving a grant under this section shall provide to the Secretary (or his designee) such information (or access thereto) as may be necessary to audit or examine expenditures made from the endowment fund corpus or income in order to determine compliance with this section.

(f) Eligibility of institutions; considerations and priorities

In selecting eligible institutions for grants under this section for any fiscal year, the Secretary shall—

(1) give priority to an applicant which is a recipient of a grant made under part A or B of this subchapter during the academic year in which the applicant is applying for a grant under this section; and

(2) give priority to an applicant with a greater need for such a grant, based on the current market value of the applicant's existing endowment in relation to the number of full-time equivalent students enrolled at such institution;

(3) consider—

(A) the effort made by the applicant to build or maintain its existing endowment fund; and

(B) the degree to which an applicant proposes to match the grant with nongovernmental funds.

(g) Applications for assistance

Any institution which is eligible for assistance under this section may submit to the Secretary a grant application at such time, in such form, and containing such information as the Secretary may prescribe. Subject to the availability of appropriations to carry out this section and consistent with the requirement of subsection (f) of this section, the Secretary may approve an application for a grant if an institution, in its application, provides adequate assurances that it will comply with the requirements of this section.

(h) Termination of grant award; recovery of grant funds; notice and hearing

(1) After notice and an opportunity for a hearing, the Secretary may terminate and recover a grant awarded under this section if the grantee institution—

(A) expends portions of the endowment fund corpus or expends more than the permissible amount of the endowment funds income as prescribed in subsection (c)(3) of this section;

(B) fails to invest the endowment fund in accordance with the investment standards set forth in subsection (c)(2) of this section; or

(C) fails to properly account to the Secretary concerning the investment and expenditures of the endowment funds.

(2) If the Secretary terminates a grant under paragraph (1), the grantee shall return to the Secretary an amount equal to the sum of the original grant or grants under this section plus income earned thereon. The Secretary may use such repaid funds to make additional endowment grants, or to increase existing endowment grants, to other eligible institutions.

(Pub. L. 89-329, title III, § 333, as added Pub. L. 98-95, § 2, Sept. 26, 1983, 97 Stat. 708.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1069c of this title; title 25 section 1832.

PART D—GENERAL PROVISIONS

§ 1069c. Authorization of appropriations

(a) Fiscal year and percentage availability

[*See main edition for text of* (*1*)]

(2) There are authorized to be appropriated to carry out part C of this subchapter $25,000,000 for the fiscal year 1982, $35,000,000 for the fiscal year 1983, $45,000,000 for the fiscal year 1984, and $50,000,000 for the fiscal year 1985. Of the amount appropriated for such part for fiscal year 1984, 20 per centum shall be available for grants under section 1065a of this title, and of the amount appropriated for such part for fiscal year 1985, 100 per centum shall be available for grants under such section.

[*See main edition for text of* (*b*) *to* (*e*)]

(f) Endowment grants

(1) For each fiscal year, the Secretary shall reserve from the amount appropriated for part B of this subchapter such sums as may be necessary to fund continuation awards for multiple year grants awarded to institutions under section 1064 of this title prior to October 1, 1983.

(2) For each fiscal year, the Secretary may reserve from the amount appropriated for part B of this subchapter, not more than an amount equal to the difference between the amount awarded under paragraph (1) and the amount equal to the aggregate amount institutions receiving grants under part B of this subchapter would contribute under section 1063 of this title to the cost of their grants in that fiscal year assuming their grant amounts are the same as those received in the prior fiscal year. The Secretary may use this amount to award grants to eligible institutions under section 1065a of this title.

(3) In reserving and awarding funds under this subsection, the Secretary shall assure in each fiscal year that the funds that would have been reserved under part B of this subchapter for institutions described in subsection (c) or (e) of this section shall be reserved under section 1064 or 1065a of this title for those institutions.

(As amended Pub. L. 98-95, § 3, Sept. 26, 1983, 97 Stat. 711; Pub. L. 98-312, § 1, June 12, 1984, 98 Stat. 233.)

AMENDMENTS

1984—Subsec. (f)(1). Pub. L. 98-312 added par. (1).

Subsec. (f)(2). Pub. L. 98-312 designated the first sentence of existing subsec. (f) as par. (2) and in par. (2) as so designated substituted "For each fiscal year, the Secretary may reserve from the amount appropriated for part B of this subchapter, not more than an amount equal to the difference between the amount awarded under paragraph (1) and the amount equal to the aggregate amount institutions receiving grants under part B of this subchapter would contribute under section 1063 of this title to the cost of their grants in that fiscal year assuming their grant amounts are the same as those received in the prior fiscal year" for "For each fiscal year, the Secretary may reserve from the appropriation for part B of this subchapter not more than an amount equal to the aggregate amount grantees receiving grants under part B of this subchapter would contribute under section 1063 of this title to the cost of the grants in that fiscal year, assuming the grant amounts remain the same as those received in the prior fiscal year, and may use those funds to award grants to eligible institutions under section 1065a of this title" and added "The Secretary may use this amount to award grants to eligible institutions under section 1065a of this title."

Subsec. (f)(3). Pub. L. 98-312 designated the existing second sentence of subsec. (f) as par. (3) and in par. (3) as so designated substituted "In reserving and awarding funds under this subsection, the Secretary shall assure in each fiscal year that the funds that would have been reserved under part B of this subchapter for institutions described in subsection (c) or (e) of this section shall be reserved under section 1064 or 1065a of this title for those institutions" for "In reserving and awarding such funds, the Secretary shall assure that funds that would have been reserved under part B of this subchapter for the institutions described in subsection (c) or (e) of this section shall continue to be set aside under section 1065a of this title for those institutions".

1983—Subsec. (a)(2). Pub. L. 98-95, § 3(1), added provision that, of the amount appropriated for part C for fiscal year 1984, 20 per centum shall be available for grants under section 1065a of this title, and of the amounts appropriated for such part for fiscal year 1985, 100 per centum shall be available for grants under such section.

Subsec. (f). Pub. L. 98-95, § 3(2), added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 7 of Pub. L. 98-312 provided that: "The amendment made in section 1 [amending this section] shall take effect on October 1, 1984."

LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1984

Pub. L. 97-35, title V, § 516(c)(1), Aug. 13, 1981, 95 Stat. 447, as amended by Pub. L. 98-98, § 4(a), Sept. 29, 1983, 97 Stat. 711, provided that: "The total amount of appropriations to carry out title III of the Higher Education Act of 1965 [this subchapter] shall not exceed $134,416,000 for fiscal year 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1057, 1060, 1064, 1065a, 1069b of this title.

SUBCHAPTER IV—STUDENT ASSISTANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1061, 1069a, 1119d-3, 3346 of this title; title 15 section 1603; title 38 section 1798; title 50 App. section 462.

Part A—Grants to Students in Attendance at Institutions of Higher Education

§ 1070. Statement of purpose

References in Text

Subpart 6 of this part, referred to in subsec. (b), was redesignated subpart 7 of this part and a new subpart 6 was added by Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2900.

SUBPART 1—BASIC EDUCATIONAL OPPORTUNITY GRANTS

Subpart Referred to in Other Sections

This subpart is referred to in sections 1058, 1070, 1070b-3, 1070e, 1078, 1096, of this title; title 25 section 1809.

§ 1070a. Basic educational opportunity grants: amount and determinations; applications

Maximum Pell Grants

Pub. L. 98-619, title III, § 200, Nov. 8, 1984, 98 Stat. 3325, provided in part: "That notwithstanding section 411(a)(2)(A)(i) and section 411(b)(5) of the Higher Education Act [subsecs. (a)(2)(A)(i) and (b)(5) of this section], the maximum grant a student may receive in the 1985-86 academic year shall be $2,100."

Pub. L. 98-139, title III, § 300, Oct. 31, 1983, 97 Stat. 891, provided in part: "That the maximum grant a student may receive in the 1984-1985 academic year shall be $1,900 notwithstanding section 411(a)(2) and section 411(b)(5) of the Higher Education Act [subsecs. (a)(2) and (b)(5) of this section]."

Cost of Attendance Criteria; Eligibility for and Amount of Pell Grants for Academic Years 1983-1984 Through 1986-1987; Determination of Amount of Allowance for Room and Board

Section 3 of Pub. L. 97-301, as amended by Pub. L. 98-79, § 4(a), Aug. 15, 1983, 97 Stat. 479; Pub. L. 98-511, title VII, § 707(1), (2), Oct. 19, 1984, 98 Stat. 2407, provided that:

"(a) Except as provided in subsection (b), but notwithstanding any other provision of law, the cost of attendance criteria used for calculating eligibility for and the amount of Pell Grants for academic years 1983-1984, 1984-1985, 1985-1986, and 1986-1987, shall be the same as those criteria in effect for academic year 1982-1983.

"(b) The cost of attendance allowance for room and board for students not residing at home or in institutionally owned or operated housing for the academic years 1984-1985, 1985-1986, and 1986-1987 shall be a standard amount determined by the institution of higher education based on the expenses reasonably incurred by such student for room and board, which shall be at least $1,100 but not more than $1,600."

Pell Grant Family Contribution Schedules for Academic Years 1983-1984 Through 1986-1987

Section 5 of Pub. L. 97-301, as amended by Pub. L. 98-79, § 4(a), Aug. 15, 1983, 97 Stat. 480; Pub. L. 98-511, title VII, § 707(3)-(6), Oct. 19, 1984, 98 Stat. 2407, provided that:

"(a) Except as provided in subsections (b) and (c), the family contribution schedule for academic year 1983-1984 for Pell Grants under subpart 1 of part A of title IV of the Higher Education Act of 1965 [this subpart] shall be the family contribution schedule for such grants for each of the academic years 1984-1985, 1985-1986, and 1986-1987.

"(b)(1) Each of the amounts allowed as an offset for family size for dependent and independent students in the family contribution schedule for each of the academic years 1984-1985, 1985-1986, and 1986-1987 shall be computed by increasing (or decreasing) the comparable amount (for the same family size) in the family contribution schedule for the preceding academic year (as set by this section) by a percentage equal to the percentage increase (or decrease) in the Consumer Price Index for Wage Earners and Clerical Workers published by the Department of Labor, and rounding the result to the nearest $100.

"(2) For purposes of paragraph (1) of this subsection, the percentage increase (or decrease) in the Consumer Price Index for Wage Earners and Clerical Workers is the change, expressed as a per centum, between the arithmetic mean of such index—

"(A) for the period from October 1, 1981, through September 30, 1982, and the arithmetic mean of such index for the period from October 1, 1982, through September 30, 1983, in the case of the academic year 1984-1985;

"(B) for the period from October 1, 1982, through September 30, 1983, and the arithmetic mean of such index for the period from October 1, 1983, through September 30, 1984, in the case of the academic year 1985-1986; and

"(C) for the period from October 1, 1983, through September 30, 1984, and the arithmetic mean of such index for the period from October 1, 1984, through September 30, 1985, in the case of academic year 1986-1987.

"(3) The Secretary of Education shall publish in the Federal Register the changes in amounts allowed as an offset for family size as a consequence of the requirements of this subsection immediately after publication by the Secretary of Labor of the Consumer Price Index for September 1983 (with respect to academic year 1984-1985), immediately after such publication for September 1984 (with respect to academic year 1985-1986), and immediately after such publication for September 1985 (with respect to academic year 1986-1987).

"(c) For purposes of subsection (a), the family contribution schedule for academic year 1983-1984 shall be modified by the Secretary of Education for use for each of academic years 1984-1985, 1985-1986, and 1986-1987—

"(1) to reflect the most recent and relevant data, and

"(2) to comply with section 482(b)(3) of the Higher Education Act of 1965 [20 U.S.C. 1089(b)(3)] with respect to the treatment of payments under title 38 of the United States Code.

"(d) The modified family contribution schedule under this section shall be published in the Federal Register—

"(1) not later than fifteen days after the date of enactment of the Student Loan Consolidation and Technical Amendments Act of 1983 [Aug. 15, 1983] for academic year 1984-1985;

"(2) not later than April 1, 1984, for academic year 1985-1986; and

"(3) not later than April 1, 1985, for academic year 1986-1987."

SUBPART 2—SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANTS

§ 1070b-3. Apportionment and allocation of funds

Supplemental Educational Opportunity Grant Program and Work-Study Program; Apportionment and Allocation of Funds

Pub. L. 98-619, title III, § 300, Nov. 8, 1984, 98 Stat. 3325, provided in part: "That notwithstanding section 413D(a) [20 U.S.C. 1070b-3(a)], and subsections (a), (b), (c), and (e) of section 442 of the Higher Education Act [42 U.S.C. 2752(a), (b), (c), (e)], the Secretary shall apportion funds among the States so that each State's apportionment under the Supplemental Educational Opportunity Grant Program and Work-Study Program bears the same ratio to the total amount appropriated under each program as that State's apportion-

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ment in fiscal year 1981 for each program bears to the total amount appropriated for fiscal year 1981 for each program: *Provided further,* That notwithstanding section 413D(b)(1)(B)(ii) and section 446(a) [42 U.S.C. 2756(a)] of the Higher Education Act, from each jurisdiction's allotment of funds under each program, the Secretary shall allocate sums to institutions in that jurisdiction that did not receive an allocation in fiscal year 1979 (award year 1979-80) under each program in a manner that will most effectively carry out the purposes of the Supplemental Educational Opportunity Grant Program and the Work-Study Program: *Provided further,* That notwithstanding section 413D(b)(1)(B)(ii)(II) of the Higher Education Act, the provisions of clause (I) of section 413D(b)(1)(B)(ii) of such Act shall apply to the amount made available for Supplemental Educational Opportunity Grants under this heading."

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 98-139, title III, § 300, Oct. 31, 1983, 97 Stat. 891.

Pub. L. 97-301, § 10, Oct. 13, 1982, 96 Stat. 1403.

SUBPART 3—GRANTS TO STATES FOR STATE STUDENT INCENTIVES

Subpart Referred to in Other Sections

This subpart is referred to in sections 1070, 1070a, 1070b-3, 1089, 1090, 1094, 1119d-2, 1143 of this title.

SUBPART 5—SPECIAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND SEASONAL FARMWORK

Subpart Referred to in Other Sections

This subpart is referred to in section 3414 of this title.

SUBPART 6—FEDERAL MERIT SCHOLARSHIPS

Subpart Referred to in Other Sections

This subpart is referred to in sections 1070, 1088 of this title.

§ 1070d-31. Congressional statement of purpose

It is the purpose of this subpart to establish a Federal Merit Scholarship Program to promote student excellence and achievement and to recognize exceptionally able students who show promise of continued excellence.

(Pub. L. 89-329, title IV, § 419A, as added Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2900.)

§ 1070d-32. Definitions

For the purpose of this subpart—

(1) the term "secondary school" has the same meaning given that term under section 2854(a)(7) of this title; and

(2) the term "State" means each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 89-329, title IV, § 419B, as added Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2900.)

§ 1070d-33. Scholarships authorized

(a) Grant authority

The Secretary is authorized, in accordance with the provisions of this subpart, to make grants to States to enable the States to award scholarships to individuals who have demonstrated outstanding academic achievement and who show promise of continued academic achievement.

(b) Duration of award

Scholarships under this section shall be awarded for a period of one academic year for the first year of study at an institution of higher education.

(c) Eligible institutions

A student awarded a scholarship under this subpart may attend any institution of higher education.

(Pub. L. 89-329, title IV, § 419C, as added Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2900.)

§ 1070d-34. Allocation among States

From the sums appropriated pursuant to section 1070d-41 of this title for any fiscal year, the Secretary shall allocate to each State having an agreement under section 1070d-35 of this title—

(1) $1,500 multiplied by the number of individuals in the State eligible for merit scholarships pursuant to section 1070d-37(b) of this title,

plus

(2) $10,000, plus 5 percent of the amount to which a State is eligible under clause (1) of this section.

(Pub. L. 89-329, title IV, § 419D, as added Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2901.)

Section Referred to in Other Sections

This section is referred to in section 1070d-35 of this title.

§ 1070d-35. Agreements

The Secretary shall enter into an agreement with each State desiring to participate in the merit scholarship program authorized by this subpart. Each such agreement shall include provisions designed to assure that—

(1) the State educational agency will administer the merit scholarship program authorized by this subpart in the State;

(2) the State educational agency will comply with the eligibility and selection provisions of this subpart;

(3) the State educational agency will conduct outreach activities to publicize the availability of Federal merit scholarships to all eligible students in the State, with particular emphasis on activities designed to assure that students from low-income and moderate-income families have access to the information on the opportunity for full participation in the merit scholarship program authorized by this subpart;

(4) the State educational agency will pay to each individual in the State who is awarded a merit scholarship under this subpart $1,500 at an awards ceremony in accordance with section 1070d-39 of this title; and

(5) the State educational agency will use the amount of the allocation described in

clause (2) of section 1070d-34 of this title for administrative expenses, including the conduct of the awards ceremony required by section 1070d-39 of this title.

(Pub. L. 89-329, title IV, § 419E, as added Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2901.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1070d-34 of this title.

§ 1070d-36. Eligibility of merit scholars

(a) Graduate; public or private secondary school

Each student awarded a scholarship under this subpart shall be a graduate of a public or private secondary school or have the equivalent of a certificate of graduation as recognized by the State in which the student resides and must have been admitted for enrollment at an institution of higher education.

(b) Demonstration; outstanding academic achievement

Each student awarded a scholarship under this subpart must demonstrate outstanding academic achievement and show promise of continued academic achievement.

(Pub. L. 89-329, title IV, § 419F, as added Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2901.)

§ 1070d-37. Selection of merit scholars

(a) Establishment; criteria

The State educational agency is authorized to establish the criteria for the selection of merit scholars under this subpart.

(b) Selection procedures; State educational agency

The State educational agency shall adopt selection procedures which are designed to assure that ten individuals will be selected from among residents of each congressional district in a State (and in the case of the District of Columbia and the Commonwealth of Puerto Rico not to exceed ten individuals will be selected in such district [1] or Commonwealth).

(c) Consultation; administrators; boards; teachers; counselors; parents

In carrying out its responsibilities under subsections (a) and (b) of this section, the State educational agency shall consult with school administrators, school boards, teachers, counselors, and parents.

(Pub. L. 89-329, title IV, § 419G, as added Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2901.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1070d-34 of this title.

§ 1070d-38. Stipends and scholarship conditions

(a) Amount of stipend

Each student awarded a merit scholarship under this subpart shall receive a stipend of $1,500 for the academic year of study for which the scholarship is awarded.

(b) Procedures; assurance that scholar shall pursue course of study

The State educational agency shall establish procedures to assure that a merit scholar awarded a scholarship under this subpart pursues a course of study at an institution of higher education.

(Pub. L. 89-329, title IV, § 419H, as added Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2902.)

§ 1070d-39. Awards ceremony

(a) Place and manner of award

The State educational agency shall make arrangements to award merit scholarships under this subpart at a place in each State which is convenient to the individuals selected to receive such scholarships. To the extent possible, the award shall be made by Members of the Senate and Members of the House of Representatives (by the Delegate in the case of the District of Columbia and the Resident Commissioner in the case of the Commonwealth of Puerto Rico) who represent the State, Commonwealth, or District, as the case may be, from which the individuals come.

(b) Completion of selection process and award

The selection process shall be completed, and the awards made prior to the end of each secondary academic year.

(Pub. L. 89-329, title IV, § 419I, as added Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2902.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1070d-35 of this title.

§ 1070d-40. Construction of needs provisions

Nothing in this subpart, or any other Act, shall be construed to permit the receipt of a merit scholarship under this subpart to be counted for any needs test in connection with the awarding of any grant or the making of any loan under this chapter or any other provision of Federal law relating to educational assistance.

(Pub. L. 89-329, title IV, § 419J, as added Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2902.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 89-329, known as the Higher Education Act of 1965. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

§ 1070d-41. Authorization of appropriations

There are authorized to be appropriated $8,000,000 for each of fiscal years 1986, 1987, and 1988 to carry out the provisions of this subpart.

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[1] So in original. Probably should be "District".

(Pub. L. 89-329, title IV, § 419K, as added Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2902.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1070d-34 of this title.

SUBPART 7—ASSISTANCE TO INSTITUTIONS OF HIGHER EDUCATION

CODIFICATION

This subpart, which was originally subpart 5, was redesignated subpart 6 by Pub. L. 94-482, title I, § 125, Oct. 12, 1976, 90 Stat. 2096, and subsequently redesignated subpart 7 by Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2900.

§ 1070e. Payments to institutions of higher education

[*See main edition for text*]

(Pub. L. 89-329, title IV, § 420, formerly § 419, as added Pub. L. 92-318, title X, § 1001(a), June 23, 1972, 86 Stat. 375, and amended Pub. L. 96-374, title XIII, § 1391(a)(1), Oct. 3, 1980, 94 Stat. 1503; renumbered Pub. L. 98-558, title VIII, § 801(b)(1), Oct. 30, 1984, 98 Stat. 2902.)

PRIOR PROVISIONS

A prior section 420 of Pub. L. 89-329 was renumbered section 420A by section 801(b)(2) of Pub. L. 98-558 and is classified to section 1070e-1 of this title.

PAYMENTS LIMITATION

Section 1001(d) of Pub. L. 92-318 provided that: "The total of the payments made under subpart 5 [redesignated subpart 7] of part A of title IV, of the Higher Education Act of 1965 [this subpart] (except section 420 [renumbered 420A]) [section 1070e-1 of this title] and under part F of title IX of such Act [part F of subchapter IX of this chapter] may not exceed $1,000,000,000 during any fiscal year."

§ 1070e-1. Veterans' cost-of-instruction payments to institutions of higher education

[*See main edition for text*]

(Pub. L. 89-329, title IV, § 420A, formerly § 420, as added Pub. L. 92-318, title X, § 1001(a), June 23, 1972, 86 Stat. 378, and amended Pub. L. 93-380, title VIII, § 834(a), Aug. 21, 1974, 88 Stat. 604; Pub. L. 94-482, title I, § 126(a)-(c), Oct. 12, 1976, 90 Stat. 2098; Pub. L. 95-336, § 6(a), Aug. 4, 1978, 92 Stat. 453; Pub. L. 96-49, § 5(a)(7), Aug. 13, 1979, 93 Stat. 352; Pub. L. 96-374, title IV, § 407, Oct. 3, 1980, 94 Stat. 1412; Pub. L. 97-300, title I, § 183, Oct. 13, 1982, 96 Stat. 1357; renumbered Pub. L. 98-558, title VIII, § 801(b)(2), Oct. 30, 1984, 98 Stat. 2902.)

PART B—FEDERAL, STATE, AND PRIVATE PROGRAMS OF LOW-INTEREST INSURED LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

§ 1071. General provisions

(a) Statement of purpose; nondiscrimination

(1) The purpose of this part is to enable the Secretary (1) to encourage States and nonprofit private institutions and organizations to establish adequate loan insurance programs for students in eligible institutions (as defined in section 1085 of this title), (2) to provide a Federal program of student loan insurance for students or lenders who do not have reasonable access to a State or private nonprofit program of student loan insurance covered by an agreement under section 1078(b) of this title, (3) to pay a portion of the interest on loans to qualified students which are made by a State under a direct loan program meeting the requirements of section 1078(a)(1)(B) of this title, or which are insured under this part or under a program of a State or of a nonprofit private institution or organization which meets the requirements of section 1078(a)(1)(C) of this title, and (4) to guarantee a portion of each loan insured under a program of a State or of a nonprofit private institution or organization which meets the requirements of section 1078(a)(1)(C) of this title.

(2) No institution, bank, credit union, corporation, or other lender who regularly extends, renews, or continues credit or provides insurance under this part shall exclude from receipt or deny the benefits of, or discriminate against any borrower or applicant in obtaining, such credit or insurance on the basis of race, national origin, religion, sex or marital status, age, or handicapped status.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 98-79, § 6, Aug. 15, 1983, 97 Stat. 482.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-79 designated existing provisions as par. (1), and added par. (2).

§ 1077. Conditions for Federal loan insurance

(a) Student eligibility; terms of loans

A loan by an eligible lender shall be insurable by the Secretary under the provisions of this part only if—

[*See main edition for text of (1)*]

(2) evidenced by a note or other written agreement which—

[*See main edition for text of (A)*]

(B) provides for repayment (except as provided in subsection (c) of this section) of the principal amount of the loan in installments over a period of not less than five years (unless sooner repaid or unless the student, during the six months preceding the start of the repayment period, specifically requests that repayment be made over a shorter period) nor more than ten years beginning six months after the month in which the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload as determined by the institution, except—

[*See main edition for text of (i) to (iv), (C) to (J); (b) and (c)*]

(As amended Pub. L. 98-79, § 10[(a)], Aug. 15, 1983, 97 Stat. 484.)

AMENDMENTS

1983—Subsec. (a)(2)(B). Pub. L. 98-79 substituted "six months after the month in which" for "six months after the date on which".

EFFECTIVE DATE OF 1983 AMENDMENT

Section 10(c) of Pub. L. 98-79 provided that: "The amendments made by this section [amending sections 1077 and 1078 of this title] shall be effective with respect to any loan under part B of title IV of the Act [this part] on which repayment has not commenced prior to the date of enactment of this Act [Aug. 15, 1983]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1075, 1078, 1078-2, 1087-2 of this title.

§ 1077a. Applicable interest rates

(a) Periods of instruction beginning on or after January 1, 1981

With respect to any loan to cover the cost of instruction for any period of instruction beginning on or after January 1, 1981, the rate of interest applicable to any borrower shall—

(1) not exceed 7 per centum per annum on the unpaid principal balance of the loan in the case of any borrower who, on the date of entering into the note or other written evidence of that loan, has an outstanding balance of principal or interest on any loan made, insured, or guaranteed under this part, for which the interest rate does not exceed 7 per centum;

(2) except as provided in paragraph (3), be 9 per centum per annum on the unpaid principal balance of the loan in the case of any borrower who, on the date of entering into the note or other written evidence of that loan, has no outstanding balance of principal or interest on any loan described in paragraph (1) or any loan for which the interest rate is determined under paragraph (1); or

(3) be 8 per centum per annum on the unpaid principal balance of the loan for a loan to cover the cost of education for any period of enrollment beginning on or after a date which is three months after a determination made under subsection (b) of this section in the case of any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan for which the interest rate is determined under paragraph (1) or (2) of this subsection.

[See main edition for text of (b) to (d)]

(e) "Period of instruction" and "period of enrollment" defined

For the purposes of subsection (a) of this section—

(1) the term "period of instruction" shall, at the discretion of the lender, be any academic year, semester, trimester, quarter, or other academic period; or shall be the period for which the loan is made as determined by the institution of higher education; and

(2) the term "period of enrollment" shall be the period for which the loan is made as determined by the institution of higher education and shall coincide with academic terms such as academic year, semester, trimester, quarter, or other academic period as defined by such institution.

(As amended Pub. L. 98-79, § 5(a), (b)(1), Aug. 15, 1983, 97 Stat. 481, 482.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-79, § 5(a)(1), substituted "for which the interest rate does not exceed 7 per centum" for "other than a loan for which the interest rate is determined under paragraph (2) or (3) of this subsection".

Subsec. (a)(2). Pub. L. 98-79, § 5(a)(2), substituted "any loan described in paragraph (1) or any loan for which the interest rate is determined under paragraph (1)" for "any loan made, insured, or guaranteed under this part, or who has such an outstanding balance on a loan for which the interest rate is determined under this paragraph".

Subsec. (a)(3). Pub. L. 98-79, § 5(a)(3), substituted "for a loan to cover the cost of education for any period of enrollment beginning on or after a date which is three months after a determination made under subsection (b) of this section in the case of any borrower who, on the date of entering into the note or other written evidence of the loan, has no outstanding balance of principal or interest on any loan for which the interest rate is determined under paragraph (1) or (2) of this subsection" for "in the case of any borrower not subject to paragraph (1) or (2) for any loan to cover the cost of education for any period of enrollment beginning on or after a date which is three months after a determination made under subsection (b) of this section".

Subsec. (e). Pub. L. 98-79, § 5(b)(1), added subsec. (e).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 5(b)(2) of Pub. L. 98-79 provided that: "The amendment made by this subsection [enacting subsec. (e) of this section] shall be effective as if enacted as part of the amendment made by section 415(a)(1) of the Education Amendments of 1980 [Pub. L. 96-374, which enacted this section]."

§ 1078. Federal interest subsidy payments

[See main edition for text of (a)]

(b) Agreements with State and nonprofit private institutions for subsidy payments on loans insured under student loan insurance program of such State or institution; standards for student loan insurance program; required provisions of agreement

(1) Any State or any nonprofit private institution or organization may enter into an agreement with the Secretary for the purpose of entitling students who receive loans which are insured under a student loan insurance program of that State, institution, or organization to have made on their behalf the payments provided for in subsection (a) of this section if the Secretary determines that the student loan insurance program—

[See main edition for text of (A) to (D)]

(E) subject to subparagraphs (D) and (L) of this paragraph and except as provided by subparagraph (M) of this paragraph, provides that repayment of loans shall be in installments over a period of not less than five years (unless the student, during the six months preceding the start of the repayment period, specifically requests that repayment be made over a shorter period) nor more than ten years beginning six months after the month in which the student ceases to pursue a full-time course of study at an eligible institution, except—

(i) that, if the program provides for the insurance of loans for part-time study at eligible institutions, the program shall provide that such repayment period shall begin not earlier than six months after the month in which the student ceases to carry at an eligible institution at least one-half the normal full-time academic workload as determined by the institution;

[*See main edition for text of* (*ii*), (*F*) *to* (*P*), (*2*); (*c*) *to* (*i*)]

(As amended Pub. L. 98-79, § 10(b), Aug. 15, 1983, 97 Stat. 484.)

AMENDMENTS

1983—Subsec. (b)(1)(E). Pub. L. 98-79, § 10(b)(1), inserted "the month in which" after "nor more than ten years beginning six months after" in the provisions before cl. (i).

Subsec. (b)(1)(E)(i). Pub. L. 98-79, § 10(b)(2), inserted "the month in which" after "not earlier than six months after".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-79 effective with respect to any loan under this part on which repayment has not commenced prior to Aug. 15, 1983, see section 10(c) of Pub. L. 98-79, set out as a note under section 1077 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 9 of Pub. L. 98-79 provided that: "The amendments made by section 417(c) of the Education Amendments of 1980 [Pub. L. 96-374, which enacted subsec. (f)(3)(A)(iv) and (v) of this section] shall be effective as if enacted as part of the amendment made by section 127(a) of the Education Amendments of 1976 [Pub. L. 94-482, see Effective Date of 1976 Amendment note set out below]."

GUARANTEED STUDENT LOAN FAMILY CONTRIBUTION SCHEDULE FOR THE PERIODS OF INSTRUCTION BEGINNING AFTER JUNE 30, 1983

Pub. L. 97-301, § 9, Oct. 13, 1982, 96 Stat. 1403, as amended by Pub. L. 98-79, § 4(b), Aug. 15, 1983, 97 Stat. 481; Pub. L. 98-511, title VII, § 707(7), (8), Oct. 19, 1984, 98 Stat. 2407, 2408, provided that:

"(a) Except as provided in subsections (b) and (c), the family contribution schedule for the period of instruction from July 1, 1983, through June 30, 1984, from July 1, 1984, through June 30, 1985, and from July 1, 1985, through June 30, 1986, and from July 1, 1986, through June 30, 1987, for loans made, insured, or guaranteed under part B of title IV of the Higher Education Act of 1965 [this part] shall be the family contribution schedule for such loans for the period of instruction from July 1, 1982, through June 30, 1983.

"(b) For purposes of subsection (a), the family contribution schedule for the period of instruction from July 1, 1982, through June 30, 1983, shall be modified by the Secretary of Education for use for each of the periods of instruction (beginning after June 30, 1983) described in subsection (a) to reflect the most recent and relevant data.

"(c) The modified family contribution schedule under this section shall be submitted not later than—

"(1) April 1, 1983, for the period of instruction from July 1, 1983, through June 30, 1984;

"(2) April 1, 1984, for the period of instruction from July 1, 1984, through June 30, 1985;

"(3) April 1, 1985, for the period of instruction from July 1, 1985, through June 30, 1986; and

"(4) April 1, 1986, for the period of instruction from July 1, 1986, through June 30, 1987,

and shall otherwise be subject to the provisions of section 482(a) of the Higher Education Act of 1965 [20 U.S.C. 1089(a)]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1071, 1072, 1073, 1075, 1078-1, 1078-2, 1080, 1081, 1082, 1083a, 1084, 1085, 1087, 1087-1, 1087-2, 1094, 1098, 1119d-2, 1232 of this title.

§ 1078-2. Auxiliary loans to assist students

(a) Borrowing authority; parents of undergraduates, independent undergraduates, graduate and professional students

(1) Parents of a dependent undergraduate student (as defined by regulations by the Secretary) shall be eligible to borrow funds under this part in amounts specified in subsection (b) of this section, and unless otherwise specified in subsections (c) and (d) of this section, such loans shall have the same terms, conditions, and benefits as all other loans made under this part. Whenever necessary to carry out the provisions of this section the terms "student" and "student borrower" used in this part shall include a parent borrower under this section, but such a parent borrower shall not be eligible for any deferment pursuant to section 1077(a)(2)(C) or 1078(b)(1)(M) of this title.

[*See main edition for text of* (*2*); (*b*) *to* (*d*)]

(As amended Pub. L. 98-79, § 12, Aug. 15, 1983, 97 Stat. 484.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-79 added ", but such a parent borrower shall not be eligible for any deferment pursuant to section 1077(a)(2)(C) or 1078(b)(1)(M) of this title".

§ 1083a. Student loan information by eligible lenders

(a) Required loan information

Each eligible lender shall, at or prior to the time such lender disburses a loan to a borrower which is insured or guaranteed under this part, provide thorough and accurate loan information on such loan to the borrower. Any disclosure required by this subsection may be made by an eligible lender as part of the written application material provided to the borrower, or as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. The disclosures shall include—

(1) the name of the eligible lender, and the address to which communications and payments should be sent;

(2) the principal amount of the loan;

(3) the amount of any charges, such as the origination fee and insurance premium, collected by the lender at or prior to the disbursal of the loan and whether such charges are deducted from the proceeds of the loan or paid separately by the borrower;

(4) the stated interest rate on the loan;

(5) the yearly and cumulative maximum amounts that may be borrowed;

(6) an explanation of when repayment of the loan will be required and when the borrower will be obligated to pay interest that accrues on the loan;

(7) a statement as to the minimum and maximum repayment term which the lender may impose, and the minimum annual payment required by law;

(8) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

(9) a statement that the borrower has the right to prepay all or part of the loan, at any time, without penalty, a statement summarizing circumstances in which repayment of the loan or interest that accrues on the loan may be deferred, and a brief notice of the program for repayment of loans, on the basis of military service, pursuant to section 902 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141, note);

(10) a definition of default and the consequences to the borrower if the borrower defaults, including a statement that the default may be reported to a credit bureau or credit reporting agency;

(11) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(12) an explanation of any cost the borrower may incur in the making or collection of the loan.

(b) Requisite disclosure to student borrower

Each eligible lender shall, at or prior to the start of the repayment period of the student borrower on loans made, insured, or guaranteed under this part, disclose to the borrower the information required under this subsection. Any disclosure required by this subsection may be made by an eligible lender either in a promissory note evidencing the loan or loans or in a written statement provided to the borrower. The disclosures shall include:

(1) the name of the eligible lender, and the address to which communications and payments should be sent;

(2) the scheduled date upon which the repayment period is to begin;

(3) the estimated balance owed by the borrower on the loan or loans covered by the disclosure as of the scheduled date on which the repayment period is to begin (including, if applicable, the estimated amount of interest to be capitalized);

(4) the stated interest rate on the loan or loans, or the combined interest rate of loans with different stated interest rates;

(5) the nature of any fees which may accrue or be charged to the borrower during the repayment period;

(6) the repayment schedule for all loans covered by the disclosure including the date the first installment is due, and the number, amount, and frequency of required payments;

(7) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

(8) the projected total of interest charges which the borrower will pay on the loan or loans, assuming that the borrower makes payments exactly in accordance with the repayment schedule; and

(9) a statement that the borrower has the right to prepay all or part of the loan or loans covered by the disclosure at any time without penalty.

(c) Availability of information without cost; consequences of failure to provide required information; limitation, suspension, or termination of participation of eligible lender by Secretary

Such information shall be available without cost to the borrower. The failure of an eligible lender to provide information as required by this section shall not (1) relieve a borrower of the obligation to repay a loan in accordance with its terms, (2) provide a basis for a claim for civil damages, or (3) be deemed to abrogate the obligation of the Secretary under a contract of insurance or reinsurance, or the obligation of a State or nonprofit private agency or organization which has an agreement with the Secretary under section 1078(b) of this title under a contract of guaranty. The Secretary may limit, suspend, or terminate the continued participation of an eligible lender in making loans under this part for failure by that lender to comply with this section.

(As amended Pub. L. 98-79, § 3(a), Aug. 15, 1983, 97 Stat. 476.)

REFERENCES IN TEXT

Section 902 of the Department of Defense Authorization Act, 1981, referred to in subsec. (a)(9), is section 902 of Pub. L. 96-342, title IX, Sept. 8, 1980, 94 Stat. 1115, as amended, which is set out as a note under section 2141 of Title 10, Armed Forces.

AMENDMENTS

1983—Pub. L. 98-79 amended section generally. Prior to the amendment, subsec. (a) required each eligible lender to enter into an agreement with the Secretary under which the eligible lender would, at the time such lender makes a loan to a student borrower which is insured or guaranteed under this part, provide thorough and accurate loan information on loans insured or guaranteed under this part to the student borrower, and required the loan information to include (1) the yearly and cumulative maximum amounts that may be borrowed by a student; (2) the terms on which repayment will begin; (3) the maximum number of years in which the loan must be repaid; (4) the interest rate that will be repaid, and the minimum amount of required monthly payment; (5) the amount of any other charges, including the origination fee, and the rate of the insurance premium charged to the student by the lender; (6) any special options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan; (7) a definition of default and the consequences to the borrower if the borrower should default, including a description of any arrangements made with credit bureau organizations; and (8) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; subsec. (b) required each eligible lender to enter into an agreement with the Secretary under which the eligible lender would, prior to the start of the repayment period of the student borrower on loans made, insured, or guaranteed under this part, disclose to the student borrower the information required under this subsection, and required the disclosures to include (1) the itemization of and the total of amounts financed, calculated by adding all amounts borrowed by the student borrower under this part, and subtracting all charges, including any origination fee or insurance premium, paid by the student borrower; (2) the dollar cost to the student borrower of the amount borrowed; (3) the dollar amount of total scheduled payments, calculated by adding the amounts in clauses (1) and (2); and (4) the repayment schedule of the student borrower, including the number, amounts, and frequency of payments; and subsec. (c) required the loan information under this section to be made available in a conspicuous form either in the note or other written evidence of the loan or in another written form signed by the borrower.

§ 1087-1. Special allowances

[*See main edition for text of* (*a*)]

(b) Payment authority; percentage calculation formula

[*See main edition for text of* (*1*)]

(2) [*See main edition for text of* (*A*)]

(B) [*See main edition for text of* (*i*) *and* (*ii*)]

(iii) No special allowance may be paid under this subparagraph unless the issuer of such obligations complies with subsection (d) of this section.

[*See main edition for text of* (*3*) *to* (*6*); (*c*)]

(d) Plan for doing business; contents; nondiscrimination

(1) In order for the holders of loans which were made or purchased with funds obtained by the holder from an Authority issuing obligations, the income from which is exempt from taxation under title 26, to be eligible to receive a special allowance under subsection (b)(2) of this section, the Authority shall submit to the Secretary a plan for doing business. The Secretary shall approve or disapprove such plan within thirty days after the date of its submission. Each such plan shall contain provisions designed to assure that—

(A) no eligible lender in the area served by the Authority will be excluded from participation in the program of the Authority and all eligible lenders may participate in the program on the same terms and conditions if eligible lenders are going to participate in the program;

(B) no director or staff member of the Authority who receives compensation from the Authority may own stock in, or receive compensation from, any agency that would contract to service and collect the loans of the Authority;

(C) student loans will not be purchased from participating lenders at a premium or discount amounting to more than 1 per centum of the unpaid principal amount borrowed plus accrued interest to the date of acquisition, but a reasonable loan transfer fee may be paid by the purchaser;

(D) the Authority will, within the limit of funds available and subject to the applicable State and Federal law, make loans to, or purchase loans incurred by, all eligible students who are residents of, or who attend an eligible institution within, the area served by the Authority;

(E) the Authority has a plan under which the Authority will pursue the development of new lender participation in a continuing program of benefits to students together with assurances of existing lender commitments to the program;

(F) there will be an annual audit of the Authority by a certified public accounting firm which will include review of compliance by the Authority with the provisions of the plan; and

(G) the Authority will not issue obligations for amounts in excess of the reasonable needs for student loan credit within the area served by the Authority, after taking into account existing sources of student loan credit in that area.

(2) In order for the holders of loans which were made or purchased with funds obtained by the holder from an Authority issuing obligations, the income from which is exempt from taxation under title 26, to be eligible to receive a special allowance under subsection (b)(2) of this section on any such loans, the Authority shall not engage in any pattern or practice which results in a denial of a borrower's access to loans under this part because of the borrower's race, sex, color, religion, national origin, age, handicapped status, income, attendance at a particular eligible institution within the area served by the Authority, length of the borrower's educational program, or the borrower's academic year in school.

(e) Regulations

The Secretary shall adopt or amend appropriate regulations pertaining to programs carried on under this part to prevent, where practicable, any practices which he finds have denied loans to a substantial number of eligible students.

(As amended Pub. L. 98-79, § 7(a), (c), Aug. 15, 1983, 97 Stat. 482, 483.)

AMENDMENTS

1983—Subsec. (b)(2)(B)(iii). Pub. L. 98-79, § 7(c), substituted "subsection (d) of this section" for "section 1087-1a of this title".

Subsecs. (d), (e). Pub. L. 98-79, § 7(a), added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 7(d) of Pub. L. 98-79 provided that: "Until two years after the date of enactment of this Act [Aug. 15, 1983], section 438(d)(2) of the Act [subsec. (d)(2) of this section] (as added by subsection (a) of this section) [subsec. (d)(2) of this section] shall not operate to prevent the payment of special allowances on loans described in such section 438(d)(2) because an Authority described in such section denies access to loans under part B of title IV of the Act [this part] to students in attendance at particular institutions with specified high default rates on such loans, if such denial is pursuant to a rule of such Authority adopted prior to August 1, 1983."

TREASURY DEPARTMENT DECISIONS AFFECTING TAX-EXEMPT BONDS; REVIEW PROCEDURES; APPLICABILITY

Pub. L. 98-369, div. A, title VI, § 646, July 18, 1984, 98 Stat. 941, provided that:

"(a) The Secretary of Education and the Secretary of the Treasury shall within 90 days of the date of enactment of this provision [July 18, 1984], establish procedures under which issuers affected by any decision of the Secretary of Education or his delegate under section 7 of the Student Loan Consolidation and Technical Amendments Act of 1983 [amending this section, repealing section 1087-1a of this title, and enacting provisions set out as a note under this section] may request and obtain a review of such decision by the Secretary of the Treasury or his delegate followed by a written report to the Secretary of Education and to such person with respect to such review to be filed no later than 60 days of the request for review (unless the person requesting such review consents to an extension of time).

"(b) Nothing in this section shall affect the exemption from income taxation of interest on any student loan bond or any issuer of such bonds."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1078, 1098 of this title; title 26 section 103; title 42 section 294a.

§ 1087-1a. Repealed. Pub. L. 98-79, § 7(b), Aug. 15, 1983, 97 Stat. 483

Section, Pub. L. 96-374, title IV, § 420(b), Oct. 3, 1980, 94 Stat. 1427, related to eligibility for special allowances covering loans made or purchased with funds obtained from Authorities issuing tax exempt obligations, and established requirement relating to plans for doing business. See section 1087-1(d) of this title.

§ 1087-2. Student Loan Marketing Association

[*See main edition for text of* (*a*) *to* (*k*)]

(*l*) Legal investments; exempt securities; agency of the United States; exemption from taxation; Association as legal person; priority of payment

All obligations issued by the Association including those made under subsection (d)(4) of this section shall be lawful investments, and may be accepted as security for all fiduciary, trust, and public funds, the investment or deposit of which shall be under authority or control of the United States or of any officer or officers thereof. All stock and obligations issued by the Association pursuant to this section shall be deemed to be exempt securities within the meaning of laws administered by the Securities and Exchange Commission, to the same extent as securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States. The Association shall, for the purposes of section 355(2) of title 12, be deemed to be an agency of the United States. The obligations of the Association shall be deemed to be obligations of the United States for purposes of section 3124(a) of title 31. For the purpose of the distribution of its property pursuant to section 726 of title 11, the Association shall be deemed a person within the meaning of such title. The priority established in favor of the United States by section 3713(a) of title 31 shall not establish a priority over the indebtedness of the Association issued or incurred on or before September 30, 1988.

[*See main edition for text of* (*m*) *and* (*n*)]

(*o*) Loan consolidation; extended flexible repayment terms

[*See main edition for text of* (*1*) *to* (*4*)]

(5) The authority of the Association to make loans under this section shall terminate on November 1, 1983.

[*See main edition for text of* (*p*) *and* (*q*)]

(As amended Pub. L. 98-79, §§ 2, 8, Aug. 15, 1983, 97 Stat. 476, 483.)

AMENDMENTS

1983—Subsec. (*l*). Pub. L. 98-79, § 8, substituted "September 30, 1988" for "September 30, 1984".

Subsec. (*o*)(5). Pub. L. 98-79, § 2, substituted "November 1, 1983" for "August 1, 1983".

PART D—DIRECT LOANS TO STUDENTS IN INSTITUTIONS OF HIGHER EDUCATION

§ 1087cc-1. Student loan information by institutions

(a) Required loan information

Each institution of higher education, in order to carry out the provisions of section 1087cc(a)(8) of this title, shall, at or prior to the time such institution makes a loan to a student borrower which is made under this part, provide thorough and adequate loan information on such loan to the student borrower. Any disclosure required by this subsection may be made by an institution of higher education as part of the written application material provided to the borrower, or as part of the promissory note evidencing the loan, or on a separate written form provided to the borrower. The disclosures shall include:

(1) the name of the institution of higher education, and the address to which communications and payments should be sent;

(2) the principal amount of the loan;

(3) the amount of any charges collected by the institution at or prior to the disbursal of the loan and whether such charges are deducted from the proceeds of the loan or paid separately by the borrower;

(4) the stated interest rate on the loan;

(5) the yearly and cumulative maximum amounts that may be borrowed;

(6) an explanation of when repayment of the loan will be required and when the borrower will be obligated to pay interest that accrues on the loan;

(7) a statement as to the minimum and maximum repayment term which the institution may impose, and the minimum monthly payment required by law;

(8) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

(9) a statement that the borrower has the right to prepay all or part of the loan, at any time, without penalty, a statement summarizing circumstances in which repayment of the loan or interest that accrues on the loan may be deferred, and a brief notice of the program for repayment of loans, on the basis of military service, pursuant to section 902 of the Department of Defense Authorization Act, 1981 (10 U.S.C. 2141, note);

(10) a definition of default and the consequences to the borrower if the borrower defaults, including a statement that the default

may be reported to a credit bureau or credit reporting agency;

(11) to the extent practicable, in effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(12) an explanation of any cost the borrower may incur in the making or collection of the loan.

(b) Requisite disclosure to student borrower

Each institution of higher education shall enter into an agreement with the Secretary under which the institution will, prior to the start of the repayment period of the student borrower on loans made under this part, disclose to the student borrower the information required under this subsection. Any disclosures required by this subsection may be made by an institution of higher education either in a promissory note evidencing the loan or loans or in a written statement provided to the borrower. The disclosures shall include—

(1) the name of the institution of higher education, and the address to which communications and payments should be sent;

(2) the scheduled date upon which the repayment period is to begin;

(3) the estimated balance owed by the borrower on the loan or loans covered by the disclosure as of the scheduled date on which the repayment period is to begin (including, if applicable, the estimated amount of interest to be capitalized);

(4) the stated interest rate on the loan or loans, or the combined interest rate of loans with different stated interest rates;

(5) the nature of any fees which may accrue or be charged to the borrower during the repayment period;

(6) the repayment schedule for all loans covered by the disclosure including the date the first installment is due, and the number, amount, and frequency of required payments;

(7) an explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan;

(8) the projected total of interest charges which the borrower will pay on the loan or loans, assuming that the borrower makes payments exactly in accordance with the repayment schedule; and

(9) a statement that the borrower has the right to prepay all or part of the loan or loans covered by the disclosure at any time without penalty.

(c) Availability of information without cost; consequences of failure to provide required information

Such information shall be available without cost to the borrower. The failure of an eligible institution to provide information as required by this section shall not (1) relieve a borrower of the obligation to repay a loan in accordance with its terms, (2) provide a basis for a claim for civil damages, or (3) be deemed to abrogate the obligation of the Secretary to make payments with respect to such loan.

(As amended Pub. L. 98-79, § 3(b), Aug. 15, 1983, 97 Stat. 478.)

References in Text

Section 902 of the Department of Defense Authorization Act, 1981, referred to in subsec. (a)(9), is section 902 of Pub. L. 96-342, title IX, Sept. 8, 1980, 94 Stat. 1115, as amended, which is set out as a note under section 2141 of Title 10, Armed Forces.

Amendments

1983—Pub. L. 98-79 amended section generally. Prior to the amendment, subsec. (a) required each institution of higher education, in order to carry out the provisions of section 1087cc(a)(8) of this title, to, at the time such institution makes a loan to a student borrower which is made under this part, provide thorough and adequate loan information on loans made under this part to the student borrower, and required the loan information to include (1) the yearly and cumulative maximum amounts that may be borrowed by a student; (2) the terms on which repayment will begin; (3) the maximum number of years in which the loan must be repaid; (4) the interest rate that will be repaid and the minimum amount of required monthly payment; (5) the amount of any other charges, including the origination fee, and the rate of the insurance premium charged to the student by the lender; (6) any special options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan; (7) a definition of default and the consequences to the borrower if the borrower should default, including a description of any arrangements made with credit bureau organizations; and (8) to the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; subsec. (b) required each institution of higher education, in order to carry out the provisions of section 1087cc(a)(8) of this title, to, prior to the start of the repayment period of the student borrower on loans made under this part, disclose to the student borrower the information required under this subsection, and required the disclosures by this subsection to include (1) the itemization of and the total of amounts financed, calculated by adding all amounts borrowed by the student borrower under this part, and subtracting all charges, including any origination fee or insurance premium, paid by the student borrower; (2) the dollar cost to the student borrower of the amount borrowed; (3) the dollar amount of total scheduled payments, calculated by adding the amounts in clauses (1) and (2); and (4) the repayment schedule of the student borrower, including the number, amounts, and frequency of payments; and subsec. (c) required the loan information to be made available in a conspicuous form either in the note or other written evidence of the loan or in another written form signed by the borrower.

PART E—GENERAL PROVISIONS RELATING TO STUDENT ASSISTANCE PROGRAMS

§ 1088. Definitions

References in Text

Subpart 6 of part A of this subchapter, referred to in subsec. (a)(1), was redesignated subpart 7 and new subpart 6 was added by Pub. L. 98-558, title VIII, § 801(a), Oct. 30, 1984, 98 Stat. 2900.

Section Referred to in Other Sections

This section is referred to in sections 1098, 1202 of this title; title 29 section 1503.

§ 1089. Need analysis

Establishment of Separate Systems of Need Analysis for Academic Years 1983-1984 Through 1986-1987

Pub. L. 97-301, § 4, Oct. 13, 1982, 96 Stat. 1400, as amended by Pub. L. 98-79, § 4(a), Aug. 15, 1983, 97 Stat. 480; Pub. L. 98-511, title VII, § 707(3), Oct. 19, 1984, 98 Stat. 2407, provided that: "The Secretary of Education shall establish or approve separate systems of need analysis for the academic years 1983-1984, 1984-1985, 1985-1986, and 1986-1987 for the programs authorized under subpart 2 of part A [20 U.S.C. 1070b et seq.], part C [42 U.S.C. 2751 et seq.], and part E [20 U.S.C. 1087aa et seq.] of title IV of the Higher Education Act of 1965."

Determination of Independent Student Status for Academic Years 1982-1983 Through 1986-1987

Pub. L. 97-301, § 6, Oct. 13, 1982, 96 Stat. 1400, as amended by Pub. L. 98-79, § 4(a), Aug. 15, 1983, 97 Stat. 481; Pub. L. 98-516, title VII, § 707(3), Oct. 19, 1984, 98 Stat. 2407, provided that: "Notwithstanding any rule or regulation, the criteria for the determination of independent student status, prescribed under section 482(c)(2) [subsec. (c)(2) of this section], of the Higher Education Act of 1965, in effect for academic year 1982-1983 shall be the criteria for such determinations for each of the academic years 1983-1984, 1984-1985, 1985-1986, and 1986-1987."

Section Referred to in Other Sections

This section is referred to in sections 1070a, 1070b, 1070b-1, 1078, 1078-2, 1087dd, 1087hh, 1119d-3, 1232 of this title; title 42 section 2753.

§ 1098. National Commission on Student Financial Assistance

[See main edition for text of (a) to (c)]

(d) Reports and recommendations; report dates; termination of Commission

[See main edition for text of (1) and (2)]

(3) The Commission shall cease to exist on November 1, 1983.

[See main edition for text of (e) to (h)]

(As amended Pub. L. 98-79, § 11, Aug. 15, 1983, 97 Stat. 484.)

Amendments

1983—Subsec. (d)(3). Pub. L. 98-79 substituted "on November 1, 1983" for "90 days following the submission of its final report".

SUBCHAPTER V—TEACHER CORPS AND TEACHER TRAINING PROGRAMS

Part E—Carl D. Perkins Scholarship Program

§ 1119d. Declaration of purpose; authorization of appropriations

(a) It is the purpose of this part to make available, through grants to the States, scholarships during fiscal years 1986 through 1990 to a maximum of ten thousand individuals who are outstanding high school graduates and who demonstrate an interest in teaching, in order to enable and encourage those individuals to pursue teaching careers in education at the elementary or secondary level. Such scholarships shall be referred to as "Carl D. Perkins Scholarships".

(b) There are authorized to be appropriated $20,000,000 for fiscal year 1986, $21,000,000 for fiscal year 1987, $22,000,000 for fiscal year 1988, and $23,000,000 for fiscal year 1989, for Carl D. Perkins Scholarships to eligible students under this part.

(Pub. L. 89-329, title V, § 561, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2894.)

Section Referred to in Other Sections

This section is referred to in sections 1119d-1, 1119d-2 of this title.

§ 1119d-1. Allocation among States

(a) Ratio

From the sums appropriated pursuant to section 1119d of this title for any fiscal year, the Secretary shall allocate to any State an amount which bears as nearly as possible the same ratio to such sums as the number of persons in that State bears to the number of persons in all States.

(b) Determination of number of persons

For the purpose of this section, the number of persons in a State and in all States shall be determined by the most recently available data from the United States Census Bureau.

(Pub. L. 89-329, title V, § 562, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2894.)

§ 1119d-2. Grant applications

(a) Authorization to make grants

The Secretary is authorized to make grants to States in accordance with the provisions of this part. In order to receive a grant under this part, a State shall submit an application at such time or times, in such manner, and containing such information as the Secretary may prescribe by regulation. Such application shall set forth a program of activities for carrying out the purposes set forth in section 1119d(a) of this title in such detail as will enable the Secretary to determine the degree to which such program will accomplish such purposes and such other policies, procedures, and assurances as the Secretary may require by regulation.

(b) Application requirements

The Secretary shall approve an application only if the application—

(1) describes the selection criteria and procedures to be used by the State in the selection of scholarships under this part which satisfy the provisions of this part;

(2) designates the State agency which administers the program under subpart 3 of part A of subchpater IV of this chapter, relating to State student incentive grants, or the State agency with which the Secretary has an agreement under section 1078(b) of this title;

(3) describes the outreach effort the State agency intends to use to publicize the availability of Carl D. Perkins Scholarships to high school students in the State;

(4) provides assurances that each recipient eligible under section 1119d-4(b) of this title

who receives a Carl D. Perkins Scholarship shall enter into an agreement with the State agency under which the recipient shall—

(A) within the ten-year period after completing the postsecondary education for which the Carl D. Perkins Scholarship was awarded, teach, for a period of not less than two years for each year for which assistance was received, in a public elementary or secondary school in any State, in a public education program in any State, or in a private nonprofit school located and serving students in a district eligible for assistance pursuant to chapter 1 of the Education Consolidation and Improvement Act of 1981 [20 U.S.C. 3801 et seq.], or, on a full-time basis, handicapped children or children with limited English proficiency in a private nonprofit school, except that, in the case of individuals who teach in a school serving large numbers or high concentrations of economically disadvantaged students, or who teach children with limited English proficiency or handicapped children, the requirements of this subparagraph shall be reduced by one-half;

(B) provide the State agency evidence of compliance with section 1119d-5 of this title as required by the State agency; and

(C) repay all or part of a Carl D. Perkins Scholarship received under section 1119d-3 of this title plus interest and, if applicable, reasonable collection fees, in compliance with regulations issued by the Secretary under section 1119d-6 of this title, in the event that the conditions of clause (A) are not complied with, except as provided for in section 1119d-7 of this title;

(5) provides that the agreement entered into with recipients shall fully disclose the terms and conditions under which assistance under this part is provided and under which repayment may be required. Such disclosure shall include—

(A) a description of the procedures required to be established under paragraph (6); and

(B) a description of the appeals procedures required to be established under paragraph (7) under which a recipient may appeal a determination of noncompliance with any provision under this part;

(6) provides for procedures under which a recipient of assistance received under this part who teaches for less than the period required under paragraph (4)(A) will have the repayment requirements reduced or eliminated consistent with the provisions of sections 1119d-6 and 1119d-7 of this title;

(7) provides for appeals procedures under which a recipient may appeal any determination of noncompliance with any provision under this part;

(8) provides assurances that the State agency shall make particular efforts to attract students from low-income backgrounds or who express a willingness or desire to teach in schools having less than average academic results or serving large numbers of economically disadvantaged students; and

(9) provides assurances that Carl D. Perkins Scholarships will be awarded without regard to sex, race, handicapping condition, creed, or economic background.

(c) Selection criteria and procedures; present and projected teacher needs

The selection criteria and procedures to be used by the State shall reflect the present and projected teacher needs of the State, including the demand for and supply of elementary teachers in the State, the demand for and supply of secondary teachers in the State, and the demand for teachers with training in specific academic disciplines in the State.

(d) Solicitation of views of agencies, institutions and other parties

In developing the selection criteria and procedures to be used by the State, the State shall solicit the views of State and local educational agencies, private educational institutions, and other interested parties. Such views—

(1) shall be solicited by means of (A) written comments; and (B) publication of proposed selection criteria and procedures in final form for implementation; and

(2) may be solicited by means of (A) public hearings on the teaching needs of elementary and secondary schools in the State (including the number of new teachers needed, the expected supply of new teachers, and the shortages in the State of teachers with training in specific academic disciplines); or (B) such other methods as the State may determine to be appropriate to gather information on such needs.

(Pub. L. 89-329, title V, § 563, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2894.)

References in Text

The Education Consolidation and Improvement Act of 1981, referred to in subsec. (b)(4)(A), is subtitle D [§§ 551 to 596] of title V of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 463, as amended. Chapter 1 of the Act is classified generally to subchapter I [§ 3801 et seq.] of chapter 51 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of this title and Tables.

Section Referred to in Other Sections

This section is referred to in sections 1119d-4, 1119d-7, 1119d-8 of this title.

§ 1119d-3. Amount and duration of and relation to other assistance

(a) Scholarship amount; duration

Subject to subsection (c) of this section, each Carl D. Perkins Scholar shall receive a $5,000 scholarship for each academic year of postsecondary education for study in preparation to become an elementary or secondary teacher. No individual shall receive scholarship assistance for more than four years of postsecondary education, as determined by the State agency.

(b) Eligibility for student assistance

Notwithstanding the provisions of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, scholarship funds awarded pursuant to this part shall be considered in determining eligibility for student assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(c) Cost of attendance; reduction of award

Carl D. Perkins Scholarship assistance awarded by the statewide panel established pursuant to section 1119d-4 of this title to any individual in any given year, when added to assistance received under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, shall not exceed the cost of attendance, as defined under section 1089(d) of this title, at the institution the individual is attending. If the amount of the Carl D. Perkins Scholarship assistance and assistance received under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, exceeds the cost of attendance, the Carl D. Perkins Scholarship shall be reduced by an amount equal to the amount by which the combined awards exceed the cost of attendance.

(d) Prohibition; exceeding cost of attendance

No individual shall receive an award under the Carl D. Perkins Scholarship established under this part, in any academic year, which shall exceed the cost of attendance, as defined under section 1089(d) of this title, at the institution the individual is attending.

(Pub. L. 89-329, title V, § 564, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2896.)

Section Referred to in Other Sections

This section is referred to in section 1119d-2 of this title.

§ 1119d-4. Selection of Carl D. Perkins Scholars

(a) Statewide panel; composition; appointment

Carl D. Perkins Scholars shall be selected by a seven-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency, or by an existing grant agency or panel designated by the chief State elected official and approved by the Secretary of Education. The statewide panel shall be representative of school administrators, teachers, and parents.

(b) Eligible students; applications; criteria and procedures; letters of recommendation

Selections of Carl D. Perkins Scholars shall be made from students who have graduated or who are graduating from high school and who rank in the top 10 per centum of their graduating class. The State educational agency shall make applications available to high schools in the State and in other locations convenient to applicants, parents, and others. The statewide panel shall develop criteria and procedures for the selection of Carl D. Perkins Scholars. Such criteria may include the applicant's high school grade point average, involvement in extracurricular activities, financial need, and expression of interest in teaching as expressed in an essay written by the applicant. The panel may also require the applicant to furnish letters of recommendation from teachers and others.

(Pub. L. 89-329, title V, § 565, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2896.)

Section Referred to in Other Sections

This section is referred to in sections 1119d-2, 1119d-4 of this title.

§ 1119d-5. Scholarship conditions

Recipients of scholarship assistance under this part shall continue to receive such scholarship payments only during such periods that the State agency finds that the recipient is (A) enrolled as a full-time student in an accredited postsecondary institution; (B) pursuing a course of study leading to teacher certification; and (C) maintaining satisfactory progress as determined by the postsecondary institution the recipient is attending.

(Pub. L. 89-329, title V, § 566, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2897.)

Section Referred to in Other Sections

This section is referred to in section 1119d-2 of this title.

§ 1119d-6. Scholarship repayment provisions

Recipients found by the State agency to be in noncompliance with the agreement entered into under section 1119d-2(b)(4) of this title shall be required to repay a pro rata amount of the scholarship awards received, plus interest and, where applicable, reasonable collection fees, on a schedule and at a rate of interest to be prescribed by the Secretary by regulations issued pursuant to this part.

(Pub. L. 89-329, title V, § 567, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2897.)

Section Referred to in Other Sections

This section is referred to in section 1119d-2 of this title.

§ 1119d-7. Exceptions to repayment provisions

(a) Violation of agreement

A recipient shall not be considered in violation of the agreement entered into pursuant to section 1119d-4(b)(4)(C) of this title if the recipient (1) returns to a full-time course of study related to the field of teaching at an eligible institution; (2) is serving, not in excess of three years, as a member of the armed services of the United States; (3) is temporarily totally disabled for a period of time not to exceed three years as established by sworn affidavit of a qualified physician; (4) is unable to secure employment for a period not to exceed twelve months by reason of the care required by a spouse who is disabled; (5) is seeking and unable to find full-time employment for a single period not to exceed twelve months; (6) is seeking and unable to find full-time employment as a teacher in a public elementary or secondary school or a public education program; or (7) satisfies the provisions of additional repayment exceptions that may be prescribed by the

Secretary in regulations issued pursuant to this part.

(b) Excused from repayment; permanently totally disabled

A recipient shall be excused from repayment of any scholarship assistance received under this part if the recipient becomes permanently totally disabled as established by sworn affidavit of a qualified physician.

(Pub. L. 89-329, title V, § 568, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2897.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1119d-2 of this title.

§ 1119d-8. Federal administration of State programs; judicial review

(a) Disapproval: application; notice and hearing

The Secretary shall not finally disapprove any application for a State program submitted under section 1119d-2 of this title, or any modification thereof, without first affording the State agency submitting the program reasonable notice and opportunity for a hearing.

(b) Notification of ineligibility; conditions

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State agency administering a State program approved under this part, finds—

(1) that the State program has been so changed that it no longer complies with the provisions of this part, or

(2) that in the administration of the program there is a failure to comply substantially with any such provisions,

the Secretary shall notify such State agency that the State will not be regarded as eligible to participate in the program under this part until the Secretary is satisfied that there is no longer any such failure to comply.

(c) Judicial review; summons and notice of appeal; findings of fact of Secretary; jurisdiction; review by Supreme Court

(1) If any State is dissatisfied with the Secretary's final action under subsection (b)(1) or (2) of this section, such State may appeal to the United States court of appeals for the circuit in which such State is located. The summons and notice of appeal may be served at any place in the United States. The Secretary shall forthwith certify and file in the court the transcript of the proceedings and the record on which the action was based.

(2) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify any previous action, and shall certify to the court the transcript and record of further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(3) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review [illegible] the Supreme Court of the United State[illegible] certiorari or certification as provided in [illegible] on 1254 of title 28.

(Pub. L. 89-329, title V, § 569, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2898.)

PART F—NATIONAL TALENTED TEACHER FELLOWSHIP PROGRAM

§ 1119e. Declaration of purpose

It is the purpose of this part to establish a national fellowship program for outstanding teachers.

(Pub. L. 89-329, title V, § 571, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2898.)

§ 1119e-1. Authorization of appropriations; allocation among States

There are authorized to be appropriated $1,000,000 for fiscal year 1986, $2,000,000 for fiscal year 1987, $3,000,000 for fiscal year 1988, and $4,000,000 for fiscal year 1989, for fellowships to outstanding teachers under this part. Not more than 2½ per centum of these funds shall be used for purposes of administering this part.

(Pub. L. 89-329, title V, § 572, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2898.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1119e-2 of this title.

§ 1119e-2. Talented teacher fellowships

(a) Awards; amount; duration; alternative distribution

(1) Except as provided under paragraph (3), sums available for the purpose of this part shall be used to award one national teacher fellowship to a public or private school teacher teaching in each congressional district of each State, and in the District of Columbia, and the Commonwealth of Puerto Rico; and one such fellowship in Guam, the Virgin Islands, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Fellowship awards may not exceed the average national salary of public school teachers in the most recent year for which satisfactory data are available, as determined by the Secretary. Talented teacher fellows may not receive an award for two consecutive years. Subject to the repayment provisions of section 1119e-5 of this title, talented teacher fellows shall be required to return to a teaching position in their current school district or private school system for at least two years following the fellowship award.

(3) If the appropriation under section 1119e-1 of this title is not sufficient to provide the number of fellowships required by paragraph (1) at the level required under paragraph (2), the Secretary shall determine and publish an

alternative distribution of fellowships which will permit fellowship awards at that level and which is geographically equitable. The Secretary shall send a notice of such determination to each of the statewide panels established under section 1119e-3 of this title.

(b) Award use

Talented teacher fellows may use such awards for such projects for improving public education as the Secretary may approve, including (1) sabbaticals for study or research directly associated with the objectives of this part, or academic improvement; (2) consultation with or assistance to other school districts or private school systems; (3) development of special innovative programs; or (4) model teacher programs and staff development.

(Pub. L. 89-329, title V, § 573, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1934, 98 Stat. 2899.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1119e-4 of this title.

§ 1119e-3. Selection of talented teacher fellowships

Recipients of talented teacher fellowship in each State shall be selected (in accordance with section 1119e-4 of this title) by a seven-member statewide panel appointed by the chief State elected official, acting in consultation with the State educational agency, or by an existing panel designated by the chief State elected official and approved by the Secretary of Education. The statewide panel shall be representative of school administrators, teachers, parents, and institutions of higher education.

(Pub. L. 89-329, title V, § 574, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2899.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119e-2, 1119e-4 of this title.

§ 1119e-4. Evaluation of applications

(a) Submission of proposals; consultation; local education agencies; recommendations; regulations

An applicant for talented teacher fellowship assistance shall submit proposals for projects under section 1119e-2(b) of this title, and shall indicate the extent to which the applicant wishes to continue current teaching duties. The applicant shall submit such proposals to the local education agency for comment prior to submission to the statewide panel (appointed under section 1119e-3 of this title) for the State within which the project is to be conducted. In evaluating proposals, such statewide panel shall consult with the local education agency, requesting two recommendations from teaching peers; a recommendation from the principal; and a recommendation of the superintendent on the quality of the proposal and its benefit to the local education agency; and any other criteria for awarding fellowships as is considered appropriate by such statewide panel. Selection of fellows shall be made in accordance with regulations prescribed by the Secretary of Education.

(b) Announcement; public ceremony

Announcement of awards shall be made in a public ceremony.

(Pub. L. 89-329, title V, § 575, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2899.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1119e-3 of this title.

§ 1119e-5. Fellowship repayment provisions

Repayment of the award shall be made to the Federal Government in the case of fraud or gross noncompliance.

(Pub. L. 89-329, title V, § 576, as added Pub. L. 98-558, title VII, § 701, Oct. 30, 1984, 98 Stat. 2900.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1119e-2 of this title.

SUBCHAPTER VII—CONSTRUCTION, RECONSTRUCTION, AND RENOVATION OF ACADEMIC FACILITIES

§ 1132a-1. Authorization of appropriations

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 98-95, § 4(c), Sept. 26, 1983, 97 Stat. 711, provided that: "Notwithstanding section 516(g) of such Act [section 516(g) of Pub. L. 97-35, set out as a note below], there are authorized to be appropriated such sums as may be necessary to carry out parts A and B [20 U.S.C. 1132b et seq., 1132c] of title VII of the Higher Education Act of 1965."

PART D—GENERAL

§ 1132e-1. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 sections 1812, 1813.

SUBCHAPTER IX—GRADUATE PROGRAMS

PART E—LAW SCHOOL CLINICAL EXPERIENCE PROGRAMS

§ 1134p. Authorization of appropriations

LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR CERTAIN FISCAL YEARS

Pub. L. 98-312, § 4(a), June 12, 1984, 98 Stat. 233, provided that: "Notwithstanding any other provision of law, the total amount which may be appropriated to carry out part E of title IX of the Higher Education Act of 1965 [this part], relating to law school clinical experience programs, shall not exceed $1,500,000 in fiscal year 1985, $2,000,000 in fiscal year 1986, $2,000,000 in fiscal year 1987, $2,500,000 in fiscal year 1988, and $3,000,000 in fiscal year 1989."

SUBCHAPTER X—FUND FOR THE IMPROVEMENT OF POSTSECONDARY EDUCATION

PART B—ESTABLISHMENT OF AGENCIES

§ 1135c-1. Community College Unit

(a) Establishment

There is established, in the Department of Education, a Community College Unit (in this section referred to as the "Unit") which shall have the responsibility for coordinating all programs administered by the Secretary which affect, or can benefit, community colleges, including such programs assisted under this chapter, and the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.].

[*See main edition for text of (b)*]

(As amended Pub. L. 98-524, § 4(c)(3), Oct. 19, 1984, 98 Stat. 2488.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (a), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, which is classified generally to chapter 44 (§ 2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-524 substituted "the Carl D. Perkins Vocational Education Act" for "the Vocational Education Act of 1963".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of this title.

SUBCHAPTER XII—GENERAL PROVISIONS

§ 1141. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1088, 1098, 2002, 3902, 3982, 4206 of this title; title 18 section 207; title 22 section 4502; title 25 sections 13, 1801, 1813; title 29 sections 631, 1503; title 30 section 1291; title 33 section 1262; title 39 section 3626; title 42 sections 3791, 9877.

CHAPTER 30—BASIC EDUCATION FOR ADULTS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1013, 1014, 2323, 2325, 3489 of this title; title 42 section 3013.

§ 1201. Congressional declaration of purpose

AMENDMENT OF SECTION

Pub. L. 98-511, title I, § 101, title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2366, 2408, provided that, effective July 1, 1985, this section is amended by inserting after "basic" in cl. (1) the following: "literacy", and by inserting after "training" in cl. (3) the following: "and education".

§ 1202. Definitions

AMENDMENT OF SECTION

Pub. L. 98-511, title I, § 102(a)-(e), title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2366, 2408, provided that, effective July 1, 1985, subsections (a), (b), (d), (g), and (j) of this section are amended to read as follows:

(a) The term "adult" means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law, except that for the purpose of section 1204(a) of this title, the term "adult" means an individual 16 years of age or older.

(b) The term "adult education" means instruction or services below the college level for adults who do not have—

(1) the basic skills to enable them to function effectively in society; or

(2) a certificate of graduation from a school providing secondary education (and who have not achieved an equivalent level of education).

(d) The term "Secretary" means the Secretary of Education.

(g) The term "State" includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(j) The term "institution of higher education" means any such institution as defined by section 1088 of this title.

§ 1203. Grants to States

AMENDMENT OF SUBSECTION (a)

Pub. L. 98-511, title I, §§ 101(f)(1), 103, title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2367, 2408, provided that, effective July 1, 1985, subsection (a) of this section is amended by designating existing provisions as par. (1), in par. (1) as so designated by substituting "Secretary" for "Commissioner", substituting "establishment or expansion" for "establishment of expansion", striking out "nonprofit" each place it appears, and redesignating clauses (1) and (2) as (A) and (B), respectively, and by adding at the end the following new paragraph:

(2) Grants provided under this section may not be used to carry out programs by a for-profit agency, organization, or institution unless such agency, organization, or institution (A) can make a significant contribution to attaining the objectives of this Act, and (B) can provide substantially equivalent education at a lesser cost or can provide services and equipment not available in public institutions. Whenever the establishment or expansion of programs is carried out by a for-profit agency, organization, or institution, the State educational agency or eligible applicant shall enter into a contract with such agency, organization, or institution, for the establishment or expansion of such programs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1204, 1205, 1207a, 1208b, 1211 of this title.

§ 1204. Allotment of grant funds

AMENDMENT OF SECTION

Pub. L. 98-511, title I, §§ 102(f)(1), 104, title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2367, 2408, provided that, effective July 1, 1985, this section is amended by substituting "Secretary" for "Commissioner" wherever it appears, and subsection (a) is amended by striking out "From" and inserting in lieu thereof "Subject to the last sentence of this subsection, from"; by striking out "not more than 1 per centum thereof among" in cl. (1) and inserting in lieu thereof "$100,000 each to"; by striking out "$150,000" in cl. (2) and inserting in lieu thereof "$250,000"; and by striking out the last sentence and inserting in lieu thereof "No State shall be allotted in any fiscal year beginning after September 30, 1984, an amount less than that State received for fiscal year 1984.".

§ 1205. State plans

[*See main edition for text of (a)*]

(b) Requisites for State plans

A State plan under this chapter shall—

[*See main edition for text of (1) to (10)*]

(11) provide that special assistance be given to the needs of persons with limited English proficiency (as defined in section 703(a) of title VII of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 3223(a)]) by providing a bilingual adult education program of instruction in English and, to the extent necessary to allow such persons to progress effectively through the adult education program, in the native language of such persons, carried out in coordination with programs of bilingual education assisted under title VII [20 U.S.C. 3221 et seq.] and bilingual vocational education programs under the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.];

[*See main edition for text of (12) to (14); (c)*]

(As amended Pub. L. 98-524, § 4(d)(1), Oct. 19, 1984, 98 Stat. 2488.)

AMENDMENT OF SECTION

Pub. L. 98-511, title I, §§ 102(f)(1), 105, title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2367, 2408, provided that, effective July 1, 1985, this section is amended by substituting "Secretary" for "Commissioner" each place it appears, in subsection (a)(1) by substituting "1232d" for "1232c", and in subsection (b) by striking out "and" at the end of clause (13), striking out clause (14), and inserting in lieu thereof the following:

(14) provide such information about the State's adult education students, programs, expenditures, and goals as the Secretary may require, together with information with respect to the age, sex, and race of students in the programs assisted under this Act and whether the students complete such programs; and

(15) provide such further assurances and information as the Secretary may require.

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (b)(11), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, which is classified generally to chapter 44 (§ 2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

AMENDMENTS

1984—Subsec. (b)(11). Pub. L. 98-524 substituted "the Carl D. Perkins Vocational Education Act" for "the Vocational Education Act of 1963".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of this title.

§ 1206. Payments to States

AMENDMENT OF SUBSECTION (b)

Pub. L. 98-511, title I, §§ 102(f)(1), 106, title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2367, 2368, 2408, provided that, effective July 1, 1985, subsection (b) of this section is amended by substituting "Secretary" for "Commissioner", by designating existing provisions as paragraph (1), and by adding at the end the following new paragraph:

(2) The Secretary may waive, for one fiscal year only, the requirements of paragraph (1) of this subsection, if the Secretary determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State educational agency.

§ 1207. Cessation of payments for noncompliance with plan

AMENDMENT OF SECTION

Pub. L. 98-511, title I, § 107, title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2368, 2408, provided that, effective July 1, 1985, this section is amended to read as follows:

§ 1207. Administration of State plans

Whenever the Secretary has reason to believe that, in administering its State plan, a State has failed to comply substantially with any provision of that State plan, the Secretary may take appropriate action under sections 1234b and 1234c of this title.

§ 1207a. Research, development, dissemination, evaluation, and information clearinghouse

AMENDMENT OF SECTION

Pub. L. 98-511, title I, § 108, title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2368, 2408, provided that, effective July 1, 1985, this section is amended to read as follows:

§ 1207a. Research, development, demonstration, dissemination, and evaluation

(a)(1) The Secretary shall, with funds set aside under section 1211(b) of this title, support applied research, development, demonstration, dissemination, evaluation, and related activities which will contribute to the improvement and expansion of adult education in the United States. The activities required by this subsection may include—

(A) improving adult education opportunities for elderly individuals and adult immigrants,

(B) evaluating educational technology and computer software suitable for providing instruction to adults, and

(C) supporting exemplary cooperative adult education programs which combine the resources of businesses, schools and community organizations.

(2)(A) The Secretary may support such activities directly, or through grants to, or contracts or cooperative agreements with, public or private institutions, agencies, or organizations, or individuals, including business concerns.

(B) Whenever the Secretary makes a grant or enters into a contract or cooperative agreement with any private for-profit institution, agency, organization, individual, or business concern, the Secretary shall assure that participants in the program assisted under this subsection are not charged for their participation.

(b) In addition to the responsibilities of the Director under section 1221e of this title, the Director of the National Institute of Education may, with funds available under that section or with funds set aside under section 1211(b) of this title, support research on the special needs of individuals requiring adult education. The Director may support such research directly, or through grants to, or contracts or cooperative agreements with, public or private institutions, agencies, or organizations, or individuals.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1211 of this title.

§ 1208a. Special projects for the elderly

REPEAL OF SECTION

Pub. L. 98-511, title I, § 109(a)(1), title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2369, 2408, provided that, effective July 1, 1985, this section is repealed.

§ 1208b. State advisory councils

AMENDMENT OF SECTION

Pub. L. 98-511, title I, § 109(a)(2), title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2369, 2408, provided that, effective July 1, 1985, this section is renumbered section 311 of Pub. L. 89-750 and amended to read as follows:

Any State may use funds granted under section 1203 of this title to support a State advisory council which assists the State educational agency to plan, implement, or evaluate programs or activities assisted under this Act.

§ 1209. National Advisory Council on Adult Education

AMENDMENT OF SECTION

Pub. L. 98-511, title I, §§ 102(f)(1), 109(a)(2), 111, title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2367, 2369, 2408, provided that, effective July 1, 1985, this section is renumbered section 312 of Pub. L. 89-750 and amended by substituting "1988" for "1984" in subsection (b) and "Secretary" for "Commissioner" in subsections (b) and (c).

§ 1210. Grants for sectarian instruction, religious worship, or school or department of divinity prohibited

AMENDMENT OF SECTION

Pub. L. 98-511, title I, § 109(a)(2), title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2369, 2408, provided that, effective July 1, 1985, this section is renumbered section 313 of Pub. L. 89-750.

§ 1211. Authorization of appropriations

AMENDMENT OF SECTION

Pub. L. 98-511, title I, §§ 109(a)(2), 112, title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2369, 2408, provided that, effective July 1, 1985, this section is renumbered section 314 of Pub. L. 89-750 and amended to read as follows:

(a) Fiscal year authorizations

For the purpose of carrying out this chapter there are authorized to be appropriated $140,000,000 for fiscal year 1985 and such sums as may be necessary for each of the three succeeding fiscal years.

(b) Amount for research and grant programs; limitation

(1) From the amount appropriated pursuant to subsection (a) of this section for any fiscal year the Secretary may set aside not to exceed 5 per centum of that amount for programs under section 1207a of this title. The remainder of the amount appropriated in each fiscal year shall be available for grants made under section 1203 of this title.

(2) No set aside may be made pursuant to paragraph (1) of this subsection in any fiscal year in which the amount appropriated pursuant to subsection (a) of this section is less than $112,000,000.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1207a of this title.

§ 1211a. Grants for improvement of educational opportunities for adult Indians

[*See main edition for text of* (a) *to* (d)]

(e) Authorization of appropriations

For the purpose of making grants under this section there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1973, and $8,000,000 for each of the succeeding fiscal years ending prior to October 1, 1986.

There is also authorized to be appropriated for such purpose for each of the fiscal years 1987, 1988, and 1989, an amount not to exceed the amount appropriated for such purpose for fiscal year 1986.

(As amended Pub. L. 98-511, title V, § 513(d), Oct. 19, 1984, 98 Stat. 2400.)

AMENDMENT OF SECTION

Pub. L. 98-511, title I, §§ 102(f)(1), 109(a)(2), title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2367, 2369, 2408, provided that, effective July 1, 1985, this section is renumbered section 315 of Pub. L. 89-750 and amended by substituting "Secretary" for "Commissioner" each place it appears.

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-511, § 513(d), substituted "October 1, 1986" for "October 1, 1983" and authorized appropriations for fiscal years 1987 through 1989, in amounts not to exceed appropriation for fiscal year 1986.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 513(d) of Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 1211c. Adult education program for adult immigrants

(a) Grant and contract authority

The Secretary is authorized to enter into grants and contracts with State and local education agencies and other public or private nonprofit agencies, organizations, or institutions to provide programs of adult education and adult basic education to immigrant adults in need of such services. Such grants and contracts may be used for—

[*See main edition for text of* (1) *to* (3)]

(4) special projects designed to operate in conjunction with existing Federal and non-Federal programs and activities to develop occupational and related skills for individuals, particularly programs authorized under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] or under the Carl D. Perkins Vocational Education Act [20 U.S.C. 2301 et seq.].

[*See main edition for text of* (b) *to* (f)]

(As amended Pub. L. 98-524, § 4(d)(2), Oct. 19, 1984, 98 Stat. 2489.)

REPEAL OF SECTION

Pub. L. 98-511, title I, § 109(a)(1), title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2369, 2408, provided that, effective July 1, 1985, this section is repealed.

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (a)(4), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, which is classified generally to chapter 44 (§ 2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98-524 substituted "the Carl D. Perkins Vocational Education Act" for "the Vocational Education Act of 1963".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of this title.

CHAPTER 31—GENERAL PROVISIONS CONCERNING EDUCATION

SUBCHAPTER III—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS: GENERAL AUTHORITY OF SECRETARY

PART II—ADMINISTRATION: REQUIREMENTS AND LIMITATIONS

Sec.	
1232-1.	Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1652, 2738, 2811, 2815, 2816, 2831, 2834, 2836, 2837, 3441, 3487, 3489, 3876 of this title.

SUBCHAPTER I—OFFICES AND PERSONNEL IN DEPARTMENT OF EDUCATION

§ 1221e. National Institute of Education

[*See main edition for text of* (a) *to* (j)]

(k) National assessment of educational progress

(1) In addition to other responsibilities of the Institute under this section, the Institute shall carry out, by grant to or cooperative agreement (subject to the provisions of chapter 63 of title 31) with a nonprofit education organization, a National Assessment of Educational Progress which shall have as a primary purpose the assessment of the performance of children and young adults in the basic skills of reading, mathematics, and communication. Such a National Assessment shall—

[*See main edition for text of* (A) *and* (B)]

(C) conduct special assessments of other educational areas, as the need for additional national information arises;

(D) provide technical assistance to State educational agencies and to local educational agencies on the use of National Assessment objectives, primarily pertaining to the basic skills of reading, mathematics, and communication, and on making comparisons of such assessments with the national profile and change data developed by the National Assessment; and

(E) with respect to each State which voluntarily participates in accordance with paragraph (5), provide for a statement of information collected by the National Assessment for each such State.

[*See main edition for text of* (2)]

(3) The Assessment Policy Committee established by paragraph (2) shall be responsible for

the design of the National Assessment, including the selection of the learning areas to be assessed, the development and selection of goal statements and assessment items, the assessment methodology, the form and content of the reporting and dissemination of assessment results, and studies to evaluate and improve the form and utilization of the National Assessment. The appropriateness of all cognitive, background, and attitude items developed as part of the National Assessment shall be the responsibility of the Assessment Policy Committee. Such items shall be subject to review by the Department of Education and the Office of Management and Budget for a single period of not more than 60 days.

[*See main edition for text of* (*4*) *to* (*6*)]

(7) There are authorized to be appropriated $8,000,000 for fiscal year 1985, and $10,800,000 for each succeeding fiscal year ending prior to October 1, 1989, to carry out the provisions of this subsection.

(*l*) "United States" and "State" defined

For purposes of this section, the terms "United States" and "State" include the District of Columbia and Puerto Rico.

(As amended Pub. L. 98-511, title VII, §§ 702(a), 703, 704(a), Oct. 19, 1984, 98 Stat. 2405, 2406.)

AMENDMENTS

1984—Subsec. (k)(1)(E). Pub. L. 98-511, § 703(a), added subpar. (E).

Subsec. (k)(3). Pub. L. 98-511, § 703(b), made the Assessment Policy Committee responsible for appropriateness of cognitive, background, and attitude items developed as part of the National Assessment, subject to review by the Department of Education and the Office of Management and Budget for a single period of not more than 60 days.

Subsec. (k)(7). Pub. L. 98-511, § 702(a), substituted "$8,000,000 for fiscal year 1985, and $10,800,000 for each succeeding fiscal year ending prior to October 1, 1989" for "$10,500,000 for each fiscal year ending prior to October 1, 1983".

Subsec. (*l*). Pub. L. 98-511, § 704(a), added subsec. (*l*).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1207a, 1232, 3246 of this title.

§ 1221e-1. National Center for Education Statistics

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Limitation of funds for salaries and expenses, and grants and contracts; separate line item appropriations

(1) The amount available for salaries and expenses of the Center shall not exceed $5,000,000 for the fiscal year ending June 30, 1975, $10,000,000 for the fiscal year ending June 30, 1976, and $14,000,000 for each of the fiscal years ending prior to October 1, 1989.

(2) The amount available for grants and contracts by the Assistant Secretary under subsection (e) of this section shall not exceed $10,000,000 for fiscal year 1985, $12,000,000 for fiscal year 1986, $14,000,000 for fiscal year 1987, $16,000,000 for fiscal year 1988, and $18,000,000 for fiscal year 1989.

[*See main edition for text of* (*3*); (*h*)]

(i) "United States" and "State" defined

For purposes of this section, the terms "United States" and "State" include the District of Columbia and Puerto Rico.

(As amended Pub. L. 98-511, title VII, §§ 702(b), 704(b), Oct. 19, 1984, 98 Stat. 2406.)

AMENDMENTS

1984—Subsec. (g)(1). Pub. L. 98-511, § 702(b)(1), substituted "October 1, 1989" for "October 1, 1983".

Subsec. (g)(2). Pub. L. 98-511, § 702(b)(2), substituted "Assistant Secretary" for "Secretary" and provisions authorizing appropriations of $10,000,000, $12,000,000, $14,000,000, $16,000,000, and $18,000,000 for fiscal years 1985 through 1989, respectively, for provisions authorizing appropriations of $20,000,000 and $25,000,000 for fiscal years ending June 30, 1975, and June 30, 1976, respectively, and $30,000,000 for each fiscal year ending prior to Oct. 1, 1983.

Subsecs. (h), (i). Pub. L. 98-511, § 704(b), added subsec. (i) and redesignated former subsec. (i) as (h).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

STUDY BY NATIONAL CENTER FOR EDUCATION STATISTICS RESPECTING CONDITION OF EDUCATION FOR HISPANIC AMERICANS

Pub. L. 98-211, § 24(b), Dec. 8, 1983, 97 Stat. 1419, provided that: "The National Center for Education Statistics shall not terminate the study of the condition of education for Hispanic Americans unless specifically required or authorized to do so by law."

LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982, 1983, AND 1984

Pub. L. 97-35, title V, § 515(b), Aug. 13, 1981, 95 Stat. 446, as amended by Pub. L. 98-211, § 24(a), Dec. 8, 1983, 97 Stat. 1419, provided that: "The total amount of appropriations to carry out section 406(g)(2) of the General Education Provisions Act [subsec (g)(2) of this section] shall not exceed $8,947,000 for each of the fiscal years 1982, 1983, and 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1119a-1, 1221-3, 1232, 3247 of this title.

§ 1221e-1a. State responsibility to furnish information

(a) Report to Secretary; contents

The Secretary shall require that each State submit to him, within ninety days after the end of any fiscal year, a report on the uses of Federal funds in that State under any applicable program for which the State is responsible for administration. Such report shall—

(1) list all grants and contracts made under such program to the local educational agencies and other public and private agencies and institutions within such State during such year;

(2) include the total amount of funds available to the State under each such program

for such fiscal year and specify from which appropriation Act or Acts these funds were available; and

(3) be made readily available by the State to local educational agencies and other public and private agencies and institutions within the State, and to the public.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-211, § 18(b), Dec. 8, 1983, 97 Stat. 1417.)

AMENDMENTS

1983—Subsec. (a)(3) to (5). Pub. L. 98-211 struck out par. (3) which related to compilation of reports setting forth amount of Federal funds received by local educational agencies, etc., struck out par. (4) which related to statistical report on individuals, and redesignated par. (5) as (3).

§ 1221e-3. General authority of administrative heads of education agencies

SUPERSEDURE OF SUBSECTION (a)(1)

Section 3876(b)(1) of this title provides that subsection (a)(1) of this section is superseded by section 3871(a) of this title with respect to programs authorized by chapter 51 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1232g, 3876 of this title.

§ 1221g. National Advisory Council on Indian Education

(a) Establishment; membership; appointment; geographic representation; termination of Council

There is hereby established the National Advisory Council on Indian Education (referred to in the Indian Education Act as the "National Council"), which shall consist of fifteen members who are Indians and Alaska Natives appointed by the President of the United States. Such appointments shall be made by the President from lists of nominees furnished, from time to time, by Indian tribes and organizations, and shall represent diverse geographic areas of the country. Subject to section 1233g(b) of this title, the National Council shall continue to exist until October 1, 1989.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-511, title V, § 513(b)(5), Oct. 19, 1984, 98 Stat. 2400.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-511 substituted "October 1, 1989" for "October 1, 1983".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SUBCHAPTER II—APPROPRIATIONS AND EVALUATIONS

PART 2—PLANNING AND EVALUATION OF FEDERAL EDUCATION ACTIVITIES

§ 1226c. Annual evaluation reports to Congressional committees

(a) Time of submission; purpose; contents

Not later than December 31 of each year, the Secretary shall transmit to the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate an annual evaluation report which evaluates the effectiveness of applicable programs (including compliance with provisions of law requiring the maintenance of non-Federal expenditures for the purposes of such applicable programs) in achieving their legislated purposes together with recommendations relating to such programs for the improvement of such programs which will result in greater effectiveness in achieving such purposes. In the case of any evaluation report evaluating specific programs and projects, such report shall—

[*See main edition for text of* (*A*) *to* (*F*); (*b*)]

(As amended Pub. L. 98-511, title VII, § 705, Oct. 19, 1984, 98 Stat. 2406.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-511 substituted "December 31" for "November 1".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SUBCHAPTER III—GENERAL REQUIREMENTS AND CONDITIONS CONCERNING OPERATION AND ADMINISTRATION OF EDUCATION PROGRAMS: GENERAL AUTHORITY OF SECRETARY

PART I—GENERAL AUTHORITY

§ 1231c. Advice, counsel and technical assistance

SUPERSEDURE OF SUBSECTION (a)

Section 3876(b)(2) of this title provides that subsection (a) of this section is superseded by section 3871(b) of this title with respect to programs authorized by chapter 51 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3876 of this title.

§ 1231d. Parental involvement and dissemination

SUPERSEDURE OF SECTION

Section 3876(b)(3) of this title provides that this section is superseded by section 3805(b)(3) of this title with respect to programs authorized by chapter 51 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3876 of this title.

PART II—ADMINISTRATION: REQUIREMENTS AND LIMITATIONS

§ 1231g. Applications

SUPERSEDURE OF SECTION

Section 3876(b)(4) of this title provides that this section is superseded by sections 3805(a) and 3814(b) of this title with respect to programs authorized by chapter 51 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3876 of this title.

§ 1232. Regulations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 927, 1078, 1221-3, 1407, 3345, 3474 of this title; title 25 section 2018.

§ 1232-1. Maintenance of effort determination by Secretary

REPEAL OF SECTION

Pub. L. 98-511, title I, § 109(b), title VII, § 711(b), Oct. 19, 1984, 98 Stat. 2369, 2408, provided that, effective July 1, 1985, this section is repealed.

SUPERSEDURE OF SECTION

Section 3876(b)(5) of this title provides that this section is superseded by section 3807(a) of this title with respect to programs authorized by chapter 51 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3876 of this title.

§ 1232a. Prohibition against Federal control of education

CROSS REFERENCES

Job training partnership provisions, prohibition of Federal control of education, see section 1555 of Title 29, Labor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3953 of this title.

PART III—ADMINISTRATION OF EDUCATION PROGRAMS AND PROJECTS BY STATES AND LOCAL EDUCATIONAL AGENCIES

§ 1232c. State educational agency monitoring and enforcement

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1205, 2464, 2816, 3876 of this title.

§ 1232d. Single State application

[*See main edition for text of* (*a*)]

(b) Assurances

An application submitted under subsection (a) of this section shall set forth assurances, satisfactory to the Secretary—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) that the State will make reports to the Secretary (including reports on the results of evaluations required under paragraph (4)) as may reasonably be necessary to enable the Secretary to perform his duties under each program, and that the State will maintain such records, in accordance with the requirements of section 1232f of this title, and afford access to the records as the Secretary may find necessary to carry out his duties;

(7) that the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for and operation of each program, including the following:

[*See main edition for text of* (*A*) *to* (*C*)]

(D) the State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations; and

(8) that none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-511, title VII, § 706(a), Oct. 19, 1984, 98 Stat. 2406.)

AMENDMENTS

1984—Subsec. (b)(8). Pub. L. 98-511 added par. (8).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1205, 1234a, 1234d, 2324, 2832, 3876 of this title.

§ 1232e. Single local educational agency application

[*See main edition for text of* (*a*)]

(b) Assurances

The general application submitted by a local educational agency under subsection (a) of this section shall set forth assurances—

[*See main edition for text of* (*1*) *to* (*6*)]

(7) that in the case of any project involving construction—

(A) the project is not inconsistent with overall State plans for the construction of school facilities, and

(B) in developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under section 794 of title 29 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals;

(8) that the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects; and

(9) that none of the funds expended under any applicable program will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-511, title VII, § 706(b), Oct. 19, 1984, 98 Stat. 2407.)

Amendments

1984—Subsec. (b)(9). Pub. L. 98-511 added par. (9).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

Part IV—Records; Privacy; Limitation on Withholding Federal Funds

§ 1232f. Records

Section Referred to in Other Sections

This section is referred to in sections 1232d, 1232e of this title.

SUBCHAPTER IV—ADVISORY COUNCILS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1221g, 3262, 3346 of this title.

§ 1233d. Professional, technical and clerical staff

Section Referred to in Other Sections

This section is referred to in section 3262 of this title.

§ 1233e. Meetings of advisory councils

Section Referred to in Other Sections

This section is referred to in section 3262 of this title.

§ 1233g. Report by Secretary

Section Referred to in Other Sections

This section is referred to in sections 1145, 1209, 1221e-1, 1221g, 1244, 2852, 3262 of this title.

SUBCHAPTER V—ENFORCEMENT

§ 1234b. Withholdings

Supersedure of Section

Section 3876(b)(6) of this title provides that this section is superseded by section 3872 of this title with respect to programs authorized by chapter 51 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1207, 1234, 1234c, 1234d, 2832, 3876, 4062 of this title.

§ 1234c. Cease and desist orders

Section Referred to in Other Sections

This section is referred to in sections 1207, 1234, 1234d, 4062 of this title.

§ 1234d. Judicial review

Supersedure of Section

Section 3876(b)(7) of this title provides that this section is superseded by section 3873 of this title with respect to programs authorized by chapter 51 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1234a, 1234b, 1234c, 3876 of this title.

CHAPTER 32—VOCATIONAL EDUCATION

Codification

The Vocational Education Act of 1963, Pub. L. 88-210, title I, as added Pub. L. 90-576, title I, Oct. 16, 1968, 82 Stat. 1064, formerly classified to this chapter, was completely amended and reorganized by the Education Amendments of 1976, Pub. L. 94-482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2169, and was classified to section 2301 et seq. of this title. For subsequent revision of Pub. L. 88-210 and redesignation as the Carl D. Perkins Vocational Education Act, see note set out preceding section 2301 of this title.

CHAPTER 33—EDUCATION OF THE HANDICAPPED

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
1402. Office of Special Education Programs.
  (a) Establishment; purposes.
  (b) Deputy Assistant Secretary: selection and supervision, compensation; Associate Deputy Assistant Secretary and minimum number of assistants: establishment, compensation.
1403. National Advisory Committee on the Education of Handicapped Children and Youth.
  (a) Establishment; membership.
  (b) Functions; recommendations; report to Congress.
  (c) Authorization of appropriations.
1407. Regulation requirements.
  (a) Minimum period for comment before effective date.
  (b) Lessening of procedural or substantive protections as in effect on July 20, 1983, prohibited.
  (c) Transmission to Advisory Committee.

SUBCHAPTER III—CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF THE HANDICAPPED

1422. Services for deaf-blind children and youth.
  (a) Grant and contract authority; types and scope of programs; governing considerations.

Sec.
- (b) Contract authority for regional programs of technical assistance.
- (c) Annual report to Secretary; examination of numbers and services and revision of numbers; annual report to Congress: summary of data.
- (d) Dissemination of materials and information concerning working practices.

1423. Experimental preschool and early education programs for handicapped children.
- (a) Authorization; special problems of handicapped; community coordination of programs; geographical dispersion; Federal share: non-Federal contributions; "handicapped children" defined.
- (b) Special education and related services through comprehensive delivery system for handicapped children of certain age; types of grants; applications for grants; annual report: additional information.
- (c) Minimum percentage of funds for certain subsection (b) purposes.

1424. Research, innovation, training, and dissemination activities in connection with model centers and services for the handicapped.
- (a) Grant and contract authority.
- (b) Coordination of activities with similar activities under other sections of this chapter.
- (c) Needs of severely handicapped.

1424a. Development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education; grant and contract authority; priority of programs; "handicapped individual" defined.

1425. Secondary education and transitional services for handicapped youth.
- (a) Grant and contract authority; statement of purposes.
- (b) Description of specific projects.
- (c) Coordination of noneducational agency applicant with State educational agency.
- (d) Participation in planning, development, and implementation of projects.
- (e) Coordination of educational programs with vocational rehabilitation projects.

1426. Program evaluations; submittal of analyses to Congressional committees.

1427. Authorization of appropriations.

SUBCHAPTER IV—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

1431. Grants to institutions of higher education and other appropriate agencies for personnel training.
- (a) Careers in special education; personnel training standards; costs of courses, fellowships, and traineeships; contract authority for areas of personnel shortages.
- (b) Special projects for preservice training, regular educators, and inservice training of special education personnel.
- (c) Parent training and information programs.

Sec.
1433. Grants or contracts to improve recruiting of educational personnel and dissemination of information concerning educational opportunities for the handicapped.
- (a) National clearinghouse on education of handicapped; establishment; other support projects; statement of objectives.
- (b) National clearinghouse on postsecondary education for handicapped; establishment; statement of purpose.
- (c) Considerations governing awards; limitation of contracts with profit-making organizations.

1434. Reports to the Secretary.

1435. Authorization of appropriations.

1436. Omitted.

SUBCHAPTER V—RESEARCH IN THE EDUCATION OF THE HANDICAPPED

1441. Research, surveys, and demonstration projects to assist appropriate personnel and other persons in education of handicapped children and youth.
- (a) Grant and contract authority; statement of objectives; description of specific activities.
- (b) Qualifications of applicant.
- (c) Publication of research priorities in Federal Register.
- (d) Reports of research projects; index of research projects for annual report; availability to interested parties.
- (e) Coordination of related research priorities; information respecting research priorities to Federal entities.

SUBCHAPTER VII—SPECIAL PROGRAMS FOR CHILDREN WITH SPECIFIC LEARNING DISABILITIES

1461. Repealed.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2323, 2372, 2421, 3441 of this title; title 29 sections 721, 1577; title 42 section 6024.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1400. Congressional statements and declarations

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-199, § 1, Dec. 2, 1983, 97 Stat. 1357, provided: "That this Act [enacting sections 1407 and 1427 of this title, amending sections 1401 to 1404, 1406, 1411 to 1414, 1416 to 1426, 1431 to 1435, 1441 to 1444, 1452, 1454, and 1461 of this title, repealing section 1461 of this title, omitting section 1436 of this title, enacting a provision set out as a note under section 1401 of this title, and amending provisions set out as notes under sections 101, 681, and 1411 of this title] may be cited as the 'Education of the Handicapped Act Amendments of 1983'."

§ 1401. Definitions

(a) As used in this chapter—

(1) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services.

(2) Repealed. Pub. L. 98–199, § 2(2), Dec. 2, 1983, 97 Stat. 1357.

(3) The term "Advisory Committee" means the National Advisory Committee on the Education of Handicapped Children.

[See main edition for text of (4) and (5)]

(6) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

[See main edition for text of (7) to (22)]

(b) For purposes of subchapter III of this chapter, "handicapped youth" means any handicapped child (as defined in subsection (a)(1) of this section) who—

(1) is twelve years of age or older; or

(2) is enrolled in the seventh or higher grade in school.

(Pub. L. 91–230, title VI, § 602, Apr. 13, 1970, 84 Stat. 175; Pub. L. 94–142, § 4(a), Nov. 29, 1975, 89 Stat. 775; Pub. L. 98–199, §§ 2, 3(b), Dec. 2, 1983, 97 Stat. 1357, 1358.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98–199, § 2(6), designated existing provisions as subsec. (a).

Subsec. (a)(1). Pub. L. 98–199, § 2(1), included language impaired children within term "handicapped children".

Subsec. (a)(2). Pub. L. 98–199, § 2(2), struck out definition of "Commissioner" as meaning the Commissioner of Education.

Subsec. (a)(3). Pub. L. 98–199, § 2(3), inserted "the Education of" after "Committee on".

Subsec. (a)(6). Pub. L. 98–199, § 2(4), included the Northern Mariana Islands within the term "State".

Subsec. (a)(11)(E). Pub. L. 98–199, § 3(b), substituted "Secretary" for "Commissioner" wherever appearing.

Subsec. (a)(14). Pub. L. 98–199, § 2(5), substituted "Secretary of Education" for "Secretary of Health, Education, and Welfare".

Subsec. (b). Pub. L. 98–199, § 2(7), added subsec. (b).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 18 of Pub. L. 98–199 provided that:

"(a) Except as provided in subsection (b), the provisions of this Act [enacting sections 1407 and 1427 of this title; amending sections 1401 to 1404, 1406, 1411 to 1414, 1416 to 1426, 1431 to 1435, 1441 to 1444, 1452, 1454, and 1461 of this title; repealing section 1461 of this title; omitting section 1436 of this title; enacting a provision set out as a note under section 1400 of this title; and amending provisions set out as notes under sections 101, 681, and 1411 of this title] shall take effect on the date of enactment of this Act [Dec. 2, 1983].

"(b)(1) To the extent that the amendments made by this Act to parts C, D, E, and G of the Education of the Handicapped Act [subchapters III, IV, V and VII of this chapter] prohibit or limit the use of funds, such amendments shall apply only to funds obligated after the date of enactment of this Act [Dec. 2, 1983].

"(2) As determined necessary by the Secretary of Education for purposes of providing services under the Education of the Handicapped Act [this chapter] pending the issuance of regulations implementing the amendments made by this Act, the Secretary shall provide financial assistance under parts C, D, E, and G of the Act as in effect on the day before the date of enactment of this Act until issuance of such regulations or March 1, 1984, whichever is earlier."

§ 1402. Office of Special Education Programs

(a) Establishment; purposes

There shall be, within the Office of Special Education and Rehabilitative Services in the Department of Education, an Office of Special Education Programs which shall be the principal agency in the Department for administering and carrying out this chapter and other programs and activities concerning the education and training of the handicapped.

(b) Deputy Assistant Secretary: selection and supervision, compensation; Associate Deputy Assistant Secretary and minimum number of assistants: establishment, compensation

(1) The office established under subsection (a) of this section shall be headed by a Deputy Assistant Secretary who shall be selected by the Secretary and shall report directly to the Assistant Secretary for Special Education and Rehabilitative Services. The position of Deputy Assistant Secretary shall be in grade GS–18 of the General Schedule under section 5104 of title 5, and shall be a Senior Executive Service position for the purposes of section 3132(a)(2) of such title.

(2) In addition to such Deputy Assistant Secretary, there shall be established in such office not less than six positions for persons to assist the Deputy Assistant Secretary, including the position of the Associate Deputy Assistant Secretary. Each such position shall be in grade GS–15 of the General Schedule under section 5104 of title 5.

(Pub. L. 91–230, title VI, § 603, Apr. 13, 1970, 84 Stat. 177; Pub. L. 93–380, title VI, § 612(a), Aug. 21, 1974, 88 Stat. 579; Pub. L. 98–199, § 3(a), Dec. 2, 1983, 97 Stat. 1357.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (b), is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1983—Pub. L. 98–199 substituted provisions respecting establishment of Office of Special Education Programs within the Office of Special Education and Rehabilitative Services in the Department of Education, including executive personnel thereof for provisions designating a bureau for education and training of handicapped within the Office of Education, including executive personnel consisting of a Deputy Commissioner of Education, appointed and supervised by the Commissioner, and an Associate Deputy Commissioner and four assistantships, and providing for compensation of such personnel under the General Schedule.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–199 effective Dec. 2, 1983, see section 18 of Pub. L. 98–199, set out as a note under section 1401 of this title.

§ 1403. National Advisory Committee on the Education of Handicapped Children and Youth

(a) Establishment; membership

The Secretary shall establish in the Department of Education a National Advisory Committee on the Education of Handicapped Children and Youth, consisting of fifteen members, appointed by the Secretary. Not less than five such members shall be parents of handicapped children and the remainder shall be handicapped persons (including students), persons affiliated with education, training, or research programs for the handicapped, and those having demonstrated a commitment to the education of handicapped children.

(b) Functions; recommendations; report to Congress

The Advisory Committee shall review the administration and operation of the programs authorized by this chapter and other provisions of law administered by the Secretary with respect to handicapped children (including the effect of such programs in improving the educational attainment of such children) and make recommendations for the improvement of such programs. Such recommendations shall take into consideration experience gained under this and other Federal programs for handicapped children and, to the extent appropriate, experience gained under other public and private programs for handicapped children. The Advisory Committee may make such recommendations to the Secretary as the Committee considers appropriate and shall make an annual report of its findings and recommendations to the Secretary not later than June 30 of each year. The Secretary shall transmit each such report, together with comments and recommendations, to the Congress.

(c) Authorization of appropriations

There are authorized to be appropriated for the purposes of this section $200,000 for fiscal year 1984, and for each of the two succeeding fiscal years.

(Pub. L. 91-230, title VI, § 604, Apr. 13, 1970, 84 Stat. 177; Pub. L. 93-380, title VI, § 613, Aug. 21, 1974, 88 Stat. 580; Pub. L. 94-273, §§ 3(14), 13(2), Apr. 21, 1976, 90 Stat. 376, 378; Pub. L. 98-199, § 4, Dec. 2, 1983, 97 Stat. 1358.)

Amendments

1983—Pub. L. 98-199 amended section generally, substituting provisions establishing the National Advisory Committee on the Education of Handicapped Children and Youth for provisions establishing the National Advisory Committee on Handicapped Children and providing for the termination of the Committee on Oct. 1, 1977.

1976—Subsec. (b). Pub. L. 94-273 substituted "October" for "July" and "June 30" for "March 31".

1974—Subsec. (b). Pub. L. 93-380, § 613(a), continued existence of National Committee until July 1, 1977.

Subsec. (c). Pub. L. 93-380, § 613(b), added subsec. (c).

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

Effective Date of 1974 Amendment

Amendment by Pub. L. 93-380 effective on and after sixtieth day after Aug. 21, 1974, see section 2(c) of Pub. L. 93-380, set out as a note under section 241b of this title.

Termination of Advisory Committees

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1404. Acquisition of equipment and construction of necessary facilities

[*See main edition for text*]

(Pub. L. 91-230, title VI, § 605, Apr. 13, 1970, 84 Stat. 177; Pub. L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358.)

Amendments

1983—Subsec. (a). Pub. L. 98-199 substituted "Secretary" for "Commissioner".

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

§ 1406. Grants for removal of architectural barriers; authorization of appropriations

(a) The Secretary is authorized to make grants and to enter into cooperative agreements with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units to pay part or all of the cost of altering existing buildings and equipment in accordance with standards promulgated under the Act approved August 12, 1968 (Public Law 90-480) [42 U.S.C. 4151 et seq.], relating to architectural barriers.

(b) For the purposes of carrying out the provisions of this section, there are authorized to be appropriated such sums as may be necessary.

(Pub. L. 91-230, title VI, § 607, as added Pub. L. 94-142, § 6(a), Nov. 29, 1975, 89 Stat. 795, and amended Pub. L. 98-199, §§ 3(b), 5, Dec. 2, 1983, 97 Stat. 1358.)

Amendments

1983—Subsec. (a). Pub. L. 98-199, § 5, amended subsec. (a) generally, substituting provisions authorizing the Secretary to make grants and to enter into cooperative agreements with State educational agencies to assist such agencies in making grants to local educational agencies or intermediate educational units in accordance with standards promulgated under Pub. L. 90-480 for provisions authorizing the Secretary to make grants, upon application by any State or local educational agency or intermediate educational unit, in the same manner and same extent as authorized by Pub. L. 90-480.

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

Subsec. (b). Pub. L. 98-199, § 5, reenacted subsec. (b) without change.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

§ 1407. Regulation requirements

(a) Minimum period for comment before effective date

For purposes of complying with section 1232(b) of this title with respect to regulations promulgated under subchapter II of this chapter, the thirty-day period under such section shall be ninety days.

(b) Lessening of procedural or substantive protections as in effect on July 20, 1983, prohibited

The Secretary may not implement, or publish in final form, any regulation prescribed pursuant to this chapter which would procedurally or substantively lessen the protections provided to handicapped children under this chapter, as embodied in regulations in effect on July 20, 1983 (particularly as such protections relate to parental consent to initial evaluation or initial placement in special education, least restrictive environment, related services, timelines,[1] attendance of evaluation personnel at IEP meetings, or qualifications of personnel), except to the extent that such regulation reflects the clear and unequivocal intent of the Congress in legislation.

(c) Transmission to Advisory Committee

The Secretary shall transmit a copy of any regulations promulgated under this chapter to the National Advisory Committee on the Education of the Handicapped [2] concurrently with publication in the Federal Register.

(Pub. L. 91-230, title VI, § 608, as added Pub. L. 98-199, § 6, Dec. 2, 1983, 97 Stat. 1359.)

EFFECTIVE DATE

Section effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as an Effective Date of 1983 Amendment note under section 1401 of this title.

SUBCHAPTER II—ASSISTANCE FOR EDUCATION OF ALL HANDICAPPED CHILDREN

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1407, 1422, 1431 of this title.

§ 1411. Entitlements and allocations

(a) Formula for determining maximum State entitlement

[*See main edition for text of* (*1*)]

(2) For the purpose of this subsection and subsection (b) through subsection (e) of this section, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

[*See main edition for text of* (*3*) *to* (*5*); (*b*) *to* (*d*)]

(e) Territories and possessions

(1) The jurisdictions to which this subsection applies are Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

[*See main edition for text of* (*2*) *and* (*3*); (*f*) *and* (*g*)]

(Pub. L. 91-230, title VI, § 611, Apr. 13, 1970, 84 Stat. 178; Pub. L. 93-380, title VI, § 614(a), (e)(1), (2), Aug. 21, 1974, 88 Stat. 580, 582; Pub. L. 94-142, §§ 2(a)(1)-(3), 5(a), (c), Nov. 29, 1975, 89 Stat. 773, 776, 794; Pub. L. 95-561, title XIII, § 1341(a), Nov. 1, 1978, 92 Stat. 2364; Pub. L. 96-270, § 13, June 14, 1980, 94 Stat. 498; Pub. L. 98-199, §§ 3(b), 15, Dec. 2, 1983, 97 Stat. 1358, 1374.)

AMENDMENTS

1983—Subsec. (a)(2). Pub. L. 98-199, § 15, excluded from the term "State" the Northern Mariana Islands.

Subsec. (a)(5). Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

Subsec. (e)(1). Pub. L. 98-199, § 15, extended applicability of subsec. (e) to the Northern Mariana Islands.

Subsecs. (e)(2), (f). Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

LIMITATION ON AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEARS 1982, 1983, AND 1984

Pub. L. 97-35, title VI, § 602(a)(1), Aug. 13, 1981, 95 Stat. 483, as amended by Pub. L. 98-199, § 16(a), Dec. 2, 1983, 97 Stat. 1374, provided that: "There is authorized to be appropriated to carry out part B of the Education of the Handicapped Act [this subchapter], other than sections 618 and 619 [sections 1418 and 1419 of this title], $969,850,000 for fiscal year 1982, and $1,017,900,000 for the fiscal year 1983, and $1,071,850,000 for the fiscal year 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1413, 1414, 1419 of this title.

§ 1412. Eligibility requirements

[*See main edition for text*]

(Pub. L. 91-230, title VI, § 612, Apr. 13, 1970, 84 Stat. 178; Pub. L. 92-318, title IV, § 421(b)(1)(C), June 23, 1972, 86 Stat. 341; Pub. L. 93-380, title VI, §§ 614(b), (f)(1), 615(a), title VIII, § 843(b), Aug. 21, 1974, 88 Stat. 581, 582, 611; Pub. L. 94-142, §§ 2(a)(4), (c), (d), 5(a), Nov. 29, 1975, 89 Stat. 773, 774, 780; Pub. L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358.)

AMENDMENTS

1983—Pub. L. 98-199 substituted in provision preceding par. (1) and in par. (2)(E) "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1400, 1411, 1413, 1414, 1416, 1418, 1419, 1423, 2334 of this title; title 29 section 796d.

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[1] So in original. Probably should be "timeliness".

[2] So in original. Probably should be "of Handicapped Children and Youth".

§ 1413. State plans

[See main edition for text of (a) to (c)]

(d) Participation of handicapped children in private schools; payment of Federal amount: determinations of Secretary: notice and hearing; judicial review: jurisdiction of court of appeals, petition, record, conclusiveness of findings, remand, review by Supreme Court

(1) If, on December 2, 1983, a State educational agency is prohibited by law from providing for the participation in special programs of handicapped children enrolled in private elementary and secondary schools as required by subsection (a)(4) of this section, the Secretary shall waive such requirement, and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of subsection (a)(4) of this section.

(2)(A) When the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services an amount per child which may not exceed the Federal amount provided per child under this subchapter to all handicapped children enrolled in the State for services for the fiscal year preceding the fiscal year for which the determination is made.

(B) Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of such services.

(C) Any determination by the Secretary under this section shall continue in effect until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(4) of this section.

(3)(A) The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or his designee to show cause why such action should not be taken.

(B) If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A) of this paragraph, it may, within 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28.

(C) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(D) Upon the filing of a petition under subparagraph (B), the court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(Pub. L. 91-230, title VI, § 613, Apr. 13, 1970, 84 Stat. 179; Pub. L. 93-380, title VI, §§ 614(c), (d), 615(b), (c), title VIII, § 843(b)(2), Aug. 21, 1974, 88 Stat. 581, 583, 611; Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 782; Pub. L. 98-199, §§ 3(b), 7, Dec. 2, 1983, 97 Stat. 1358, 1359.)

Amendments

1983—Subsecs. (a), (c). Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner" wherever appearing.

Subsec. (d). Pub. L. 98-199, § 7, added subsec. (d).

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1411, 1412, 1414 to 1416, 1419 of this title.

§ 1414. Application

[See main edition for text]

(Pub. L. 91-230, title VI, § 614, Apr. 13, 1970, 84 Stat. 181; Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 784; Pub. L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358.)

Amendments

1983—Subsec. (b)(1). Pub. L. 98-199 substituted "Secretary" for "Commissioner".

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1401, 1411, 1412, 1413, 1418, 1420, 2334 of this title; title 29 section 796d.

§ 1416. Withholding of payments

[See main edition for text]

(Pub. L. 91-230, title VI, § 616, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 789, and amended Pub. L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358.)

Amendments

1983—Pub. L. 98-199 substituted "Secretary" for "Commissioner" wherever appearing in text and "Secretary's" for "Commissioner's" in subsec. (b)(1).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

§ 1417. Administration

[*See main edition for text*]

(Pub. L. 91-230, title VI, § 617, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 791, and amended Pub. L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358.)

REFERENCES IN TEXT

Section 1418 of this title, referred to in subsec. (d), was amended generally by Pub. L. 98-199, § 8, Dec. 2, 1983, 97 Stat. 1360, and, as so amended, the subject matter of subsecs. (b), (c), and (d) of that section is generally contained in subsecs. (b) and (f).

CODIFICATION

In subsec. (b), the words "(and the Secretary, in carrying out the provisions of subsection (c) of this section)", preceding "shall issue", have been omitted as redundant in view of the amendment by Pub. L. 98-199 substituting "the Secretary" for "the Commissioner" following "of this subchapter,".

AMENDMENTS

1983—Pub. L. 98-199 substituted "Secretary" for "Commissioner" wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

§ 1418. Evaluation

(a) Duties of Secretary

The Secretary shall directly or by grant, contract, or cooperative agreement, collect data and conduct studies, investigations, and evaluations—

(1) to assess progress in the implementation of this chapter, the impact, and the effectiveness of State and local efforts to provide free appropriate public education to all handicapped children and youth; and

(2) to provide Congress with information relevant to policymaking and provide Federal, State, and local educational agencies with information relevant to program management, administration, and effectiveness with respect to such education.

(b) Collection of data on education of handicapped children and youth; additional information

In carrying out the responsibilities under this section, the Secretary, on at least an annual basis, shall obtain data concerning programs and projects assisted under this chapter, and under other Federal laws relating to the education of handicapped children and youth, and such additional information, from State and local educational agencies and other appropriate sources, as is necessary for the implementation of this chapter including—

(1) the number of handicapped children and youth in each State receiving a free appropriate public education (special education and related services) by disability category and by age group (3-5, 6-11, 12-17, and 18-21);

(2) the number of handicapped children and youth in each State who are participating in regular educational programs, by disability category (consistent with the requirements of section 1412(5)(B) and section 1414(a)(1)(C)(iv) of this title), and the number of handicapped children and youth in separate classes, separate schools or facilities, or public or private residential facilities, or who have been otherwise removed from the regular education environment;

(3) the number of handicapped children and youth exiting the educational system each year through program completion or otherwise, by disability category and age, and anticipated services for the next year;

(4) the amount of Federal, State, and local funds expended in each State specifically for special education and related services (which may be based upon a sampling of data from State agencies including State and local educational agencies);

(5) the number and type of personnel that are employed in the provision of special education and related services to handicapped children and youth by disability category served, and the estimated number and type of additional personnel by disability category needed to adequately carry out the policy established by this chapter; and

(6) a description of the special education and related services needed to fully implement the [2] chapter throughout each State, including estimates of the number of handicapped children and youth within each disability by age group (3-5, 6-11, 12-17, and 18-21) in need of improved services and the type of programs and services in need of improvement.

(c) Evaluation studies by grant, contract, or cooperative agreement

The Secretary shall, by grant, contract, or cooperative agreement, provide for evaluation studies to determine the impact of this chapter. Each such evaluation shall include recommendations for improvement of the programs under this chapter. The Secretary shall, not later than July 1 of each year, submit to the appropriate committees of each House of the Congress and publish in the Federal Register proposed evaluation priorities for review and comment.

(d) Cooperative agreements with State educational agencies

(1) The Secretary is authorized to enter into cooperative agreements with State educational agencies to carry out studies to assess the impact and effectiveness of programs assisted under the [2] chapter.

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[2] So in original. Probably should be "this".

(2) Such agreements shall—

(A) provide for the payment of not to exceed 60 per centum of the total cost of studies conducted by a participating State educational agency to assess the impact and effectiveness of programs assisted under the [2] chapter; and

(B) be developed in consultation with the State Advisory Panel established under this chapter, the local educational agencies, and others involved in or concerned with the education of handicapped children and youth.

(3) The Secretary shall provide technical assistance to participating State educational agencies in the implementation of the study design, analysis, and reporting procedures.

(4) In addition, the Secretary shall disseminate information from such studies to State educational agencies, and as appropriate, others involved in, or concerned with the education of handicapped children and youth.

(e) Specifically mandated studies

(1) At least one study shall be a longitudinal study of a sample of handicapped students, encompassing the full range of handicapping conditions, examining their educational progress while in special education and their occupational, educational, and independent living status after graduating from secondary school or otherwise leaving special education.

(2) At least one study shall focus on obtaining and compiling current information available through State educational agencies and local educational agencies and other service providers, regarding State and local expenditures for educational services for handicapped students (including special education and related services), and gather information needed in order to calculate a range of per pupil expenditures by handicapping condition.

(f) Annual report

(1) Not later than one hundred and twenty days after the close of each fiscal year, the Secretary shall publish and disseminate an annual report on the progress being made toward the provision of a free appropriate public education to all handicapped children and youth. The annual report is to be transmitted to the appropriate committees of each House of Congress and the National Advisory Committee on the Education of Handicapped Children and Youth, and published and disseminated in sufficient quantities to the education community at large and to other interested parties.

(2) The Secretary shall include in each annual report—

(A) an index and summary of each evaluation activity and results of studies conducted under subsection (c) of this section;

(B) a compilation and analysis of data gathered under subsection (b) of this section;

(C) a description of findings and determinations resulting from monitoring reviews of State implementation of this subchapter;

(D) an analysis and evaluation of the participation of handicapped children and youth in vocational education programs and services;

(E) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to ensure that handicapped children and youth receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children and youth in day or residential facilities; and

(F) any recommendations for change in the provisions of this chapter or any other Federal law providing support for the education of handicapped children and youth.

(3) In the annual report for fiscal year 1985 (published in 1986) and for every third year thereafter, the Secretary shall include in the annual report—

(A) an index of all current projects funded under subchapters III through VI of this chapter; and

(B) data reported under sections 1421, 1422, 1423, 1426, 1434, 1441, and 1453 of this title.

(g) Authorization of appropriations

There are authorized to be appropriated $3,100,000 for fiscal year 1984, $3,270,000 for fiscal year 1985, and $3,440,000 for fiscal year 1986 to carry out the provisions of this section.

(Pub. L. 91-230, title VI, § 618, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 791, and amended Pub. L. 98-199, §§ 3(b), 8, Dec. 2, 1983, 97 Stat. 1358, 1360.)

AMENDMENTS

1983—Pub. L. 98-199, § 8, amended section generally. Prior to the amendment, subsec. (a) required the Secretary to measure and evaluate the impact of the program authorized under this subchapter and the effectiveness of State efforts to assure the free appropriate public education of all handicapped children; subsec. (b) required the Secretary to conduct, directly or by grant or contract, such studies, investigations, and evaluations as are necessary to assure effective implementation of this subchapter, and in carrying out his responsibilities under this section, to (1), through the National Center for Education Statistics, provide to the appropriate committees of each House of the Congress and to the general public at least annually, and shall update at least annually, programmatic information concerning programs and projects assisted under this subchapter and other Federal programs supporting the education of handicapped children, and such information from State and local educational agencies and other appropriate sources necessary for the implementation of this subchapter, including— (A) the number of handicapped children in each State, within each disability, who require special education and related services; (B) the number of handicapped children in each State, within each disability, receiving a free appropriate public education and the number of handicapped children who need and are not receiving a free appropriate public education in each such State; (C) the number of handicapped children in each State, within each disability, who are participating in regular educational programs, consistent with the requirements of section 1412(5)(B) and section 1414(a)(1)(C)(iv) of this title, and the number of handicapped children who have been placed in separate classes or separate school facilities, or who have been otherwise removed from the regular education environment; (D) the number of handicapped children who are enrolled in public or private institutions in each State and who are receiving a free appropriate public education, and the number of handicapped children who are in such institutions and who are not receiving a free appropriate public education; (E) the amount of Federal, State, and local expenditures in each State specifically available for special education and related services; and (F) the number of personnel, by disability category, employed in the education of handicapped children, and the estimated number of additional personnel needed to adequately carry out the policy established by this chapter; and (2) provide for the evaluation of programs and projects assisted under this subchapter through (A) the development of effective methods and procedures for evaluation; (B) the testing and validation of such evaluation methods and procedures; and (C) conducting actual evaluation studies designed to test the effectiveness of such programs and projects; subsec. (c) required the Secretary in developing and furnishing information under subclause (E) of clause (1) of subsection (b) of this section, to base such information upon a sampling of data available from State agencies, including the State educational agencies, and local educational agencies; subsec. (d) required the Secretary (1), not later than one hundred twenty days after the close of each fiscal year, to transmit to the appropriate committees of each House of the Congress a report on the progress being made toward the provision of free appropriate public education to all handicapped children, including a detailed description of all evaluation activities conducted under subsection (b) of this section, and (2) to include in each such report (A) an analysis and evaluation of the effectiveness of procedures undertaken by each State educational agency, local educational agency, and intermediate educational unit to assure that handicapped children receive special education and related services in the least restrictive environment commensurate with their needs and to improve programs of instruction for handicapped children in day or residential facilities; (B) any recommendations for change in the provisions of this subchapter, or any other Federal law providing support for the education of handicapped children; and (C) an evaluation of the effectiveness of the procedures undertaken by each such agency or unit to prevent erroneous classification of children as eligible to be counted under section 1411 of this title, including actions undertaken by the Secretary to carry out provisions of this chapter relating to such erroneous classification, and, in order to carry out such analyses and evaluations, to conduct a statistically valid survey for assessing the effectiveness of individualized educational programs; and subsec. (e) authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the provisions of this section.

Subsecs. (a) to (d). Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner" wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1413, 1417, 1421, 1422, 1423, 1426, 1434, 1441 of this title.

§ 1419. Incentive grants

[See main edition for text of (a) and (b)]

(c) Payment

The Secretary shall pay to each State having an application approved under subsection (b) of this section the amount to which the State is entitled under this section, which amount shall be used for the purpose of providing the services specified in clause (3) of subsection (a) of this section, and for providing special education and related services for handicapped children from birth to three years of age.

[See main edition for text of (d) and (e)]

(Pub. L. 91-230, title VI, § 619, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 793, and amended Pub. L. 98-199, §§ 3(b), 9, Dec. 2, 1983, 97 Stat. 1358, 1363.)

AMENDMENTS

1983—Subsecs. (a), (b). Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

Subsec. (c). Pub. L. 98-199, §§ 3(b), 9, authorized use of payments for providing special education and related services for handicapped children from birth to three years of age and substituted "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1411, 1423 of this title.

§ 1420. Payments

[See main edition for text]

(Pub. L. 91-230, title VI, § 620, as added Pub. L. 94-142, § 5(a), Nov. 29, 1975, 89 Stat. 793, and amended Pub. L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358.)

AMENDMENTS

1983—Pub. L. 98-199 substituted "Secretary" for "Commissioner" wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

SUBCHAPTER III—CENTERS AND SERVICES TO MEET SPECIAL NEEDS OF THE HANDICAPPED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchpater is referred to in sections 1401, 1418, 1443 of this title.

§ 1421. Regional resource centers

(a) Establishment; functions

The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with, institutions of higher education, private nonprofit organizations, State educational agencies, or combinations of such agencies and institutions (which combinations may include one or more local educational agencies) within particular regions of the United States, to pay all or part of the cost of the establishment and operation of regional resource centers. Each regional resource center shall provide consultation, technical assistance, and training to State educational agencies and through such State agencies to local educational agencies. Each center established or operated under this section shall—

(1) assist in identifying and solving persistent problems in providing quality special education and related services for handicapped children and youth;

(2) assist in developing, identifying, and replicating successful programs and practices which will improve special education and related services to handicapped children and youth and their families;

(3) gather and disseminate information to all State educational agencies within the region and coordinate activities with other centers assisted under this section and other relevant projects conducted by the Department of Education; and

(4) assist in the improvement of information dissemination to and training activities for professionals and parents of handicapped children.

(b) Considerations governing approval of application

In determining whether to approve an application for a project under this section, the Secretary shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to fulfill the responsibilities under subsection (a) of this section.

(c) Annual report; summary of information

Each regional resource center shall report a summary of materials produced or developed and this information shall be included in the annual report to Congress required under section 1418 of this title.

(Pub. L. 91-230, title VI, § 621, Apr. 13, 1970, 84 Stat. 181; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1363.)

AMENDMENTS

1983—Pub. L. 98-199, § 10, amended section generally. Prior to amendment, section read:

"(a) The Secretary is authorized to make grants to or contracts with institutions of higher education, State educational agencies, or combinations of such agencies or institutions, which combinations may include one or more local educational agencies, within particular regions of the United States, to pay all or part of the cost of the establishment and operation of regional centers which will develop and apply the best methods of appraising the special educational needs of handicapped children referred to them and will provide other services to assist in meeting such needs. Centers established or operated under this section shall (1) provide testing and educational evaluation to determine the special educational needs of handicapped children referred to such centers, (2) develop educational programs to meet those needs, and (3) assist schools and other appropriate agencies, organizations, and institutions in providing such educational programs through services such as consultation (including, in appropriate cases, consultation with parents or teachers of handicapped children at such regional centers), periodic reexamination and reevaluation of special educational programs, and other technical services.

"(b) In determining whether to approve an application for a project under this section, the Secretary shall consider the need for such a center in the region to be served by the applicant and the capability of the applicant to develop and apply, with the assistance of funds under this section, new methods, techniques, devices, or facilities relating to educational evaluation or education of handicapped children."

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner" wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1418, 1427 of this title.

§ 1422. Services for deaf-blind children and youth

(a) Grant and contract authority; types and scope of programs; governing considerations

(1) The Secretary is authorized to make grants to, or to enter into cooperative agreements or contracts with, public or nonprofit private agencies, institutions, or organizations to assist State educational agencies to—

(A) assure deaf-blind children and youth provision of special education and related services as well as vocational and transitional services; and

(B) make available to deaf-blind youth upon attaining the age of twenty-two, programs and services to facilitate their transition from educational to other services.

(2) A grant, cooperative agreement, or contract pursuant to paragraph (1)(A) may be made only for programs providing (A) technical assistance to agencies, institutions, or organizations providing educational services to deaf-blind children or youth; (B) preservice or inservice training to paraprofessionals, professionals, or related services personnel preparing to serve, or serving, deaf-blind children or youth; (C) replication of successful innovative approaches to providing educational or related services to deaf-blind children and youth; and (D) facilitation of parental involvement in the education of their deaf-blind children and youth. Such programs may include—

(i) the diagnosis and educational evaluation of children and youth at risk of being certified deaf-blind;

(ii) programs of adjustment, education, and orientation for deaf-blind children and youth; and

(iii) consultative, counseling, and training services for the families of deaf-blind children and youth.

(3) A grant, cooperative agreement, or contract pursuant to paragraph (1)(B) may be made only for programs providing (A) technical assistance to agencies, institutions, and organizations serving, or proposing to serve, deaf-blind individuals who have attained age twenty-two years; (B) training or inservice training to paraprofessionals or professionals serving, or preparing to serve, such individuals; and (C) assistance in the development or replication of successful innovative approaches to providing rehabilitative, semisupervised, or independent living programs.

(4) In carrying out this subsection, the Secretary shall take into consideration the need for a center for deaf-blind children and youth in light of the general availability and quality of existing services for such children and youth in the part of the country involved.

(b) Contract authority for regional programs of technical assistance

The Secretary is also authorized to enter into a limited number of cooperative agreements or contracts to establish and support regional programs for the provision of technical assistance in the education of deaf-blind children and youth.

(c) Annual report to Secretary; examination of numbers and services and revision of numbers; annual report to Congress: summary of data

(1) Programs supported under this section shall report annually to the Secretary on (A) the numbers of deaf-blind children and youth served by age, severity, and nature of deaf-blindness; (B) the number of paraprofessionals, professionals, and family members directly served by each activity; and (C) the types of services provided.

(2) The Secretary shall examine the number of deaf-blind children and youth (A) reported under subparagraph (c)(1)(A) and by the States; (B) served by the programs under subchapter II of this chapter and subpart 2 of part B, title I, of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2771 et seq.] (as modified by chapter 1 of the Education Consolidation and Improvement Act of 1981 [20 U.S.C. 3801 et seq.]); and (C) the Deaf-Blind Registry of each State. The Secretary shall revise the count of deaf-blind children and youth to reflect the most accurate count.

(3) The Secretary shall summarize these data for submission in the annual report required under section 1418 of this title.

(d) Dissemination of materials and information concerning working practices

The Secretary shall disseminate materials and information concerning effective practices in working with deaf-blind children and youth.

(Pub. L. 91-230, title VI, § 622, Apr. 13, 1970, 84 Stat. 182; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1364.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(2), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Subpart 2 of part B of title I of the 1965 Act is classified generally to subpart 2 (§ 2771 et seq.) of part B of subchapter I of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Education Consolidation and Improvement Act of 1981, referred to in subsec. (c)(2), is subtitle D [§§ 551 to 596] of title V of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 463, as amended. Chapter 1 of the Act is classified generally to subchapter 1 [§ 3801 et seq.] of chapter 51 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98-199, § 10, amended section generally, substituting in subsec. (a) provisions for grant and contract authority for types and scope of certain programs for provisions containing Congressional declaration of policy in providing certain services for deaf-blind children through limited number of model centers; substituting in subsec. (b) provisions respecting contract authority for regional programs of technical assistance for provisions respecting grant and contract authority for establishment and operation of model centers for deaf-blind children; adding subsec. (c) and redesignating former subsec. (c) as subsec. (a)(4); and substituting in subsec. (d) provisions respecting dissemination of materials and information concerning working practices for provisions respecting necessary services to be provided by model centers.

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner" wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1418, 1427 of this title.

§ 1423. Experimental preschool and early education programs for handicapped children

(a) Authorization; special problems of handicapped; community coordination of programs; geographical dispersion; Federal share: non-Federal contributions; "handicapped children" defined

(1) The Secretary is authorized to arrange by contract, grant, or cooperative agreement with appropriate public agencies and private nonprofit organizations, for the development and operation of programs of experimental preschool and early education for handicapped children which the Secretary determines show promise of promoting a comprehensive and strengthened approach to the special problems of such children. Such programs shall include activities and services designed to (1) facilitate the intellectual, emotional, physical, mental, social, and language development of such children; (2) encourage the participation of the parents of such children in the development and operation of any such program; and (3) acquaint the community to be served by any such program with the problems and potentialities of such children.

(2) Programs authorized by this subsection shall be coordinated with similar programs in the schools operated or supported by State or local educational agencies of the community to be served.

(3) As much as is feasible, such programs shall be geographically dispersed throughout the Nation in urban as well as rural areas.

(4) No arrangement pursuant to this subsection shall provide for the payment of more than 90 per centum of the total annual costs of development, operation, and evaluation of any program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services.

(5) For purposes of this subsection the term "handicapped children" includes children from birth through eight years of age.

(b) Special education and related services through comprehensive delivery system for handicapped children of certain age; types of grants; applications for grants; annual report: additional information

(1) Subject to paragraph (2), the Secretary is authorized to make a grant to each State through the State educational agency or other State agency to assist such State agency in planning, developing, and implementing a comprehensive delivery system for the provision of special education and related services to handicapped children from birth through five years of age.

(2) The Secretary shall make one of the following types of grants (authorized under paragraph (1)) to any State which submits an application which meets the requirements of this subsection:

(A) Planning grant

A grant for a maximum of two years for the purpose of assessing needs within the State and establishing a procedure and design for the development of a State plan which includes parent participation and training of professionals and others.

(B) Development grant

A grant for a maximum of three years for the purpose of developing a comprehensive State plan, and gaining approval of this plan from the State Board of Education, the Commissioner of Education, or other designated official of the appropriate State agency.

(C) Implementation grant

A grant for a maximum of three years for the purpose of implementing and evaluating the comprehensive State plan. A State must apply for annual renewal of such grant.

(3) Each State educational agency or other State agency desiring to receive a grant under this subsection shall submit an application at such time, in such manner, and accompanied by such information as the Secretary considers necessary. Each such application shall contain assurances and evidence that:

(A) The State agency receiving the grant will coordinate with other appropriate State agencies (including the State educational agency) in carrying out the grant.

(B) The State plan will address the special education and related service needs of all handicapped children from birth through five years of age with special emphasis on children who are often not identified and children who are not now served.

(C) The State plan will be closely coordinated with child-find efforts under section 1412(2)(C) of this title and with preschool incentive grant activities under section 1419 of this title.

(4) The Secretary shall include in the annual report under section 1418 of this title the following:

(A) The States and State agencies receiving grants under this subsection and the types of grants received.

(B) A description of the activities in each State being undertaken through grants under this subsection.

(C) Beginning in 1986, in consultation with the National Council for the Handicapped and the National Advisory Committee on the Education of Handicapped Children and Youth, a description of the status of special education and related services to handicapped children from birth through five years of age (including those receiving services through Head Start, Developmental Disabilities Program, Crippled Children's Services, Mental Health/Mental Retardation Agency, and State child-development centers and private agencies under contract with local schools).

(c) Minimum percentage of funds for certain subsection (b) purposes

(1) Not less than 30 per centum of the funds made available in any year for the purposes of this section may be used for purposes of subsection (b) of this section.

(2) Not less than 10 per centum of the funds made available in any year for the purposes of subsection (b) of this section shall be available for the provision of training and technical assistance to States preparing to receive or receiving grants under this section.

(Pub. L. 91-230, title VI, § 623, Apr. 13, 1970, 84 Stat. 183; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1365.)

AMENDMENTS

1983—Pub. L. 98-199, § 10, amended section generally. Prior to amendment, section read:

"(a) The Secretary is authorized to arrange by contract, grant, or otherwise with appropriate public agencies and private nonprofit organizations, for the development and carrying out by such agencies and organizations of experimental preschool and early education programs for handicapped children which the Secretary determines show promise of promoting a comprehensive and strengthened approach to the special problems of such children. Such programs shall be distributed to the greatest extent possible throughout the Nation, and shall be carried out both in urban and in rural areas. Such programs shall include activities and services designed to (1) facilitate the intellectual, emotional, physical, mental, social, and language development of such children; (2) encourage the participation of the parents of such children in the development and operation of any such program; and (3) acquaint the community to be served by any such program with the problems and potentialities of such children.

"(b) Each arrangement for developing or carrying out a program authorized by this section shall provide for the effective coordination of each such program with similar programs in the schools of the community to be served by such a program.

"(c) No arrangement pursuant to this section shall provide for the payment of more than 90 per centum of the cost of developing, carrying out, or evaluating such a program. Non-Federal contributions may be in cash or in kind, fairly evaluated, including, but not limited to, plant, equipment, and services."

Subsec. (a). Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner" wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1418, 1427 of this title.

§ 1424. Research, innovation, training, and dissemination activities in connection with model centers and services for the handicapped

(a) Grant and contract authority

The Secretary is authorized to make grants to, or to enter into contracts or cooperative agreements with such organizations or institutions, as are determined by the Secretary to be appropriate, consistent with the purposes of this subchapter, for—

(1) research to identify and meet the full range of special needs of handicapped children and youth;

(2) the development or demonstration of new, or improvements in existing, methods, approaches, or techniques which would contribute to the adjustment and education of handicapped children and youth;

(3) training of personnel for programs specifically designed for handicapped children; and

(4) dissemination of materials and information about practices found effective in working with such children and youth.

(b) Coordination of activities with similar activities under other sections of this chapter

In making grants and contracts under this section, the Secretary shall ensure that the activities funded under such grants and contracts will be coordinated with similar activities funded from grants and contracts under other sections of this chapter.

(c) Needs of severly handicapped

In carrying out the provisions of this section the Secretary is authorized to address the needs of the severely handicapped.

(Pub. L. 91-230, title VI, § 624, Apr. 13, 1970, 84 Stat. 183; Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1366.)

AMENDMENTS

1983—Pub. L. 98-199, § 10, amended section generally. Prior to amendment, subsec. (a) authorized the Secretary, either as part of any grant or contract under this subchapter, or by separate grant to, or contract with, an agency, organization, or institution operating a center or providing a service which meets such requirements as the Secretary determines to be appropriate, consistent with the purposes of this subchapter, to pay all or part of the cost of such activities as— (1) research to identify and meet the full range of special needs of handicapped children; (2) development or demonstration of new, or improvements in existing, methods, approaches, or techniques, which would contribute to the adjustment and education of such children; (3) training (either directly or otherwise) of professional and allied personnel engaged or preparing to engage in programs specifically designed for such children, including payment of stipends for trainees and allowances for travel and other expenses for them and their dependents; and (4) dissemination of materials and information about practices found effective in working with such children; and subsec. (b) required the Secretary, in making grants and contracts under this section, to insure that the activities funded under such grants and contracts be coordinated with similar activities funded from grants and contracts under other subchapters of this chapter.

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner" wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

§ 1424a. Development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education; grant and contract authority; priority of programs; "handicapped individual" defined

(a)(1) The Secretary is authorized to make grants to or enter into contracts with State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development, operation, and dissemination of specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for handicapped individuals.

(2) In making grants or contracts on a competitive basis under this section, the Secretary shall give priority consideration to the four regional centers for the deaf and to model programs for individuals with handicapping conditions other than deafness—

(A) for developing and adapting programs of postsecondary, vocational, technical, continuing, or adult education to meet the special needs of handicapped individuals; and

(B) for programs that coordinate, facilitate, and encourage education of handicapped individuals with their nonhandicapped peers.

(3) Of the sums made available for programs under this section, not less than $2,000,000 shall first be available for the four regional centers for the deaf.

(b) For the purposes of this section the term "handicapped individuals" means individuals who are mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired individuals, or individuals with specific learning disabilities who by reason thereof require special education and related services.

(Pub. L. 91-230, title VI, § 625, as added Pub. L. 93-380, title VI, § 616, Aug. 21, 1974, 88 Stat. 584, and amended Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1367.)

AMENDMENTS

1983—Pub. L. 98-199, § 10, amended section generally. Prior to amendment, subsec. (a) authorized the Secretary to make grants to or contracts with institutions of higher education, including junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies for the development and operation of specially designed or modified programs of vocational, technical, postsecondary, or adult education for deaf or other handicapped persons; subsec. (b) required the Secretary in making grants or contracts authorized by this section, to give priority consideration to (1) programs serving multistate regions or large population centers;

(2) programs adapting existing programs of vocational, technical, postsecondary, or adult education to the special needs of handicapped persons; and (3) programs designed to serve areas where a need for such services is clearly demonstrated; and subsec. (c), for purposes of this section, defined the term "handicapped persons" as meaning persons who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, emotionally disturbed, crippled, or in other ways health impaired and by reason thereof require special education programming and related services.

Subsecs. (a), (b). Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1427 of this title.

§ 1425. Secondary education and transitional services for handicapped youth

(a) Grant and contract authority; statement of purposes

The Secretary is authorized to make grants to, or enter into contracts with, institutions of higher education, State educational agencies, local educational agencies, or other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (Public Law 97-300) [29 U.S.C. 1501 et seq.]) to—

(1) strengthen and coordinate education, training, and related services for handicapped youth to assist in the transitional process to postsecondary education, vocational training, competitive employment, continuing education, or adult services; and

(2) stimulate the improvement and development of programs for secondary special education.

(b) Description of specific projects

Projects assisted under this section may include—

(1) developing strategies and techniques for transition to independent living, vocational training, postsecondary education, and competitive employment for handicapped youth;

(2) establishing demonstration models for services and programs which emphasize vocational training, transitional services, and placement for handicapped youth;

(3) conducting demographic studies which provide information on the numbers, age levels, types of handicapping conditions, and services required for handicapped youth in need of transitional programs;

(4) specially designed vocational programs to increase the potential for competitive employment for handicapped youth;

(5) research and development projects for exemplary service delivery models and the replication and dissemination of successful models;

(6) initiating cooperative models between educational agencies and adult service agencies, including vocational rehabilitation, mental health, mental retardation, public employment, and employers, which facilitate the planning and developing of transitional services for handicapped youth to postsecondary education, vocational training, employment, continuing education, and adult services; and

(7) developing appropriate procedures for evaluating vocational training, placement, and transitional services for handicapped youth.

(c) Coordination of noneducational agency applicant with State educational agency

For purposes of subsections (b)(1) and (b)(2) of this section, if an applicant is not an educational agency, such applicant shall coordinate with the State educational agency.

(d) Participation in planning, development, and implementation of projects

Projects funded under this section shall to the extent appropriate provide for the direct participation of handicapped students and the parents of handicapped students in the planning, development, and implementation of such projects.

(e) Coordination of educational programs with vocational rehabilitation projects

The Secretary, as appropriate, shall coordinate programs described under this section with projects developed under section 777a of title 29.

(Pub. L. 91-230, title VI, § 626, formerly § 625, Apr. 13, 1970, 84 Stat. 183, renumbered Pub. L. 93-380, title VI, § 616, Aug. 21, 1974, 88 Stat. 584, and amended Pub. L. 98-199, §§ 3(b), 10, Dec. 2, 1983, 97 Stat. 1358, 1367.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (a), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

AMENDMENTS

1983—Pub. L. 98-199, § 10, amended section generally, substituting provisions respecting secondary education and transitional services for handicapped youth for provisions requiring evaluation of programs assisted under this subchapter. See section 1426 of this title.

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1427 of this title; title 29 section 777a.

§ 1426. Program evaluations; submittal of analyses to Congressional committees

The Secretary shall conduct, either directly or by contract, a thorough and continuing evaluation of the effectiveness of each program assisted under this subchapter. Results of the evaluations shall be analyzed and submitted to the appropriate committees of each House of Congress together with the annual report under section 1418 of this title.

(As amended Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1368.)

Prior Provisions

Provisions similar to those comprising this section were contained in Pub. L. 91-230, title VI, § 626, formerly § 625, Apr. 13, 1970, 84 Stat. 183, renumbered Pub. L. 93-380, title VI, § 616, Aug. 21, 1974, 88 Stat. 584, which is classified to section 1425 of this title, prior to general amendment of this subchapter by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1363.

Amendments

1983—Pub. L. 98-199 amended section generally substituting provisions respecting program evaluations and submittance of results of analysis to Congressional committees for provisions authorizing appropriations. See section 1427 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

Section Referred to in Other Sections

This section is referred to in section 1418 of this title.

§ 1427. Authorization of appropriations

(a) There are authorized to be appropriated to carry out the provisions of section 1421 of this title, $5,700,000 for fiscal year 1984, $6,000,000 for fiscal year 1985, and $6,300,000 for fiscal year 1986.

(b) There are authorized to be appropriated to carry out the provisions of section 1422 of this title, $15,000,000 for fiscal year 1984, and for each of the two succeeding fiscal years.

(c) There are authorized to be appropriated to carry out the provisions of section 1423 of this title, $26,000,000 for fiscal year 1984, $27,100,000 for fiscal year 1985, and $28,300,000 for fiscal year 1986.

(d) There are authorized to be appropriated to carry out the provisions of subsection (c) of section 1424 of this title, $5,000,000 for fiscal year 1984, $5,300,000 for fiscal year 1985, and $5,600,000 for fiscal year 1986.

(e) There are authorized to be appropriated to carry out the provisions of section 1424a of this title, $5,000,000 for fiscal year 1984, $5,300,000 for fiscal year 1985, and $5,500,000 for fiscal year 1986.

(f) There are authorized to be appropriated to carry out the provisions of section 1425 of this title, $6,000,000 for fiscal year 1984, $6,330,000 for fiscal year 1985, and $6,660,000 for fiscal year 1986.

(Pub. L. 91-230, title VI, § 628, as added Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1368.)

Prior Provisions

Provisions similar to those comprising this section were contained in Pub. L. 91-230, title VI, § 627, formerly § 626, Apr. 13, 1970, 84 Stat. 184, renumbered and amended Pub. L. 93-380, title VI, §§ 616, 617, Aug. 21, 1974, 88 Stat. 584; Pub. L. 95-49, § 2, June 17, 1977, 91 Stat. 230, which is classified to section 1426 of this title, prior to general amendment of this subchapter by Pub. L. 98-199, § 10, Dec. 2, 1983, 97 Stat. 1363.

Effective Date

Section effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as an Effective Date of 1983 Amendment note under section 1401 of this title.

SUBCHAPTER IV—TRAINING PERSONNEL FOR THE EDUCATION OF THE HANDICAPPED

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1418, 1443 of this title.

§ 1431. Grants to institutions of higher education and other appropriate agencies for personnel training

(a) Careers in special education; personnel training standards; costs of courses, fellowships, and traineeships; contract authority for areas of personnel shortages

(1) The Secretary is authorized to make grants, which may include scholarships with necessary stipends and allowances, to institutions of higher education (including the university-affiliated facilities program under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] and the satellite network of the developmental disabilities program) and other appropriate nonprofit agencies to assist them in training personnel for careers in special education including—

(A) special education teaching, including speech, language, and hearing impaired, and adaptive physical education;

(B) related services to handicapped children and youth in educational settings;

(C) special education supervision and administration;

(D) special education research; and

(E) training of special education personnel and other personnel providing special services.

(2) The Secretary shall ensure that grants awarded to applicant institutions and agencies under this subsection meet State and professionally recognized standards for the training of special education and related services personnel.

(3) Grants under this subsection may be used by such institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary.

(4) The Secretary in carrying out the purposes of this subsection may reserve a sum not to exceed 5 per centum of the amount available for this subsection in each fiscal year for contracts to prepare personnel in areas where shortages exist, when a response to that need

has not been adequately addressed by the grant process.

(b) Special projects for preservice training, regular educators, and inservice training of special education personnel

The Secretary is authorized to make grants to institutions of higher education and other appropriate nonprofit agencies to conduct special projects to develop and demonstrate new approaches for the preservice training purposes set forth in subsection (a) of this section, for regular educators, and for the inservice training of special education personnel, including classroom aides, related services personnel, and regular education personnel who serve handicapped children.

(c) Parent training and information programs

(1) The Secretary is authorized to make grants through a separate competition to private nonprofit organizations for the purpose of providing training and information to parents of handicapped children and volunteers who work with parents to enable such individuals to participate more effectively with professionals in meeting the educational needs of handicapped children. Such grants shall be designed to meet the unique training and information needs of parents of handicapped children, including those who are members of groups that have been traditionally underrepresented, living in the area to be served by the grant.

(2) In order to receive a grant under this subsection a private nonprofit organization shall—

(A) be governed by a board of directors on which a majority of the members are parents of handicapped children and which includes members who are professionals in the field of special education and related services who serve handicapped children and youth; or if the nonprofit private organization does not have such a board, such organization shall have a membership which represents the interests of individuals with handicapping conditions, and shall establish a special governing committee on which a majority of the members are parents of handicapped children and which includes members who are professionals in the fields of special education and related services, to operate the training and information program under this subsection;

(B) serve the parents of children with the full range of handicapping conditions under such grant program; and

(C) demonstrate the capacity and expertise to conduct effectively the training and information activities authorized under this subsection.

(3) The board of directors or special governing committee of a private nonprofit organization receiving a grant under this subsection shall meet at least once in each calendar quarter to review such parent training and information activities, and each such committee shall advise the governing board directly of its views and recommendations. Whenever a private nonprofit organization requests the renewal of a grant under this subsection, the board of directors or the special governing committee shall submit to the Secretary a written review of the parent training and information program conducted by that private nonprofit organization during the preceding fiscal year.

(4) The Secretary shall ensure that grants under this subsection will—

(A) be distributed geographically to the greatest extent possible throughout all the States; and

(B) be targeted to parents of handicapped children in both urban and rural areas, or on a State, or regional basis.

(5) Parent training and information programs assisted under this subsection shall assist parents to—

(A) better understand the nature and needs of the handicapping conditions of their child;

(B) provide followup support for their handicapped child's educational programs;

(C) communicate more effectively with special and regular educators, administrators, related services personnel, and other relevant professionals;

(D) participate in educational decisionmaking processes including the development of their handicapped child's individualized educational program;

(E) obtain information about the programs, services, and resources available to their handicapped child, and the degree to which the programs, services, and resources are appropriate; and

(F) understand the provisions for the education of handicapped children as specified under subchapter II of this chapter.

(6) Each private nonprofit organization operating a program receiving assistance under this subsection shall consult with appropriate agencies which serve or assist handicapped children and youth and are located in the jurisdictions served by the program.

(7) The Secretary shall provide technical assistance, by grant or contract, for establishing, developing, and coordinating parent training and information programs.

(Pub. L. 91-230, title VI, § 631, Apr. 13, 1970, 84 Stat. 184; Pub. L. 98-199, §§ 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1369.)

References in Text

The Rehabilitation Act of 1973, referred to in subsec. (a)(1), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Amendments

1983—Pub. L. 98-199, § 11, amended section generally. Prior to amendment, section authorized the Secretary to make grants to institutions of higher education and other appropriate nonprofit institutions or agencies to assist them (1) in providing training of professional personnel to conduct training of teachers and other specialists in fields related to the education of handicapped children; (2) in providing training for personnel engaged or preparing to engage in employment as teachers of handicapped children, as supervisors of such teachers, or as speech correctionists or other special personnel providing special services for the education of such children, or engaged or preparing to engage in research in fields related to the education of such children; and (3) in establishing and maintaining scholarships, with such stipends and allowances as may be determined by the Secretary, for training personnel engaged in or preparing to engage in employment as teachers of the handicapped or as related specialists and provided that grants under this section could be used by such institutions to assist in covering the cost of courses of training or study for such personnel and for establishing and maintaining fellowships or traineeships with such stipends and allowances as may be determined by the Secretary.

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner" in provisions preceding par. (1).

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

Section Referred to in Other Sections

This section is referred to in section 1435 of this title.

§ 1432. Grants to State educational agencies for traineeships

The Secretary shall make grants to State educational agencies to assist them in establishing and maintaining, directly or through grants to institutions of higher education, programs for the preservice and inservice training of teachers of handicapped children, or supervisors of such teachers.

(Pub. L. 91-230, title VI, § 632, Apr. 13, 1970, 84 Stat. 184; Pub. L. 98-199, §§ 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1371.)

Amendments

1983—Pub. L. 98-199, § 11, amended section generally. Prior to amendment, section read: "The Secretary is authorized to make grants to State educational agencies to assist them in establishing and maintaining, directly or through grants to institutions of higher education, programs for training personnel engaged, or preparing to engage, in employment as teachers of handicapped children or as supervisors of such teachers. Such grants shall also be available to assist such institutions in meeting the cost of training such personnel."

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

§ 1433. Grants or contracts to improve recruiting of educational personnel and dissemination of information concerning educational opportunities for the handicapped

(a) National clearinghouse on education of handicapped; establishment; other support projects; statement of objectives

The Secretary is authorized to make a grant to or enter into a contract with a public agency or a nonprofit private organization or institution for a national clearinghouse on the education of the handicapped and to make grants or contracts with a public agency or a nonprofit private organization or institution for other support projects which may be deemed necessary by the Secretary to achieve the following objectives:

(1) to disseminate information and provide technical assistance on a national basis to parents, professionals, and other interested parties concerning—

(A) programs relating to the education of the handicapped under this chapter and under other Federal laws; and

(B) participation in such programs, including referral of individuals to appropriate national, State, and local agencies and organizations for further assistance;

(2) to encourage students and professional personnel to seek and obtain careers and employment in the various fields relating to the education of handicapped children and youth; and

(3) to provide information on available services and programs in postsecondary education for the handicapped.

(b) National clearinghouse on postsecondary education for handicapped; establishment; statement of purpose

In addition to the clearinghouse established under subsection (a) of this section, the Secretary shall make a grant or enter into a contract for a national clearinghouse on postsecondary education for handicapped individuals for the purpose of providing information on available services and programs in postsecondary education for the handicapped.

(c) Considerations governing awards; limitation of contracts with profitmaking organizations

(1) In awarding the grants and contracts under this section, the Secretary shall give particular attention to any demonstrated experience at the national level relevant to performance of the functions established in this section, and ability to conduct such projects, communicate with the intended consumers of information, and maintain the necessary communication with other agencies and organizations.

(2) The Secretary is authorized to make contracts with profitmaking organizations under this section only when necessary for materials or media access.

(Pub. L. 91-230, title VI, § 633, Apr. 13, 1970, 84 Stat. 184; Pub. L. 98-199, §§ 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1371.)

Amendments

1983—Pub. L. 98-199, § 11, amended section generally. Prior to amendment, section authorized the Secretary to make grants to public or nonprofit private agencies, organizations, or institutions, or to enter into contracts with public or private agencies, organizations, or institutions, for projects for (1) encouraging students and professional personnel to work in various fields of education of handicapped children and youth through, among other ways, developing and distributing imaginative or innovative materials to assist in recruiting personnel for such careers, or publicizing existing forms of financial aid which might enable students to pursue such careers, or (2) disseminating information about the programs, services, and resources for the education of handicapped children, or providing referral services to parents, teachers, and other persons especially interested in the handicapped.

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner" in provisions preceding par. (1).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1435 of this title.

§ 1434. Reports to the Secretary

(a) Not more than sixty days after the end of any fiscal year, each recipient of a grant or contract under this subchapter during such fiscal year shall prepare and submit a report to the Secretary. Each such report shall be in such form and detail as the Secretary determines to be appropriate, and shall include—

(1) the number of individuals trained under the grant or contract, by category of training and level of training; and

(2) the number of individuals trained under the grant or contract receiving degrees and certification, by category and level of training.

(b) A summary of the data required by this section shall be included in the annual report of the Secretary under section 1418 of this title.

(Pub. L. 91-230, title VI, § 634, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98-199, §§ 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1372.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 91-230, title VI, § 635, Apr. 13, 1970, 84 Stat. 185, which is classified to section 1435 of this title, prior to general amendment of this subchapter by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1369.

AMENDMENTS

1983—Pub. L. 98-199, § 11, amended section generally, substituting provisions requiring reports to the Secretary for provisions respecting grants for training physical educators and recreation personnel for handicapped children.

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1418 of this title.

§ 1435. Authorization of appropriations

(a) There are authorized to be appropriated to carry out the provisions of this subchapter (other than section 1433 of this title) $58,000,000 for fiscal year 1984, $61,150,000 for fiscal year 1985, and $64,370,000 for fiscal year 1986. There are authorized to be appropriated to carry out the provisions of section 1433 of this title, $1,000,000 for fiscal year 1984, $1,050,000 for fiscal year 1985, and $1,110,000 for fiscal year 1986.

(b) Of the funds appropriated pursuant to subsection (a) of this section for any fiscal year, the Secretary shall reserve 10 per centum for activities under section 1431(c) of this title.

(Pub. L. 91-230, title VI, § 635, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98-199, §§ 3(b), 11, Dec. 2, 1983, 97 Stat. 1358, 1372.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in Pub. L. 91-230, title VI, § 636, Apr. 13, 1970, 84 Stat. 185, as amended which was classified to section 1436 of this title, and was omitted from the Code in the general amendment of this subchapter by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1369.

AMENDMENTS

1983—Pub. L. 98-199, § 11, amended section generally, substituting provision authorizing appropriations for provision requiring reports to Secretary.

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

§ 1436. Omitted

CODIFICATION

Section, Pub. L. 91-230, title VI, § 636, Apr. 13, 1970, 84 Stat. 185; Pub. L. 93-380, title VI, § 618, Aug. 21, 1974, 88 Stat. 584; Pub. L. 95-49, § 3, June 17, 1977, 91 Stat. 230, authorized appropriations for the purposes of this subchapter, and was omitted in the general amendment of this subchapter by Pub. L. 98-199, § 11, Dec. 2, 1983, 97 Stat. 1369. See section 1435 of this title.

SUBCHAPTER V—RESEARCH IN THE EDUCATION OF THE HANDICAPPED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1418, 1443 of this title.

§ 1441. Research, surveys, and demonstration projects to assist appropriate personnel and other persons in education of handicapped children and youth

(a) Grant and contract authority; statement of objectives; description of specific activities

The Secretary is authorized to make grants to, or enter into contracts or cooperative agreements with, State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations for research and related activities, to assist special education personnel, related services personnel, and other appropriate persons, including parents, in improving the education and related services for handicapped children and youth and to conduct research, surveys, or demonstrations relating to the education of handicapped children and youth. Research and related activities shall be designed to increase knowledge and understanding of handicapping conditions and teaching, learning, and education-related practices and services for handicapped children and youth. Research and related activities assisted under this section shall include, but not be limited to, the following:

(1) The development of new and improved techniques and devices for teaching handicapped children and youth.

(2) The development of curricula which meet the unique educational needs of handicapped children and youth.

(3) The application of new technologies and knowledge for the purpose of improving the instruction of handicapped children and youth.

(4) The development of program models and exemplary practices in areas of special education.

(5) The dissemination of information on research and related activities conducted under this subchapter to interested individuals and organizations.

(b) Qualifications of applicant

In carrying out this section the Secretary shall consider the special education experience of the applicant and the ability of the applicant to disseminate the findings of any grant or contract.

(c) Publication of research priorities in Federal Register

The Secretary shall publish proposed research priorities in the Federal Register every two years, not later than July 1, and shall allow a period of sixty days for public comments and suggestions. After analyzing and considering the public comments, the Secretary shall publish final research priorities in the Federal Register not later than thirty days after the close of the comment period.

(d) Reports of research projects; index of research projects for annual report; availability to interested parties

The Secretary shall provide an index (including the title of each research project and the name and address of the researching organization) of all research projects conducted in the prior fiscal year in the annual report described under section 1418 of this title. The Secretary shall make reports of research projects available to the education community at large and to other interested parties.

(e) Coordination of related research priorities; information respecting research priorities to Federal entities

The Secretary shall coordinate the research priorities established under this section with research priorities established by the National Institute of Handicapped Research and shall provide information concerning research priorities established under this section to the National Council on the Handicapped and to the National Advisory Committee on the Education of Handicapped Children.[1]

(Pub. L. 91-230, title VI, § 641, Apr. 13, 1970, 84 Stat. 185; Pub. L. 95-49, § 4, June 17, 1977, 91 Stat. 230; Pub. L. 98-199, §§ 3(b), 12, Dec. 2, 1983, 97 Stat. 1358, 1372.)

AMENDMENTS

1983—Pub. L. 98-199, § 12, amended section generally. Prior to amendment, section read: "The Secretary is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children, including the development and conduct of model programs designed to meet the special educational needs of such children."

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1418 of this title.

§ 1442. Research and demonstration projects in physical education and recreation for handicapped children

The Secretary is authorized to make grants to States, State or local educational agencies, institutions of higher education, and other public or nonprofit private educational or research agencies and organizations, and to make contracts with States, State or local educational agencies, institutions of higher education, and other public or private educational or research agencies and organizations, for research and related purposes relating to physical education or recreation for handicapped children, and to conduct research, surveys, or demonstrations relating to physical education or recreation for handicapped children.

(Pub. L. 91-230, title VI, § 642, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98-199, §§ 3(b), 12, Dec. 2, 1983, 97 Stat. 1358, 1373.)

AMENDMENTS

1983—Pub. L. 98-199, § 12, reenacted section without change.

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

§ 1443. Panels of experts

The Secretary shall from time to time appoint panels of experts who are competent to evaluate various types of proposals for projects under subchapters III, IV, V, and VI of this chapter, and shall secure the advice and recommendations of one such panel before making any grant or contract under subchapters III, IV, V, and VI of this chapter. The panels shall be composed of—

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[1] So in original. Probably should be "Children and Youth".

(1) individuals from the field of special education for the handicapped and other relevant disciplines who have significant expertise and experience in the content areas and age levels addressed in the proposals; and

(2) handicapped individuals and parents of handicapped individuals when appropriate.

(Pub. L. 91-230, title VI, § 643, Apr. 13, 1970, 84 Stat. 185; Pub. L. 98-199, §§ 3(b), 12, Dec. 2, 1983, 97 Stat. 1358, 1373.)

AMENDMENTS

1983—Pub. L. 98-199, § 12, amended section generally, substituting "proposals for projects under subchapter III, IV, V, and VI of this chapter" and "grant or contract under subchapters III, IV, V, and VI of this chapter" for "research or demonstration projects under this subchapter" and "grant under this subchapter", respectively, and added provisions respecting the composition of panels.

Pub. L. 98-199, § 3(b), substituted "Secretary" for "Commissioner".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

§ 1444. Authorization of appropriations

For purposes of carrying out this subchapter, there are authorized to be appropriated $20,000,000 for fiscal year 1984, $21,100,000 for fiscal year 1985, and $22,200,000 for fiscal year 1986.

(As amended Pub. L. 98-199, § 12, Dec. 2, 1983, 97 Stat. 1374.)

AMENDMENTS

1983—Pub. L. 98-199 amended section generally, substituting appropriations authorizations of $20,000,000, $21,100,000, and $22,200,000 for fiscal years 1984 through 1986, respectively, for prior authorizations of $20,000,000, $22,000,000, $24,000,000, $26,000,000, and $28,000,000 for fiscal years 1978 through 1982, respectively.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, with an exception for previously obligated funds and certain interim provisions for financial assistance, see section 18 of Pub. L. 98-199 set out as a note under section 1401 of this title.

SUBCHAPTER VI—INSTRUCTIONAL MEDIA FOR THE HANDICAPPED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1418, 1443 of this title.

§ 1452. Captioned films and educational media for handicapped persons

[*See main edition for text*]

(Pub. L. 91-230, title VI, § 652, Apr. 13, 1970, 84 Stat. 186; Pub. L. 93-380, title VI, § 620(1), Aug. 21, 1974, 88 Stat. 585; Pub. L. 94-482, title V, § 501(h), Oct. 12, 1976, 90 Stat. 2237; Pub. L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358.)

AMENDMENTS

1983—Pub. L. 98-199 substituted "Secretary" for "Commissioner" wherever appearing.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

§ 1453. Centers on educational media and materials for the handicapped

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1418 of this title.

§ 1454. Authorization of appropriations

For the purposes of carrying out this subchapter, there are authorized to be appropriated $19,000,000 for fiscal year 1984, $20,000,000 for fiscal year 1985, and $21,100,000 for fiscal year 1986.

(As amended Pub. L. 98-199, § 13, Dec. 2, 1983, 97 Stat. 1374.)

AMENDMENTS

1983—Pub. L. 98-199 amended section generally, substituting appropriations authorizations of $19,000,000, $20,000,000, and $21,100,000 for fiscal years 1984 through 1986, respectively, for prior authorizations of $24,000,000, $25,000,000, $27,000,000 for fiscal years 1978 through 1980, respectively, and $29,000,000 for fiscal year 1981 and succeeding fiscal years.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-199 effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as a note under section 1401 of this title.

SUBCHAPTER VII—SPECIAL PROGRAMS FOR CHILDREN WITH SPECIFIC LEARNING DISABILITIES

§ 1461. Repealed. Pub. L. 98-199, § 14, Dec. 2, 1983, 97 Stat. 1374

Section, Pub. L. 91-230, title VI, § 661, Apr. 13, 1970, 84 Stat. 187; Pub. L. 93-380, title VI, § 621, Aug. 21, 1974, 88 Stat. 585; Pub. L. 98-199, § 3(b), Dec. 2, 1983, 97 Stat. 1358, related to research, training, and model centers respecting special programs for children with specific learning disabilities, providing in subsec. (a), Secretary's grant and contract authority, functions of model centers, and considerations governing making of contracts and grants; subsec. (b), other considerations in making awards, geographical distribution of training programs and trained personnel, and a model center in each State; and subsec. (c), appropriations authorization of $10, $20, and $20 million dollars for fiscal years ending June 30, 1975 through 1977, respectively.

EFFECTIVE DATE OF REPEAL

Section repealed effective Dec. 2, 1983, see section 18 of Pub. L. 98-199, set out as an Effective Date of 1983 Amendment note under section 1401 of this title.

CHAPTER 38—DISCRIMINATION BASED ON SEX OR BLINDNESS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1232, 3341, 3342 of this title; title 29 sections 206, 1577; title 42 sections 300w-7, 300x-7, 300y-9, 708, 1988.

CHAPTER 43—AMERICAN FOLKLIFE PRESERVATION

§ 2107. Authorization of appropriations; limitation on use for new positions

(a) There are authorized to be appropriated to the Center to carry out the provisions of this chapter $133,500 for the fiscal year 1976 and for the period from July 1 through September 30, 1976, $295,000 for the fiscal year 1977, $349,000 for the fiscal year 1978, $685,000 for the fiscal year ending September 30, 1979, $1,065,000 for the fiscal year ending September 30, 1980, $1,355,000 for the fiscal year ending September 30, 1981, $740,000 for the fiscal year ending September 30, 1982, $890,000 for the fiscal year ending September 30, 1983, $990,000 for the fiscal year ending September 30, 1984, $838,549 for the fiscal year ending September 30, 1985, and $867,898 for the fiscal year ending September 30, 1986.

(b) No amount authorized by subsection (a) of this section for the fiscal year ending September 30, 1985, or the fiscal year ending September 30, 1986, may be used for pay, benefits, or other expenses of any personnel position established after August 21, 1984.

(As amended Pub. L. 98-392, §§ 1, 2, Aug. 21, 1984, 98 Stat. 1362.)

AMENDMENTS

1984—Pub. L. 98-392 designated existing provisions as subsec. (a), in subsec. (a), as so designated, added provisions authorizing appropriations for fiscal years ending Sept. 30, 1985, and Sept. 30, 1986, of $838,549 and $867,898, respectively, and added subsec. (b).

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CODIFICATION

The Carl D. Perkins Vocational Education Act, comprising this chapter, was originally enacted as part A of Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, known as the Vocational Education Act of 1963, and classified to sections 35 to 35n of this title. Because of the extensive amendments, reorganization of the subject matter, and expansion of the Act by the acts summarized below, the Act is shown, herein, as having been added by Pub. L. 98-524 without reference to intervening amendments.

Part A of Pub. L. 88-210 was redesignated as title I and amended generally and reorganized by Pub. L. 90-576, title I, § 101, Oct. 16, 1968, 82 Stat. 1064, and reclassified to chapter 32 (§§ 1241 to 1393f) of this title.

Title I of Pub. L. 88-210 was amended generally and reorganized by Pub. L. 94-482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2169, and reclassified to this chapter (§§ 2301 to 2461).

Pub. L. 88-210 was amended by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, by striking out all after the enacting clause and inserting in lieu therof titles I to V (§§ 1 to 521), to be cited as the Carl D. Perkins Vocational Education Act, which comprises this chapter.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1013, 1014, 1135c-1, 1205, 1211c of this title; title 29 sections 721, 1535, 1697, 1751, 1754; title 40 App. sections 211, 214; title 42 section 3056a.

§ 2301. Statement of purpose

It is the purpose of this chapter to—

(1) assist the States to expand, improve, modernize, and develop quality vocational education programs in order to meet the needs of the Nation's existing and future work force for marketable skills and to improve productivity and promote economic growth;

(2) assure that individuals who are inadequately served under vocational education programs are assured access to quality vocational education programs, especially individuals who are disadvantaged, who are handicapped, men and women who are entering nontraditional occupations, adults who are in need of training and retraining, individuals who are single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(3) promote greater cooperation between public agencies and the private sector in preparing individuals for employment, in promoting the quality of vocational education in the States, and in making the vocational system more responsive to the labor market in the States;

(4) improve the academic foundations of vocational students and to aid in the application of newer technologies (including the use of computers) in terms of employment or occupational goals;

(5) provide vocational education services to train, retrain, and upgrade employed and unemployed workers in new skills for which there is a demand in that State or employment market;

(6) assist the most economically depressed areas of a State to raise employment and occupational competencies of its citizens;

(7) to assist the State to utilize a full range of supportive services, special programs, and guidance counseling and placement to achieve the basic purposes of this chapter;

(8) improve the effectiveness of consumer and homemaking education and to reduce the limiting effects of sex-role stereotyping on occupations, job skills, levels of competency, and careers; and

(9) authorize national programs designed to meet designated vocational education needs and to strengthen the vocational education research process.

(Pub. L. 88-210, § 2, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2437.)

Effective Date

Section 2 of Pub. L. 98-524 provided that:

"(a) This Act [enacting this chapter, amending sections 1013, 1014, 1135c-1, 1205, 1211c, and 3223 of this title, sections 721, 1503, 1532, 1535, 1697, 1751, 1753, 1754, 1772, and 1773 of Title 29, Labor, sections 113 and 114 of the Appendix to Title 40, Public Buildings, Property, and Works, enacting provisions set out as a note under section 1551 of Title 29, amending provisions set out as a note under section 11 of this title, and repealing provisions set out as a note under section 237 of this title] shall take effect for fiscal years beginning on or after October 1, 1984, except that the authority of the Secretary to prescribe regulations under this Act and the responsibility of States to submit State plans are effective upon the date of enactment of this Act [Oct. 19, 1984].

"(b) Not later than 90 days after the date of the enactment of this Act, the Secretary shall prescribe regulations for carrying out the provisions of this Act."

Short Title

Section 1 of Pub. L. 88-210 as added by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, provided: "This Act [enacting this chapter] may be cited as the 'Carl D. Perkins Vocational Education Act'."

Transition Provision

Section 3(a) of Pub. L. 98-524 provided that: "Each State and eligible recipient of financial assistance under the Carl D. Perkins Vocational Education Act [this chapter], or under the Vocational Education Act of 1963 [this chapter prior to amendment by Pub. L. 98-524], may expend funds received under the Carl D. Perkins Vocational Education Act or under the Vocational Education Act of 1963 to—

"(1) conduct planning for any program or activity authorized under the Carl D. Perkins Vocational Education Act; and

"(2) conduct any other activity deemed necessary by the recipient to provide for an orderly transition to the operation of programs under the Carl D. Perkins Vocational Education Act."

Vocational Education Policy

Section 6 of Pub. L. 98-524 provided that: "It is the sense of the Congress that effective vocational education programs are essential to our future as a free and democratic society; that such programs are best administered by local communities, and community colleges school boards, where the primacy of parental control can be emphasized with a minimum of Federal interference; and that as a means to strengthening vocational education and training programs, nongovernmental alternatives promoting links between public school needs and private sector sources of support should be encouraged and implemented."

§ 2302. Authorization of appropriations

(a) There are authorized to be appropriated $835,300,000 for the fiscal year 1985 and such sums as may be necessary for each of the fiscal years 1986 through 1989 to carry out the provisions of subchapters I (other than section 2322), II, and IV (other than part E) of this chapter.

(b)(1) There are authorized to be appropriated $15,000,000 for the fiscal year 1985 and such sums as may be necessary for each of the fiscal years 1986 through 1989 to carry out part A of subchapter III of this chapter, relating to State assistance for vocational education support programs by community-based organizations.

(2) There are authorized to be appropriated $32,000,000 for the fiscal year 1985 and such sums as may be necessary for each of the fiscal years 1986 through 1989 to carry out part B of subchapter III of this chapter relating to consumer and homemaking education.

(3)(A) There are authorized to be appropriated $35,000,000 for the fiscal year 1985 and such sums as may be necessary for each of the fiscal years 1986 through 1989 to carry out part C of subchapter III of this chapter, relating to adult training, retraining, and employment development.

(B) Of the amount appropriated in each fiscal year pursuant to subparagraph (A) 50 percent shall be available in each fiscal year for the purpose described in section 2331(b)(4) of this title, except that the amount made available by this subparagraph for fiscal years 1986 through 1989 shall not exceed $30,000,000 in any fiscal year.

(4) There are authorized to be appropriated $1,000,000 for the fiscal year 1985 and such sums as may be necessary for each of the fiscal years 1986 through 1989 to carry out part D of subchapter III of this chapter, relating to career guidance and counseling.

(5) There are authorized to be appropriated $20,000,000 for the fiscal year 1985 and such sums as may be necessary for fiscal years 1986 through 1989 to carry out part E of subchapter III of this chapter, relating to industry-education partnerships for training in high-technology occupations.

(c) There are authorized to be appropriated $8,000,000 for the fiscal year 1985 and such sums as may be necessary for each of the fiscal years 1986 through 1989 for section 2322 of this title, relating to State councils on vocational education.

(d) There are authorized to be appropriated $3,700,000 for the fiscal year 1985 and such sums as may be necessary for the fiscal years 1986 through 1989 to carry out part E of subchapter IV of this chapter, relating to bilingual vocational training programs.

(e) From the funds appropriated pursuant to subsection (a) of this section for each fiscal year, 2 percent shall be available to carry out the provisions of subchapter IV of this chapter (other than part E), relating to national programs.

(Pub. L. 88-210, § 3, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2437.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2311, 2322, 2341, 2441, 2451 of this title.

SUBCHAPTER I—VOCATIONAL EDUCATION ASSISTANCE TO THE STATES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2302, 2323 of this title.

PART A—ALLOTMENT AND ALLOCATION

§ 2311. Allotment

(a) Allotment formula; minimum allotment; allotment under prior law

(1) From the sums appropriated pursuant to section 2302(a) of this title, the Secretary shall reserve—

(A) 2 percent for the activities described in subchapter IV of this chapter (other than part E); and

(B) 1½ percent for the purpose of carrying out section 2313 of this title of which (i) 1¼ percent shall be for the purposes of section 2313(b) of this title and (ii) ¼ percent shall be for the purposes of section 2313(c) of this title.

(2) Subject to the provisions of paragraph (3), from the remainder of the sums appropriated pursuant to section 2302(a) and (b) of this title, the Secretary shall allot to each State for each fiscal year—

(A) an amount which bears the same ratio to 50 percent of the sums being allotted as the product of the population aged fifteen to nineteen inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

(B) an amount which bears the same ratio to 20 percent of the sums being allotted as the product of the population aged twenty to twenty-four, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States;

(C) an amount which bears the same ratio to 15 percent of the sums being allotted as the product of the population aged twenty-five to sixty-five, inclusive, in the State in the fiscal year preceding the fiscal year for which the determination is made and the State's allotment ratio bears to the sum of the corresponding products for all the States; and

(D) an amount which bears the same ratio to 15 percent of the sums being allotted as the amounts allotted to the State under clauses (A), (B), and (C) for such years bears to the sum of the amounts allotted to all the States under clauses (A), (B), and (C) for such year.

(3)(A) No State shall receive in any fiscal year less than the total amount of payments made to the State under allotments determined under the Vocational Education Act of 1963 for fiscal year 1984. Any amounts necessary for increasing the sum of the allotments of certain States to comply with the preceding sentence shall be obtained by ratably reducing the sums of the allotments of the other States, but no such sum shall be thereby reduced to an amount which is less than the total amount of payments made to the State under allotments determined under that Act for fiscal year 1984.

(B) In any fiscal year in which the amounts appropriated and available for allotments under this section exceeds the amounts so available for fiscal year 1984, and subject to the application of subparagraph (A), no State shall receive less than one-half of one percent of the amount available under this subsection for each such fiscal year except that in the case of the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands the minimum allotment shall be $200,000.

(C) No State shall, by reason of the application of the provisions of subparagraph (B) of this paragraph, be allotted more than 150 percent of the allotment of that State in the fiscal year preceding the fiscal year for which the determination is made.

(D) For the purpose of this paragraph, the term "State" does not include the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(b) Reallotments

If the Secretary determines that any amount of any State's allotment under subsection (a) of this section for any fiscal year will not be required for such fiscal year for carrying out the program for which such amount has been allotted, the Secretary shall make such amount available for reallotment. Any such reallotment among other States shall occur on such dates during the same year as the Secretary shall fix, and shall be made on the basis of criteria established by regulation. No funds may be reallotted for any use other than the use for which they were appropriated. Any amount reallotted to a State under this subsection for any fiscal year shall remain available for obligation during the succeeding fiscal year and shall be deemed to be part of its allotment for the year in which it is obligated.

(c) Allotment ratios

(1) The allotment ratio for any State shall be 1.00 less the product of—

(A) 0.50; and

(B) the quotient obtained by dividing the per capita income for the State by the per capita income for all the States (exclusive of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands), except that (i) the allotment ratio in no case shall be more than 0.60 or less than 0.40 and (ii) the allotment ratio for Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands shall be 0.60.

(2) The allotment ratios shall be promulgated by the Secretary for each fiscal year between October 1 and December 31 of the fiscal year preceding the fiscal year for which the determination is made. Allotment ratios shall be computed on the basis of the average of the appropriate per capita incomes for the three most recent consecutive fiscal years for which satisfactory data are available.

(3) The term "per capita income" means, with respect to a fiscal year, the total personal income in the calendar year ending in such year, divided by the population of the area concerned in such year.

(4) For the purposes of this section, population shall be determined by the Secretary on the basis of the latest estimates available to the Department.

(Pub. L. 88-210, title I, § 101, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2438.)

REFERENCES IN TEXT

The Vocational Education Act of 1963, referred to in subsec. (a)(3)(A), is Pub. L. 88-210, as added by Pub. L. 94-482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2169, and amended, which was classified to this chapter prior to the complete revision of Pub. L. 88-210 by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2313, 2322, 2331, 2341, 2352, 2361, 2372, 2381, 2392, 2461 of this title.

§ 2312. Within State allocation

(a) Allocations from allotment

Each State shall allocate from its allotment in each fiscal year—

(1) 57 percent for activities described in part A of subchapter II of this chapter, and

(2) 43 percent for activities described in part B of subchapter II of this chapter.

(b) Administrative expenses

Each State, from the portion of its allotment available for statewide activities under section 2323(b) of this title, shall allocate not to exceed 7 percent of the allotment of the State for administrative expenses or if the cost of carrying out the provision of section 2321(b)(1) of this title exceeds 1 percent of the allotment, the limitation under this subsection shall be 7 percent plus the excess costs.

(Pub. L. 88-210, title I, § 102, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2440.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2341 of this title.

§ 2313. Indian and Hawaiian natives programs

(a) Definitions; authority of Secretary to contract

(1) For the purpose of this section—

(A) the term "Act of April 16, 1934" means the Act entitled "An Act authorizing the Secretary of the Interior to arrange with States or territories for the education, medical attention, relief of distress, and social welfare of Indians, and for other purposes", enacted April 16, 1934 (48 Stat. 596; 25 U.S.C. 452-457); and

(B) the term "Hawaiian native" means any individual any of whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

(2) From the funds reserved pursuant to section 2311(a)(1)(B) of this title, the Secretary shall enter into contracts for Indian and Hawaiian native programs in accordance with the provisions of this section.

(b) Indian tribes; fund expenditure plans; Bureau of Indian Affairs deemed State board

(1) From the funds reserved pursuant to section 2311(a)(1)(B)(i) of this title, the Secretary is directed, upon the request of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or under the Act of April 16, 1934 [25 U.S.C. 452-457], to enter into grants or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the purposes of this chapter, except that such grants or contracts shall be subject to the terms and conditions of section 102 of the Indian Self-Determination Act [25 U.S.C. 450f] and shall be conducted in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934 [25 U.S.C. 455, 456, and 457], which are relevant to the programs administered under this

sentence. From any remaining funds reserved pursuant to section 2311(a)(1)(B) of this title and available for this subsection, the Secretary is authorized to enter into an agreement with the Assistant Secretary of the Interior for Indian Affairs for the operation of vocational education programs authorized by this chapter in institutions serving Indians eligible to receive educational benefits as Indians from the Bureau of Indian Affairs, and the Secretary of the Interior is authorized to receive the funds for the purposes described in this paragraph.

(2) The Bureau of Indian Affairs shall expend an amount equal to the amount made available under this subsection, relating to programs for Indians, to pay a part of the costs of programs funded under this subsection. During each fiscal year the Bureau of Indian Affairs shall expend no less than the amount expended during the prior fiscal year on vocational education programs, services, and activities administered either directly by, or under contract with, the Bureau of Indian Affairs. The Secretary and the Assistant Secretary of the Interior for Indian Affairs shall jointly prepare a plan for the expenditure of funds made available and for the evaluation of programs assisted under this subsection. Upon the completion of a joint plan for the expenditure of these funds and the evaluation of the programs, the Secretary shall assume responsibility for the administration of the program, with the assistance and consultation of the Bureau of Indian Affairs.

(3) Programs funded under this subsection shall be in addition to such other programs, services, and activities as are made available to eligible Indians under other provisions of this chapter.

(4) For the purposes of this chapter, the Bureau of Indian Affairs shall be deemed to be a State board; and all the provisions of this chapter shall be applicable to the Bureau as if it were a State board.

(c) Hawaiian natives

From the funds reserved pursuant to section 2311(a)(1)(B)(ii) of this title, the Secretary is directed, to enter into contracts with organizations primarily serving and representing Hawaiian natives which are recognized by the Governor of the State of Hawaii to plan, conduct, and administer programs, or portions thereof, which are authorized by and consistent with the provisions of this section for the benefit of Hawaiian natives.

(Pub. L. 88-210, title I, § 103, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2440.)

REFERENCES IN TEXT

The Act of April 16, 1934, referred to in subsecs. (a)(1) and (b)(1), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, known as the Johnson-O'Malley Act, which is classified to sections 452 to 457 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 452 of Title 25 and Tables.

The Indian Self-Determination Act, referred to in subsec. (b)(1), is title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, which is classified principally to subchapter II (§ 450f et seq.) of chapter 14 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2311 of this title.

PART B—STATE ORGANIZATIONAL AND PLANNING RESPONSIBILITIES

§ 2321. State administration

(a) Establishment of board; administrative responsibilities; delegation of functions

(1) Any State desiring to participate in the vocational education program authorized by this chapter shall, consistent with State law, designate or establish a State board of vocational education which shall be the sole State agency responsible for the administration or the supervision of the State vocational education program. The responsibilities of the State board shall include—

(A) coordination of the development, submission, and implementation of the State plan, and the evaluation of the program, services, and activities assisted under this chapter pursuant to section 2323(b)(9) of this title; and

(B) the development, in consultation with the State council on vocational education, and the submission to the Secretary, of the State plan required by section 2323 of this title and by section 2324 of this title;

(C) consultation with the State council established pursuant to section 2322 of this title, and other appropriate agencies, groups, and individuals involved in the planning, administration, evaluation, and coordination of programs funded under this chapter;

(D) convening and meeting as a State board (consistent with State law and procedure for the conduct of such meetings) at such time as the State board determines necessary to carry out its functions under this chapter, but not less than four times annually; and

(E) the adoption of such procedures as the State board considers necessary to implement State level coordination with the State job training coordinating council to encourage cooperation in the conduct of their respective programs.

Except with respect to the functions set forth in the preceding sentence, the State board may delegate any of its other responsibilities involving administration, operation, or supervision, in whole or in part, to one or more appropriate State agencies.

(2) Each State shall include a description of any delegation of its functions under paragraph (1) in its State plan, or amendments to such plan, submitted to the Secretary.

(b) Assignment of personnel by State; functions of personnel; implementing funds; "State" defined

(1) Any State desiring to participate in the programs authorized by this chapter shall assign one individual within the appropriate agency established or designated by the State board under the last sentence of subsection (a)(1) of this section to administer vocational

education programs within the State, to work full time to assist the State board to fulfill the purposes of this chapter by—

(A) administering the program of vocational education for single parents and homemakers described in section 2331(f) of this title and the sex equity program described in section 2331(g) of this title;

(B) gathering, analyzing, and disseminating data on the adequacy and effectiveness of vocational education programs in the State in meeting the education and employment needs of women (including preparation for employment in technical occupations, new and emerging occupational fields, and occupations regarded as nontraditional for women), and on the status of men and women students and employees in such programs;

(C) reviewing vocational education programs (including career guidance and counseling) for sex stereotyping and sex bias, with particular attention to practices which tend to inhibit the entry of women in high technology occupations, and submitting (i) recommendations for inclusion in the State plan of programs and policies to overcome sex bias and sex stereotyping in such programs, and (ii) an assessment of the State's progress in meeting the purposes of this chapter with regard to overcoming sex discrimination and sex stereotyping;

(D) reviewing proposed actions on grants, contracts, and the policies of the State board to ensure that the needs of women are addressed in the administration of this chapter;

(E) developing recommendations for programs of information and outreach to women concerning vocational education and employment opportunities for women (including opportunities for careers as technicians and skilled workers in technical fields and new and emerging occupational fields);

(F) providing technical assistance and advice to local educational agencies, postsecondary institutions, and other interested parties in the State, in expanding vocational opportunities for women; and

(G) assisting administrators, instructors, and counselors in implementing programs and activities to increase access for women (including displaced homemakers and single heads of households) to vocational education and to increase male and female students' enrollment in nontraditional programs.

(2) For the purpose of this subsection, the term "State" means any one of the fifty States and the District of Columbia.

(3) Each State shall expend not less than $60,000 in each fiscal year to carry out the provisions of this subsection.

(c) Program listing; availability to private industry councils

The State board shall make available to each private industry council established under section 102 of the Job Training Partnership Act [29 U.S.C. 1512] within the State a listing of all programs assisted under this chapter.

(d) Technical committees; procedures established by State board; membership

Each State board, in consultation with the State council, shall establish a limited number of technical committees to advise the council and the board on the development of model curricula to address State labor market needs. Technical committees shall develop an inventory of skills that may be used by the State board to define state-of-the-art model curricula. Such inventory will provide the type and level of knowledge and skills needed for entry, retention, and advancement in occupational areas taught in the State. The State board shall establish procedures for membership, operation, and duration of such committees consistent with the purposes of this chapter. The membership shall be representatives of (1) employers from any relevant industry or occupation for which the committee is established; (2) trade or professional organizations representing any relevant occupations; and (3) organized labor, where appropriate.

(e) State imposed requirements

The imposition of any State rule or policy relating to the administration and operation of programs funded by this chapter (including any rule or policy based on State interpretation of any Federal law, regulation, or guideline) shall be identified as a State imposed requirement.

(Pub. L. 88-210, title I, § 111, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2441.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2312, 2331, 2341, 2441, 2462 of this title; title 29 section 1697.

§ 2322. State council on vocational education

(a) Establishment; membership

Each State which desires to participate in vocational education programs authorized by this chapter for any fiscal year shall establish a State council, which shall be appointed by the Governor or, in the case of States in which the members of the State board of education are elected (including election by the State legislature), by such board. Each State council shall be composed of 13 individuals, and shall be broadly representative of citizens and groups within the State having an interest in vocational education. Each State council shall consist of—

(1) seven individuals who are representative of the private sector in the State who shall constitute a majority of the membership—

(A) five of whom shall be representative of business, industry, and agriculture including—

(i) one member who is representative of small business concerns; and

(ii) one member who is a private sector member of the State job training coordinating council (established pursuant to section 122 of the Job Training Partnership Act [29 U.S.C. 1532]), and

(B) two of whom shall be representatives of labor organizations;

(2) six individuals who are representative of secondary and postsecondary vocational institutions (equitably distributed among such institutions), career guidance and counseling organizations within the State, individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations (including women, the disadvantaged, the handicapped, individuals with limited English proficiency, and minorities) and of whom one member shall be representative of special education.

In selecting individuals under subsection (a) of this section to serve on the State council, due consideration shall be given to the appointment of individuals who serve on a private industry council under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], or on State councils established under other related Federal Acts.

(b) Certification requirements of establishment and membership

The State shall certify the establishment and membership of the State council at least 90 days prior to the beginning of each planning period described in section 2323(a)(1) of this title.

(c) Meetings; chairperson; rules for operating procedure and staffing

Each State council shall meet as soon as practical after certification has been accepted by the Secretary and shall select from among its membership a chairperson who shall be representative of the private sector. The time, place, and manner of meeting, as well as council operating procedures and staffing, shall be as provided by the rules of the State council, except that such rules must provide for not less than one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

(d) Functions and duties

Each State council shall—

(1) meet with the State board or its representatives during the planning year to advise on the development of the State plan;

(2) advise the State board and make reports to the Governor, the business community, and general public of the State, concerning—

(A) policies the State should pursue to strengthen vocational education (with particular attention to programs for the handicapped); and

(B) initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;

(3) analyze and report on the distribution of spending for vocational education in the State and on the availability of vocational education activities and services within the State;

(4) furnish consultation to the State board on the establishment of evaluation criteria for vocational education programs within the State;

(5) submit recommendations to the State board on the conduct of vocational education programs conducted in the State which emphasize the use of business concerns and labor organizations;

(6) assess the distribution of financial assistance furnished under this chapter, particularly with the analysis of the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs;

(7) recommend procedures to the State board to ensure and enhance the participation of the public in the provision of vocational education at the local level within the State, particularly the participation of local employers and local labor organizations;

(8) report to the State board on the extent to which the individuals described in section 2331(b) of this title are provided with equal access to quality vocational education programs; and

(9)(A) evaluate at least once every two years (i) the vocational education program delivery systems assisted under this chapter, and under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], in terms of their adequacy and effectiveness in achieving the purposes of each of this chapter and the Job Training Partnership Act and (ii) make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the Job Training Partnership Act and (B) advise the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor of these findings and recommendations.

(e) Employment of professional, technical, and clerical personnel; contracts for employment of personnel for implementation of evaluation functions

Each State council is authorized to obtain the services of such professional, technical, and clerical, personnel as may be necessary to enable it to carry out its functions under this chapter and to contract for such services as may be necessary to enable the Council to carry out its evaluation functions, independent of programmatic and administrative control by other State boards, agencies, and individuals.

(f) Authorization of appropriations for grants to councils; amounts of grants; expenditure of funds

(1)(A) From the amounts appropriated pursuant to section 2302(c) of this title the Secretary shall make grants to State councils from amounts allotted to State councils in accordance with the method for allotment contained in section 2311(a)(2) of this title, without regard to paragraph (3), except that no State council shall be allotted less than $120,000 nor more than $225,000 for each fiscal year.

(B) For the purpose of subparagraph (A), the term "State" shall not include the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) The expenditure of the funds paid pursuant to this subsection is to be determined solely by the State council for carrying out its functions under this chapter, and may not be divert-

ed or reprogramed for any other purpose by any State board, agency, or individual. Each State council shall designate an appropriate State agency or other public agency, eligible to receive funds under this chapter, to act as its fiscal agent for purposes of disbursement, accounting, and auditing.

(Pub. L. 88-210, title I, § 112, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2443.)

References in Text

The Job Training Partnership Act, referred to in subsecs. (a) and (d)(9)(A), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

Section Referred to in Other Sections

This section is referred to in sections 2302, 2321, 2323, 2372, 2392, 2461, 2462, 2471 of this title.

§ 2323. State plans

(a) Submission to Secretary; planning period; State councils; public hearings; development of plan

(1)(A) Any State desiring to receive funds from its allotment for any fiscal year shall submit to the Secretary a State plan for a three-year period in the case of the initial plan and a 2-year period thereafter, together with such annual revisions as the State board determines to be necessary.

(B) The planning periods required by paragraph (1) of this subsection shall be coterminous with the planning program periods required under section 104(a) of the Job Training Partnership Act [29 U.S.C. 1514(a)].

(2)(A) In formulating the State plan (and amendments thereto) the State board shall meet with and utilize the State council, established pursuant to section 2322 of this title.

(B) The State board shall conduct public hearings in the State, after appropriate and sufficient notice, for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan. A summary of such recommendations and the State board's response shall be included with the State plan.

(3) In developing the State plan, the State shall—

(A) assess the current and projected occupational needs and the current and projected demand for general occupational skills within the State;

(B) examine the needs of students, including adults, in order to determine how best to improve student skill levels in light of the State's occupational and skill requirements;

(C) assess the special needs of groups of individuals specified in section 2331(b) of this title for access to vocational education and vocational services in terms of labor market needs;

(D) assess the quality of vocational education in terms of—

(i) the pertinence of programs to the workplace and to new and emerging technologies,

(ii) the responsiveness of programs to the current and projected occupational needs in the State,

(iii) the capacity of programs to facilitate entry into, and participation in, vocational education and to ease the school-to-work and secondary-to-postsecondary transition,

(iv) the technological and educational quality of vocational curricula, equipment, and instructional materials to enable vocational students and instructors to meet the challenges of increased technological demands of the workplace; and

(v) the capability of vocational education programs to meet the needs for general occupational skills and improvement of academic foundations in order to address the changing content of jobs;

(E) determine the capacity of local educational agencies, with respect to secondary education and postsecondary educational institutions, to deliver the vocational education services necessary to meet the needs identified through the assessments required by clauses (A) through (D) of this paragraph; and

(F) determine, for each fiscal year, how the services and activities supported by funds furnished under this chapter may be expected to assist the State in meeting the needs identified through the assessments required by clauses (A) through (D) of this paragraph.

(b) Descriptions and assurances

Each such plan shall—

(1) provide assurances that, and where necessary a description of the manner in which, the State board will comply with the requirements of subchapters I, II, III, and V of this chapter, including—

(A) a description of the manner in which the State will comply with the criteria required for programs for the handicapped and for the disadvantaged prescribed by section 2334 of this title;

(B) assurances that the State will comply with the distribution of assistance requirements contained in section 2333 of this title; and

(C) assurances that, to the extent consistent with the number and location of individuals described in clauses (1) and (2) of section 2331(b) of this title in the State who are enrolled in private elementary and secondary schools, provision is made for the participation of such individuals in the vocational education program assisted under part A of subchapter II of this chapter;

(2) set forth the planned uses of Federal funds available for vocational education for each fiscal year for which the plan is submitted and describe how the State did carry out the provisions of subsection (a)(3) of this section;

(3) describe progress the State has made in achieving the goals set forth in each State plan subsequent to the initial State plan;

(4) provide assurances that the State will distribute at least 80 percent of the funds made available for parts A and B of subchap-

ter II of this chapter to eligible recipients, or combination of eligible recipients, except that the State will distribute 100 percent of the funds available for clauses (1) and (2) of section 2332 of this title, relating to the disadvantaged and the handicapped, to eligible recipients in accordance with section 2333(a) of this title;

(5) set forth the criteria the State board will use in approving applications of eligible recipients and allocating funds made available under this chapter to such recipients, which shall ensure that States will allocate more Federal funds to eligible recipients in units of local government which are economically depressed (including both urban and rural units) or which have high unemployment, as determined by the State;

(6) provide such methods of administration as are necessary for the proper and efficient administration of the chapter;

(7) provide assurances that, in the use of funds available for single parents and homemakers under section 2331(b)(3) of this title, that the State will emphasize assisting individuals with the greatest financial need, and that in serving homemakers the State will give special consideration to homemakers who because of divorce, separation, or the death or disability of a spouse must prepare for paid employment;

(8) provide assurances that the State will furnish relevant training and vocational education activities to men and women who desire to enter occupations that are not traditionally associated with their sex;

(9)(A) provide assurances that the State will develop measures for the effectiveness of programs assisted under this chapter in meeting the needs identified in the State plan, including evaluative measurements such as—

(i) the occupations to be trained for, which will reflect a realistic assessment of the labor market needs of the State;

(ii) the levels of skills to be achieved in particular occupations, which will reflect the hiring needs of employers; and

(iii) the basic employment competencies to be used in performance outcomes, which will reflect the hiring needs of employers;

(B) the State will, as a component of the measures under subclause (A) of this clause, establish appropriate measures for evaluating the effectiveness of programs for the handicapped assisted under this chapter; and

(C) provide assurances that the State will evaluate not less than 20 percent of the eligible recipients assisted within the State in each fiscal year;

(10) describe the methods proposed for the joint planning and coordination of programs carried out under this chapter with programs conducted under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], the Adult Education Act [20 U.S.C. 1201 et seq.], title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.] as modified by chapter 1 of the Education Consolidation and Improvement Act [20 U.S.C. 3801 et seq.], the Education of the Handicapped Act [20 U.S.C. 1400 et seq.], and the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], and with apprenticeship training programs;

(11) that programs of personnel development, and curriculum development shall be funded to further the goals identified in the State plan;

(12) provide assurances that the vocational education needs of those identifiable segments of the population in the State that have the highest rates of unemployment have been thoroughly assessed, and that such needs are reflected in and addressed by the State plan;

(13) provide assurances that the State board will cooperate with the State council on vocational education in carrying out its duties under this part;

(14) provide assurance that none of the funds expended under this chapter will be used to acquire equipment (including computer software) in any instance in which such acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization;

(15) provide assurances that for each fiscal year, expenditures for career guidance and counseling from allotments for subchapter II of this chapter and part D of subchapter III of this chapter will not be less than the expenditures for such guidance and counseling in the State for the fiscal year 1984 assisted under section 134(a) of the Vocational Education Act of 1963;

(16) provide assurances that Federal funds made available under this chapter will be used so as to supplement, and to the extent practicable increase the amount of State and local funds that would in the absence of such Federal funds be made available for the uses specified in the State plan, and in no case supplant such State or local funds; and

(17) provide assurances that the State will provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of, and accounting for, Federal funds paid to the State (including such funds paid by the State to eligible recipients under this chapter).

(c) Amendments; review; approval by Secretary

(1) When changes in program conditions, labor market conditions, funding, or other factors require substantial amendment to an approved State plan, the State board, in consultation with the State council, shall submit amendments to such State plan to the Secretary. Any such amendments shall be subject to review by the State job training coordinating council, and the State council.

(2) The Secretary shall approve, within sixty days of submission, the State plan amendments which meet the requirements of this section, unless such amendments propose changes that are inconsistent with the requirements and purposes of this chapter. The Secretary shall not finally disapprove such amendments except after giving reasonable notice and an opportunity for a hearing to the State board.

(Pub. L. 88–210, title I, § 113, as added Pub. L. 98–524, § 1, Oct. 19, 1984, 98 Stat. 2445.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (b)(10), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

The Adult Education Act, referred to in subsec. (b)(10), is title III of Pub. L. 89–750, Nov. 3, 1966, 80 Stat. 1216, as amended, which is classified principally to chapter 30 (§ 1201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of this title and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (b)(10), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95–561, Nov. 1, 1978, 92 Stat. 2152. Title I of the 1965 Act, which was formerly classified generally to subchapter II (§ 241a et seq.) of chapter 13 of this title, is classified generally to subchapter I (§ 2701 et seq.) of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Education Consolidation and Improvement Act, referred to in subsec. (b)(10), probably means the Education Consolidation and Improvement Act of 1981 which is subtitle D [§§ 551 to 596] of title V of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 463, as amended. Chapter 1 of the Act is classified generally to subchapter I [§ 3801 et seq.] of chapter 51 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of this title and Tables.

The Education of the Handicapped Act, referred to in subsec. (b)(10), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b)(10), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Section 134(a) of the Vocational Education Act of 1963, referred to in subsec. (b)(15), is section 134(a) of Pub. L. 88–210, title I, as added Pub. L. 94–482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2193, and amended, which was classified to section 2354(a) of this title prior to the complete revision of Pub. L. 88–210 by Pub. L. 98–524, § 1, Oct. 19, 1984, 98 Stat. 2435.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2312, 2321, 2322, 2324, 2403 of this title; title 29 section 1532.

§ 2324. Approval

(a) Submission to State legislature and State job coordinating council

(1) Each State plan shall, not less than 60 days before the plan is to be submitted to the Secretary, be furnished to the State legislature and the State job training coordinating council of the State under section 122 of the Job Training Partnership Act [29 U.S.C. 1532] for review and comment. If the matters covered by the comments of the State legislature and the State job training coordinating council are not covered by the State plan, the State shall submit the comments with the State plan to the Secretary.

(2) If the State legislature is not in session during the period described in paragraph (1), the State board shall submit the plan for review and comment to the next meeting of the State legislature and forward the comments of the State legislature to the Secretary when the comments are received.

(b) Review and comment; objections by State council

(1) Each State plan shall be submitted to the State council on vocational education for review and comment not later than 60 days prior to the submission of the plan to the Secretary.

(2) If the State council finds that the final State plan is objectionable for any reason, including that it does not meet the labor market needs of the State, the State council shall file its objections with the State board. The State board shall respond to any objections of the State council in submitting such plan to the Secretary. The Secretary shall consider such comments in reviewing the State plan.

(c) Technical assistance and guidance to States; submission of plan to Secretary; approval; notice and hearings; general application

(1) The Secretary shall provide technical assistance and guidance to the States in order to assist the States to fulfill the requirements of section 2323(a)(3) of this title.

(2)(A) Each State plan shall be submitted to the Secretary by May 1 preceding the beginning of the first fiscal year for which such plan is to be in effect. The Secretary shall approve, within sixty days, each such plan which meets the requirements of section 2323 of this title, and shall not finally disapprove a State plan except after giving reasonable notice and an opportunity for a hearing to the State board.

(B) The document submitted under subparagraph (A) shall be considered to be the general application required to be submitted by the State for funds received under this chapter for purposes of the provisions of section 435 of the General Education Provisions Act [20 U.S.C. 1232d].

(Pub. L. 88–210, title I, § 114, as added Pub. L. 98–524, § 1, Oct. 19, 1984, 98 Stat. 2449.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2321, 2362, 2461, 2464 of this title.

§ 2325. Local application

(a) Requirements; determination by State board

Except as provided in subsection (c) of this section, any eligible recipient desiring to receive assistance under this chapter shall, according to requirements established by the State board, submit to the State board an application, covering the same period as the State plan, for the use of such assistance. The State board shall determine requirements for local applications (and amendments thereto), except that each such application shall—

(1) set forth the vocational education programs, services, and activities proposed to be funded; and

(2) describe the coordination with relevant programs conducted under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] and the Adult Education Act [20 U.S.C. 1201 et seq.], to avoid duplication.

(b) Review and comment

Each such local application shall be available for review and comment by interested parties, including the appropriate administrative entity under the Job Training Partnership Act [29 U.S.C. 1501 et seq.].

(c) Exemptions; criteria

(1) Eligible recipients providing relatively few vocational education programs, services, and activities funded with limited total Federal and State funds may, as determined by the State board, be exempt from the requirements of subsection (a) or (b) of this section or both.

(2) Each State board shall identify in its State plan the appropriate criteria for determining such exemptions.

(Pub. L. 88-210, title I, § 115, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2449.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsecs. (a)(2) and (b), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

The Adult Education Act, referred to in subsec. (a)(2), is title III of Pub. L. 89-750, Nov. 3, 1966, 80 Stat. 1216, as amended, which is classified principally to chapter 30 (§ 1201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of this title and Tables.

SUBCHAPTER II—BASIC STATE GRANTS FOR VOCATIONAL EDUCATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2302, 2323, 2372, 2392 of this title.

PART A—VOCATIONAL EDUCATION OPPORTUNITIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 2312, 2323, 2341, 2462 of this title.

§ 2331. Uses of funds

(a) Services provided by State

From the portion of the allotment of each State under section 2311 of this title available for this part, each State shall provide vocational education services and activities designed to meet the special needs of groups of individuals specified in subsection (b) of this section.

(b) Education opportunities; allotment portion used

To meet the needs identified in the State plan, each State shall use the portion of its allotment available for this part in any fiscal year to provide vocational education services and activities designed to meet the special needs of, and to enhance the participation of—

(1) handicapped individuals;

(2) disadvantaged individuals;

(3) adults who are in need of training and retraining;

(4) individuals who are single parents or homemakers;

(5) individuals who participate in programs designed to eliminate sex bias and stereotyping in vocational education; and

(6) criminal offenders who are serving in a correctional institution.

(c) Handicapped individuals; disadvantaged individuals

(1) Each State shall use the portion of its allotment available for this part in any fiscal year for handicapped individuals only for the Federal share of expenditures limited to supplemental or additional staff, equipment, materials, and services not provided to other individuals in vocational education that are essential for handicapped individuals to participate in vocational education. If the conditions of handicapped students require a separate program, each State may use such funds for the Federal share of the costs of the services and activities in separate vocational education programs for handicapped individuals which exceed the average average [1] per-pupil expenditures for regular services and activities of the eligible recipient.

(2) Each State shall use the portion of its allotment available for this part in any fiscal year for disadvantaged individuals only for the Federal share of expenditures limited to supplemental or additional staff, equipment, materials, and services not provided to other individuals in vocational education that are essential for disadvantaged individuals to participate in vocational education. If the conditions of disadvantaged individuals require a separate program, each State may use such funds for the Federal share of the costs of the services and activities in separate vocational education programs for disadvantaged individuals which exceed the average per-pupil expenditures for regular services and activities of the eligible recipient.

(d) Equal access; machinery and tools

(1) Each State may use the portion of its allotment available for this part for any fiscal year for the improvement of vocational education services and activities designed to provide equal access to quality vocational education to disadvantaged individuals, the costs of services and activities which apply the latest technological advances to courses of instruction, and, subject to the provisions of paragraph (2), the acquisition of modern machinery and tools.

(2) Funds available to each recipient under this part for the disadvantaged may be expended for the acquisition of modern machinery and tools in schools at which at least 75 percent of the students enrolled are economically disadvantaged.

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[1] So in original. Second "average" probably should not appear.

(e) Adult and postsecondary services; additional uses of funds

(1) Each State shall use the portion of its allotment available for this part to provide, improve, and expand adult and postsecondary vocational education services and activities to train and retrain adults.

(2) Funds used for the purpose described in subsection (a) of this section may be used for services and activities developed in coordination with the State agency administering title III of the Job Training Partnership Act [29 U.S.C. 1651 et seq.].

(3) Funds for services and activities under this section may be used for—

(A) additional training under title III of the Job Training Partnership Act [29 U.S.C. 1651 et seq.];

(B) vocational education programs for training or retraining adults, including programs for older individuals and displaced homemakers;

(C) the costs of serving adults in other vocational education programs, including paying the costs of instruction or the costs of keeping school facilities open longer;

(D) individuals who have completed or left high school and who are enrolled in organized programs of study for which credit is given toward an associate or other degree, but which programs are not designed as baccalaureate or higher degree programs; and

(E) individuals who have already entered the labor market, or have completed or left high school, and who are not described in clause (D).

(f) Limitations on use of funds

Each State may only use the portion of its allotment available for this part to—

(1) provide, subsidize, reimburse or pay for vocational education and training activities, including basic literacy instruction and necessary educational materials, that will furnish single parents and homemakers with marketable skills;

(2) make grants to eligible recipients for expanding vocational education services when this expansion directly increases the eligible recipients' capacity for providing single parents and homemakers with marketable skills;

(3) make grants to community-based organizations for the provision of vocational education services to single parents and homemakers, if the State determines that the community-based organization has demonstrated effectiveness in providing comparable or related services to single parents and homemakers, taking into account the demonstrated performance of such an organization in terms of cost, the quality of training and the characteristics of the participants;

(4) make vocational education and training more accessible to single parents and homemakers by assisting them with child care or transportation services or by organizing and scheduling the programs so that such programs are more accessible; or

(5) provide information to single parents and homemakers to inform them of vocational education programs and related support services.

(g) Sex bias and stereotyping; age limitations

That portion of the allotment described in section 2332(5) of this title shall be available for—

(1) programs, services, and activities to eliminate sex bias and stereotyping in secondary and postsecondary vocational education;

(2) vocational education programs, services, and activities for girls and women, aged 14 through 25, designed to enable the participants to support themselves and their families; and

(3) support services for individuals participating in vocational education programs, services, and activities described in clauses (1) and (2) including dependent-care services and transportation.

The requirement with respect to age limitations contained in clause (2) of subsection (a) of this section may be waived whenever the individual described in section 2321(b)(1) of this title determines that the waiver is essential to meet the objectives of this section.

(h) Basic skill instruction; private institutions

(1) Each State may use the portion of its allotment available for this part in any fiscal year for basic skills instruction for vocational education students and related to their instructional program whenever the State board determines that such instruction is necessary to carry out the purposes described in subsection (b) of this section.

(2) Each State may use the portion of its allotment available for this part in any fiscal year for the provision of educational training through arrangements with private vocational training institutions, private postsecondary educational institutions, and employers whenever such institutions or employers can make a significant contribution to obtaining the objectives of the State plan and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions.

(i) Work-site, work-study, and apprenticeship programs; placement services for students

(1) Vocational education services and activities described in subsection (b) of this section shall, to the extent practicable, include work-site programs such as cooperative vocational education, work-study, and apprenticeship programs.

(2) Vocational education services and activities described in subsection (b) of this section may include placement services for students who have successfully completed vocational education programs.

(Pub. L. 88-210, title II, § 201, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2450.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (e)(2), (3)(A), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended. Title III of that Act is classified generally to subchapter III (§ 1651 et seq.) of chapter 19 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2302, 2321, 2322, 2323, 2333, 2403, 2411, 2462 of this title.

§ 2332. Distribution of assistance

From the portion of the allotment of each State available for this part for each fiscal year—

(1) 10 percent of the funds available for this subchapter shall be available for handicapped individuals;

(2) 22 percent of such funds shall be available for disadvantaged individuals;

(3) 12 percent of such funds shall be available for adults who are in need of training and retraining;

(4) 8.5 percent of such funds shall be available for individuals who are single parents and homemakers;

(5) 3.5 percent of such funds shall be available for individuals who are participants in programs designed to eliminate sex bias and stereotyping in vocational education; and

(6) 1 percent of such funds shall be made available for criminal offenders who are in correctional institutions.

(Pub. L. 88-210, title II, § 202, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2452.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2323, 2331, 2333 of this title.

§ 2333. Within State allocation

(a) Handicapped individuals; disadvantaged individuals; individuals with limited English proficiency; community-based organizations

(1)(A) The State board shall allocate the 10 percent of the amount allotted to the State and available for this subchapter for vocational education services and activities for the handicapped to eligible recipients in accordance with the provisions of this paragraph.

(B) Of the amount allocated under this paragraph—

(i) 50 percent of such amount shall be allocated to eligible recipients on the basis of the relative number of economically disadvantaged individuals enrolled in each eligible recipient in the fiscal year preceding the fiscal year in which the determination is made to the total number of such individuals enrolled in all eligible recipients within the State in such year; and

(ii) 50 percent shall be allocated on the basis of the relative number of handicapped students served in vocational education programs by each eligible recipient within the State in the fiscal year preceding the fiscal year for which the determination is made as compared to the total number of such individuals served by all eligible recipients within the State in such year.

(2)(A) The State board shall allocate the 22 percent of the amount allotted to the State and available for this subchapter for vocational education services and activities for the disadvantaged to eligible recipients in accordance with the provisions of this paragraph.

(B) Of the amount allocated under this paragraph—

(i) 50 percent of such amount shall be allocated to eligible recipients on the basis of the relative number of economically disadvantaged individuals enrolled in each eligible recipient in the fiscal year preceding the fiscal year in which the determination is made compared to the total number of such individuals enrolled in all eligible recipients within the State in such year; and

(ii) 50 percent shall be allocated on the basis of the relative number of disadvantaged individuals and individuals with limited English proficiency served in vocational education programs by each eligible recipient within the State in the fiscal year preceding the fiscal year for which the determination is made as compared to the total number of such individuals served by all eligible recipients within the State in such year.

(3) The State board shall assure that sums allocated among eligible recipients pursuant to this subsection shall be used by an eligible recipient for vocational education services and activities for individuals with limited English proficiency in the same proportion as the number of individuals with limited English proficiency served by each eligible recipient within the State in the fiscal year preceding the fiscal year for which the determination is made bears to the population of the State in that year.

(4) Each local educational agency shall use, to the extent feasible, community-based organizations of demonstrated effectiveness, in addition to other eligible recipients, for the use of funds available under this part in areas of the State in which there is an absence of sufficient vocational education facilities or in which the vocational education programs do not adequately address the needs of disadvantaged students, or in which the local educational agency determines that the community-based organization can better serve disadvantaged students.

(5) Each local educational agency is authorized to use funds allocated under paragraph (1) of this subsection for joint projects with one or more other local educational agencies.

(b) Joint operation of programs

The State board may encourage any eligible recipient within the State which is eligible to receive a grant under this part which is $1,000 or less in any fiscal year to operate programs jointly with another eligible recipient.

(c) Criteria; distribution of remaining amounts; establishment by State board

The State board shall establish criteria for the distribution of the remaining amount of the allotment of the State available for this part to eligible recipients and to community-based organizations pursuant to section 2331(c)(3) of this title within the State for the purposes described in clauses (3), (4), (5), and (6) of section 2332 of this title.

(Pub. L. 88-210, title II, § 203, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2453.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2323, 2334 of this title.

§ 2334. Criteria for services and activities for the handicapped and for the disadvantaged

(a) Assurances; State board

The State board shall, with respect to that portion of the allotment distributed in accordance with section 2333(a) of this title for vocational education services and activities for handicapped individuals and disadvantaged individuals, provide assurances that—

(1) equal access will be provided to handicapped and disadvantaged individuals in recruitment, enrollment, and placement activities;

(2) equal access will be provided to handicapped and disadvantaged individuals to the full range of vocational programs available to nonhandicapped and nondisadvantaged individuals, including occupationally specific courses of study, cooperative education, and apprenticeship programs; and

(3)(A) vocational education programs and activities for handicapped individuals will be provided in the least restrictive environment in accordance with section 1412(5)(B) of this title and will, whenever appropriate, be included as a component of the individualized education plan required under section 1412(4) and section 1414(a)(5) of this title; and

(B) vocational education planning for handicapped individuals will be coordinated between appropriate representatives of vocational education and special education.

(b) Local educational agency; providing information to students or parents; education opportunities

Each local educational agency shall, with respect to that portion of the allotment distributed in accordance with section 2333(a) of this title for vocational education services and activities for handicapped individuals and disadvantaged individuals, provide information to handicapped and disadvantaged students and parents of such students concerning the opportunities available in vocational education at least one year before the students enter the grade level in which vocational education programs are first generally available in the State, but in no event later than the beginning of the ninth grade, together with the requirements for eligibility for enrollment in such vocational education programs.

(c) Entitlements of students enrolled in programs

Each student who enrolls in vocational education programs and to whom subsection (b) of this section applies shall receive—

(1) assessment of the interests, abilities, and special needs of such student with respect to completing successfully the vocational education program;

(2) special services, including adaptation of curriculum, instruction, equipment, and facilities, designed to meet the needs described in clause (1);

(3) guidance, counseling, and career development activities conducted by professionally trained counselors who are associated with the provision of such special services; and

(4) counseling services designed to facilitate the transition from school to post-school employment and career opportunities.

(Pub. L. 88-210, title II, § 204, as added Pub. L 98-524, § 1, Oct. 19, 1984, 98 Stat. 2454.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2323 of this title.

PART B—VOCATIONAL EDUCATION PROGRAM IMPROVEMENT, INNOVATION, AND EXPANSION

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 2312, 2323, 2392, 2462 of this title.

§ 2341. Uses of funds

(a) State plan needs identified; amounts appropriated

From the portion of the allotment of each State under section 2311 of this title available for this part from amounts appropriated pursuant to section 2302(a) of this title for each fiscal year, each State may use funds so available to meet the needs identified in the State plan for—

(1) the improvement of vocational education programs within the State designed to improve the quality of vocational education, including high-technology programs involving an industry-education partnership as described in part D of subchapter III of this chapter, apprenticeship training programs, and the provision of technical assistance;

(2) the expansion of vocational education activities necessary to meet student needs and the introduction of new vocational education programs, particularly in economically depressed urban and rural areas of the State;

(3) the introduction of new vocational education programs, particularly in economically depressed urban and rural areas;

(4) the creation or expansion of programs to train workers in skilled occupations needed to revitalize businesses and industries or to promote the entry of new businesses and industries into a State or community;

(5) exemplary and innovative programs which stress new and emerging technologies and which are designed to strengthen vocational education services and activities;

(6) the improvement and expansion of postsecondary and adult vocational education programs and related services for out-of-school youth and adults, which may include upgrading the skills of (A) employed workers, (B) workers who are unemployed or threatened with unemployment as a result of technological change or industrial dislocation, (C) workers with limited English proficiency, and (D) displaced homemakers and single heads of households;

(7) the improvement and expansion of career counseling and guidance authorized by part D of subchapter III of this chapter;

(8) programs relating to curriculum development in vocational education within the State, including the application of basic skills training;

(9) the expansion and improvement of programs at area vocational education schools;

(10) the acquisition of equipment and the renovation of facilities necessary to improve or expand vocational education programs within the State;

(11) the conduct of special courses and teaching strategies designed to teach the fundamental principles of mathematics and science through practical applications which are an integral part of the student's occupational program;

(12) the assignment of personnel to work with employers and eligible recipients in a region to coordinate efforts to ensure that vocational programs are responsive to the labor market and supportive of apprenticeship training programs;

(13) the activities of vocational student organizations carried out as an integral part of the secondary and postsecondary instructional program;

(14) prevocational programs;

(15) programs of modern industrial and agricultural arts;

(16) support for full-time personnel to carry out section 2321(b) of this title which shall be paid for from administrative expenses of the State available under section 2312(b) of this title;

(17) the provision of stipends, which shall not exceed reasonable amounts as prescribed by the Secretary by regulation, for students entering or already enrolled in vocational education programs who have acute economic needs which cannot be met under work-study programs;

(18) placement services for students who have successfully completed vocational education programs (including special services for the handicapped and cooperative efforts with rehabilitation programs);

(19) day care services for children of students in secondary and postsecondary vocational education programs;

(20) the construction of area vocational education school facilities in areas having a demonstrated need for such facilities;

(21) the acquisition of high-technology equipment for vocational education programs;

(22) the provision of vocational education through arrangements with private vocational education institutions, private postsecondary educational institutions, and employers whenever such private institutions or employers can make a significant contribution to attaining the objectives of this chapter and can provide substantially equivalent preparation at a lesser cost, or can provide equipment or services not available in public institutions;

(23) the acquisition and operation of communications and telecommunications equipment for vocational education programs; and

(24) the improvement or expansion of any other vocational education activities authorized under part A of this subchapter.

(b) Inservice and preservice training; teachers; counselors and administrators

From the portion of the allotment of each State under section 2311 of this title available for this part from amounts appropriated pursuant to section 2302(a) of this title for each fiscal year, each State shall use grants for the provision of inservice and preservice training designed to increase the competence of vocational education teachers, counselors, and administrators, including special emphasis on the integration of handicapped and disadvantaged students in regular courses of vocational education.

(Pub. L. 88-210, title II, § 251, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2455.)

§ 2342. Criteria for program improvement, innovation, and expansion

(a) Authority of State to expend funds

Subject to the provisions of this part, each State may expend funds available under this part in the manner best suited to carry out the purposes of this chapter within the State.

(b) Use of community-based organizations

Each State may make use of community-based organizations of demonstrated effectiveness, in addition to eligible recipients, for the use of funds available under this part in areas of the State in which there is an absence of sufficient vocational education facilities or in which the vocational education programs do not adequately address the needs of disadvantaged students or wherever the community-based organization can better serve disadvantaged students.

(c) Projects to be of sufficient size, scope, and quality

Any project assisted with funds made available under this part shall be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of the students involved in the project.

(Pub. L. 88-210, title II, § 252, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2457.)

SUBCHAPTER III—SPECIAL PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2323, 2462 of this title.

PART A—STATE ASSISTANCE FOR VOCATIONAL EDUCATION SUPPORT PROGRAMS BY COMMUNITY-BASED ORGANIZATIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 2302 of this title.

§ 2351. Applications

(a)[1] Each community-based organization which desires to receive assistance under this part shall prepare jointly with the appropriate eligible recipient and submit an application to the State board at such time, in such manner, and containing or accompanied by such information as the State board may require. Each such application shall—

(1) contain an agreement between the community-based organization and the eligible re-

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[1] So in original. Section enacted without a subsec. (b).

cipients in the area to be served, which includes the designation of fiscal agents established for the program;

(2) provide a description of the uses for which assistance is sought pursuant to section 2352(b) of this title together with evaluation criteria to be applied to the program;

(3) provide assurances that the community-based organization will give special consideration to the needs of severely economically and educationally disadvantaged youth ages sixteen through twenty-one, inclusive;

(4) provide assurances that business concerns will be involved, as appropriate, in services and activities for which assistance is sought;

(5) describe the collaborative efforts with the eligible recipients and the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged youth into the vocational education programs; and

(6) provide assurances that the programs conducted by the community-based organization will conform to the applicable standards of performance and measures of effectiveness required of vocational education programs in the State.

(Pub. L. 88-210, title III, § 301, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2457.)

§ 2352. Uses of funds

(a) Financial assistance; joint programs of eligible recipients and community-based organizations; special services and activities

From the portion of the allotment of each State under section 2311 of this title available for this part, each State shall provide financial assistance to joint programs of eligible recipients and community-based organizations within the State for the conduct of special vocational education services and activities described in subsection (b) of this section.

(b) Programs eligible for funding

Funds provided under this section may be used in accordance with State plans for—

(1) outreach programs to facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment or other education and training;

(2) transitional services such as attitudinal and motivational prevocational training programs;

(3) prevocational educational preparation and basic skills development conducted in cooperation with business concerns;

(4) special prevocational preparations programs targeted to inner-city youth, non-English speaking youth, Appalachian youth, and the youth of other urban and rural areas having a high density of poverty who need special prevocational education programs;

(5) career intern programs;

(6) assessment of students needs in relation to vocational education and jobs; and

(7) guidance and counseling to assist students with occupational choices and with the selection of a vocational education program.

(Pub. L. 88-210, title III, § 302, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2458.)

Section Referred to in Other Sections

This section is referred to in section 2351 of this title.

Part B—Consumer and Homemaker Education

Part Referred to in Other Sections

This part is referred to in section 2302 of this title.

§ 2361. Consumer and homemaker education grants

From the portion of the allotment of each State under section 2311 of this title available for this part, the Secretary is authorized to make grants to States to assist them in conducting consumer and homemaker education programs. Such programs may include (1) instructional programs, services, and activities that prepare youth and adults for the occupation of homemaking, and (2) instruction in the areas of food and nutrition, consumer education, family living and parenthood education, child development and guidance, housing, home management (including resource management), and clothing and textiles.

(Pub. L. 88-210, title III, § 311, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2458.)

§ 2362. Use of funds from consumer and homemaker education grants

(a) Areas for which grants may be used

Grants to any State under this part shall be used, in accordance with State plans approved under section 2324 of this title—

(1) to conduct programs in economically depressed areas;

(2) to encourage participation of traditionally underserved populations;

(3) to encourage the elimination of sex bias and sex stereotyping;

(4) to improve, expand, and update programs with an emphasis on those which specifically address needs described under clauses (1), (2), and (3); and

(5) to address priorities and emerging concerns at the local, State, and national levels.

(b) Program development and improvement; support services and activities

Grants for the purposes set forth in subsection (a) of this section may be used for—

(1) program development and improvement of instruction and curricula relating to managing individual and family resources, making consumer choices, managing home and work responsibilities, improving responses to individual and family crises, strengthening parenting skills, assisting aged and handicapped individuals, improving nutrition, conserving limited resources, understanding the impact of new technology on life and work, applying consumer and homemaker education skills to jobs and careers, and other needs as determined by the State; and

(2) support services and activities designed to ensure the quality and effectiveness of programs, including demonstration of innovative

and exemplary projects, community outreach to underserved populations, application of academic skills (such as reading, writing, mathematics, and science) through consumer and homemaker education programs, curriculum development, research, program evaluation, development of instructional materials, teacher education, upgrading of equipment, teacher supervision, and State administration and leadership, including activities of the student organization.

(c) Expending grants in economically depressed areas with high rates of unemployment

Not less than one-third of the Federal funds made available to any State under this section shall be expended in economically depressed areas or areas with high rates of unemployment for programs designed to assist consumers and to help improve home environments and the quality of family life.

(Pub. L. 88-210, title III, § 312, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2458.)

§ 2363. Information dissemination and leadership

(a) Sharing experience with administrators; program planning; home economic education

The State board shall ensure that the experience and information gained through carrying out programs assisted under this part is shared with administrators for the purpose of program planning. Funds available under this part shall be used to assist in providing State leadership qualified by experience and preparation in home economics education.

(b) Limitation on use of funds

Not more than 6 percent of the funds available under this part may be used to carry out leadership activities under this section.

(Pub. L. 88-210, title III, § 313, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2459.)

PART C—ADULT TRAINING, RETRAINING, AND EMPLOYMENT DEVELOPMENT

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 2302 of this title.

§ 2371. Findings and purpose

(a) The Congress finds that—

(1) technological change, international competition, and the demographics of the Nation's work force have resulted in increases in the numbers of adult workers who are unemployed, who have been dislocated, or who require training, retraining, or upgrading of skills,

(2) many women entering and reentering the paid labor market are disproportionately employed in low-wage occupations and require additional training,

(3) many adults cannot gain access to or benefit fully from vocational education due to limited English proficiency, and

(4) these needs can be met by vocational education programs that are responsive to the needs of individuals and the demands of the labor market.

(b) It is the purpose of this part (1) to provide financial assistance to the States to enable them to expand and improve vocational education programs designed to meet urgent needs for training, retraining, and employment development of adults who have completed or left high school and are preparing to enter or have entered the labor market, in order to equip adults with the competencies and skills required for productive employment, and (2) to ensure that such programs are relevant to the labor market needs and accessible to all segments of the population, including women, minorities, the handicapped, individuals with limited English proficiency, workers fifty-five and older, and the economically disadvantaged.

(Pub. L. 88-210, title III, § 321, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2459.)

§ 2372. Authorization of grants and uses of funds

(a) Authority of Secretary

From the portion of the allotment of each State under section 2311 of this title available for this part, the Secretary shall make grants to the States for programs, services, and activities authorized by this part.

(b) Programs authorized for funding

(1) Grants to States under this part may be used, in accordance with State plans, for—

(A) vocational education programs, services, activities, and employment development authorized by subchapter II of this chapter which are designed to meet the needs of—

(i) individuals who have graduated from or left high school and who need additional vocational education for entry into the labor force;

(ii) unemployed individuals who require training to obtain employment or increase their employability;

(iii) employed individuals who require retraining to retain their jobs, or who need training to upgrade their skills to qualify for higher paid or more dependable employment;

(iv) displaced homemakers and single heads of households who are entering or reentering the labor force;

(v) employers who require assistance in training individuals for new employment opportunities or in retraining employees in new skills required by changes in technology, products, or processes; and

(vi) workers fifty-five and older;

(B) short-term programs of retraining designed to upgrade or update skills in accordance with changed work requirements;

(C) education and training programs designed cooperatively with employers, such as—

(i) institutional and worksite programs, including apprenticeship training programs (or combinations of such programs) especially tailored to the needs of an industry or group of industries for skilled workers, technicians, or managers, or to assist their existing work force to adjust to changes in technology or work requirements; and

(ii) quick-start, customized training for workers in new and expanding industries, or for workers for placement in jobs that are difficult to fill because of a shortage of workers with the requisite skills,

(D) building more effective linkages between vocational education programs and private sector employers (through a variety of programs including programs where secondary school students are employed on a part-time basis as registered apprentices with transition to full-time apprenticeships upon graduation), and between eligible recipients of assistance under this chapter and economic development agencies and other public and private agencies providing job training and employment services, in order to more effectively reach out to and serve individuals described in subparagraph (A);

(E) cooperative education programs with public and private sector employers and economic development agencies, including seminars in institutional or worksite settings, designed to improve management and increase productivity;

(F) entrepreneurship training programs which assist individuals in the establishment, management, and operation of small business enterprises;

(G) recruitment, job search assistance, counseling, remedial services, and information and outreach programs designed to encourage and assist males and females to take advantage of vocational education programs and services, with particular attention to reaching women, older workers, individuals with limited English proficiency, the handicapped, and the disadvantaged;

(H) curriculum development, acquisition of instructional equipment and materials, personnel training, pilot projects, and related and additional services and activities required to effectively carry out the purposes of this part;

(I) the costs of serving adults in other vocational education programs, including paying the costs of instruction or the costs of keeping school facilities open longer; and

(J) related instruction for apprentices in apprenticeship training programs.

(2) In making grants under this part, the Secretary shall require each State, in its State plan (or an amendment thereto), to assure that programs—

(A) are designed with the active participation of the State council established pursuant to section 2322 of this title;

(B) make maximum effective use of existing institutions, are planned to avoid duplication of programs or institutional capabilities, and to the fullest extent practicable are designed to strengthen institutional capacity to meet the education and training needs addressed by this part;

(C) involve close cooperation with and participation by public and private sector employers and public and private agencies working with problems of employment and training and economic development; and

(D) where appropriate, involve coordination with programs under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] and the Education of the Handicapped Act [20 U.S.C. 1400 et seq.].

(Pub. L. 88–210, title III, § 322, as added Pub. L. 98–524, § 1, Oct. 19, 1984, 98 Stat. 2460.)

References in Text

The Rehabilitation Act of 1973, referred to in subsec. (b)(2)(D), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Education of the Handicapped Act, referred to in subsec. (b)(2)(D), is title VI of Pub. L. 91–230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

§ 2373. Coordination with the Job Training Partnership Act

(a) Inclusion of procedures and methods in State plan

Each State receiving grants under this part shall include in the State plan methods and procedures for coordinating vocational education programs, services, and activities funded under this part to provide programs of assistance for dislocated workers funded under title III of the Job Training Partnership Act [29 U.S.C. 1651 et seq.].

(b) Consultation with State job training coordinating council; encouraging cooperation between recipients and administrative entities

(1) The State board shall consult with the State job training coordinating council (established under section 122 of the Job Training Partnership Act [29 U.S.C. 1532]) in order that programs assisted under this part may be taken into account by such council in formulating recommendations to the Governor for the Governor's coordination and special services plan required by section 121 of such Act [29 U.S.C. 1531].

(2) The State board shall also adopt such procedures as it considers necessary to encourage coordination between eligible recipients receiving funds under this part and the appropriate administrative entity established under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] in the conduct of their respective programs, in order to achieve the most effective use of all Federal funds through programs that complement and supplement each other, and, to the extent feasible, provide an ongoing and integrated program of training and services for workers in need of such assistance.

(Pub. L. 88–210, title III, § 323, as added Pub. L. 98–524, § 1, Oct. 19, 1984, 98 Stat. 2461.)

References in Text

The Job Training Partnership Act, referred to in subsecs. (a) and (b)(2), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. Title III of that Act is classified generally to subchapter III (§ 1651 et seq.) of chapter 19 of Title 29. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

PART D—COMPREHENSIVE CAREER GUIDANCE AND COUNSELING PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 2302, 2323, 2341 of this title.

§ 2381. Grants for career guidance and counseling

From the portion of the allotment of each State under section 2311 of this title available for this part, the Secretary is authorized to make grants to States to assist them in conducting career guidance and counseling programs authorized by this part.

(Pub. L. 88-210, title III, § 331, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2462.)

§ 2382. Use of funds from career guidance and counseling grants

(a) Programs eligible for funding

Grants to any State under this part shall be used, in accordance with State plans (and amendments thereto), for programs (organized and administered by certified counselors) designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students. Such programs shall be designed to assist individuals—

(1) to acquire self-assessment, career planning, career decisionmaking, and employability skills;

(2) to make the transition from education and training to work;

(3) to maintain marketability of current job skills in established occupations;

(4) to develop new skills to move away from declining occupational fields and enter new and emerging fields in high-technology areas and fields experiencing skill shortages;

(5) to develop midcareer job search skills and to clarify career goals; and

(6) to obtain and use information on financial assistance for postsecondary and vocational education, and job training.

(b) Goals for programs

Programs of career guidance and counseling under this part shall encourage the elimination of sex, age, handicapping condition, and race bias and stereotyping, provide for community outreach, enlist the collaboration of the family, the community, business, industry, and labor and be accessible to all segments of the population, including women, minorities, the handicapped, and the economically disadvantaged. The programs authorized by this part shall consist of—

(1) instructional activities and other services at all educational levels to help students with the skills described in clauses (1) through (6) of subsection (a) of this section; and

(2) services and activities designed to ensure the quality and effectiveness of career guidance and counseling programs and projects assisted under this part, such as counselor education (including education of counselors working with individuals with limited English proficiency), training of support personnel, curriculum development, research and demonstration projects, experimental programs, instructional materials development, equipment acquisition, and State and local leadership and supervision; and

(3) projects which provide opportunities for counselors to obtain firsthand experience in business and industry, and projects which provide opportunities to acquaint students with business, industry, the labor market, and training opportunities (including secondary educational programs that have at least one characteristic of an apprenticeable occupation as recognized by the Department of Labor or the State Apprenticeship Agency in accordance with the Act of August 16, 1937, known as the National Apprenticeship Act [29 U.S.C. 50 et seq.], in concert with local business, industry, labor, and other appropriate apprenticeship training entities, designed to prepare participants for an apprenticeable occupation or provide information concerning apprenticeable occupations and their prerequisites).

(c) Minimum level of funding

Not less than 20 percent of the sums made available to a State under this part shall be used for programs designed to eliminate sex, age, and race bias and stereotyping under subsection (b) of this section and for activities to ensure that programs under this part are accessible to all segments of the population, including women, the disadvantaged, the handicapped, individuals with limited English proficiency, and minorities.

(Pub. L. 88-210, title III, § 332, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2462.)

REFERENCES IN TEXT

The Act of August 16, 1937, known as the National Apprenticeship Act, referred to in subsec. (b)(3), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, as amended, which is classified generally to chapter 4C (§ 50 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 50 of Title 29 and Tables.

§ 2383. Information dissemination and leadership

(a) Sharing of information with administrators

The State board shall ensure that the experience and information gained through programs assisted under this part is shared with administrators for the purpose of program planning. Funds available under this part shall be used to assist in providing State leadership qualified by experience and knowledge in guidance and counseling.

(b) Limitation on use of funds

Not more than 6 percent of the funds available under this part may be used to carry out leadership activities under this section.

(Pub. L. 88-210, title III, § 333, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2463.)

PART E—INDUSTRY-EDUCATION PARTNERSHIP FOR TRAINING IN HIGH-TECHNOLOGY OCCUPATIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 2302 of this title.

§ 2391. Findings and purpose

(a) The Congress finds that—

(1) shortages of technicians in high-technology fields are adversely affecting the Nation's productivity, its competitiveness in world markets, defense capability, and economic health; and

(2) the Nation's vocational education system can make a major contribution in meeting the need for trained technicians and skilled workers in these fields, particularly through partnerships between vocational agencies and institutions and private business and industry.

(b) It is therefore the purpose of this part—

(1) to provide incentives for business and industry and the vocational education community to develop programs to train the skilled workers needed to produce, install, operate, and maintain high-technology equipment, systems, and processes; and

(2) to ensure that such programs are relevant to the labor market and accessible to all segments of the population, including women, minorities, the handicapped, and the economically disadvantaged.

(Pub. L. 88-210, title III, § 341, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2463.)

§ 2392. Authorization of grants

(a) Authority of Secretary to make grants

From the portion of the allotment of each State under section 2311 of this title available for this part, the Secretary shall make grants to the States to carry out industry-education partnership training programs in high-technology occupations in accordance with this part.

(b) Use of grants; accordance with State plans containing assurances to Secretary

Grants to any State under this part shall be used, in accordance with State plans which contain assurances to the Secretary that—

(1) funds received under this part will be used solely for vocational education programs designed to train skilled workers and technicians in high-technology occupations (including programs providing related instruction to apprentices) and projects to train skilled workers needed to produce, install, operate, and maintain high-technology equipment, systems, and processes;

(2) to the maximum extent practicable, funds received under this part will be utilized in coordination with the Job Training Partnership Act [29 U.S.C. 1501 et seq.] to avoid duplication of effort and to ensure maximum effective utilization of funds under this chapter and the Job Training Partnership Act;

(3) except as provided in subsection (c) of this section, not less than 50 per centum of the aggregate costs of programs and projects assisted under this part will be provided from non-Federal sources, and not less than 50 per centum of such non-Federal share of aggregate costs in the State will be provided by participating business and industrial firms;

(4) programs and projects assisted under this part will be coordinated with those assisted under subchapter II of this chapter, and to the maximum extent practicable (consistent with the purposes of programs assisted under subchapter II of this chapter), supportive services will be so organized as to serve programs under both subchapters; and

(5) programs and projects assisted under this part will be developed with the active participation of the State council established pursuant to section 2322 of this title.

(c) Business and industrial share; fair valuation; Federal share; demonstration of lack of capability to provide non-Federal share of costs

(1) The business and industrial share of the costs required by subsection (b)(2) of this section may be in the form of cash or of in-kind contributions (such as facilities, overhead, personnel, and equipment) fairly valued.

(2) The Federal share of such costs shall be available equally from funds available to the States under this part and from funds allotted to the States under subchapter II of this chapter.

(3) If an eligible recipient demonstrates to the satisfaction of the State that it is incapable of providing all or part of the non-Federal portion of such costs as required by subsection (b)(2) of this section, the State may designate funds available under part B of subchapter II of this chapter or funds available from State sources in lieu of such non-Federal portion.

(Pub. L. 88-210, title III, § 342, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2464.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (b)(2), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2393 of this title.

§ 2393. Use of funds

(a) Limitation on programs and projects

Funds made available to the States by grants under this part may be used solely for the establishment and operation of programs and projects described by section 2392(b) of this title and for—

(1) necessary administrative costs of the State board and of eligible recipients associated with the establishment and operation of programs authorized by this part;

(2) training and retraining of instructional and guidance personnel;

(3) curriculum development and the development or acquisition of instructional and guidance equipment and materials;

(4) acquisition and operation of communications and telecommunications equipment and other high-technology equipment for programs authorized by this part; and

(5) such other activities authorized by this subchapter as may be essential to the successful establishment and operation of programs and projects authorized by this part, including activities and related services to ensure access of women, minorities, the handicapped, and the economically disadvantaged.

(b) Approval by State board; special considerations

In approving programs and projects assisted under this part, the State board shall give special consideration to—

(1) the level and degree of business and industry participation in the development and operation of the program;

(2) the current and projected demand within the State or relevant labor market area for workers with the level and type of skills the program is designed to produce;

(3) the overall quality of the proposal, with particular emphasis on the probability of successful completion of the program by prospective trainees and the capability of the eligible recipient (with assistance from participating business or industry) to provide high quality training for skilled workers and technicians in high technology; and

(4) the commitment to serve all segments of the population, including women, minorities, the handicapped, and the economically disadvantaged (as demonstrated by special efforts to provide outreach, information, and counseling, and by the provision of remedial instruction and other assistance).

(c) Limitation on expenditure of funds

Expenditures for administrative costs pursuant to subsection (a)(1) of this section may not exceed 10 per centum of the State's allotment for this part in the first year and 5 per centum of such allotment in each subsequent year.

(Pub. L. 88-210, title III, § 343, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2465.)

SUBCHAPTER IV—NATIONAL PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2302, 2311 of this title.

PART A—RESEARCH

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 2451 of this title.

§ 2401. Research objectives

It is the purpose of this part—

(1) to authorize research activities which contribute to improving the access to vocational education programs of individuals who are disadvantaged, who are handicapped, women who are entering nontraditional occupations, adults who are in need of retraining, individuals who are single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(2) to improve the competitive process by which research projects are awarded;

(3) to encourage the dissemination of findings of research projects assisted under this chapter to all States; and

(4) to authorize research activities which are readily applicable to the vocational education setting and are of practical application to vocational education administrators, counselors, and instructors and others involved in vocational education.

(Pub. L. 88-210, title IV, § 401, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2466.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2402 of this title.

§ 2402. Research activities

(a) Conduct by Secretary; methods and strategies included

In order to carry out the objectives set forth in section 2401 of this title, the Secretary shall conduct applied research on aspects of vocational education specifically related to this chapter. Such research may be conducted through the National Institute of Education or any other division of the Department of Education which the Secretary determines to be appropriate. Such research shall include—

(1) effective methods for providing quality vocational education to handicapped individuals, disadvantaged individuals, men and women in nontraditional fields, adults, individuals who are single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(2) strategies for coordinating local, State, and Federal vocational education, employment training, and economic development programs to maximize their efficacy and for improving worker training and retraining;

(3) the constructive involvement of the private sector in public vocational education;

(4) successful methods of reinforcing and enhancing basic academic skills in vocational settings;

(5) the development of curriculum materials and instructional methods relating to new and emerging technologies, and assessments of the nature of change in the workplace and its effect on individual jobs;

(6) the identification of institutional characteristics which improve the preparation of youth and adults for employment; and

(7) the development of effective methods for providing quality vocational education to individuals of limited English proficiency, including research related to bilingual vocational training.

(b) Additional research activities

In addition, the Secretary shall—

(1) initiate leadership development and inservice education activities for State and local vocational education instructors, counselors, and administrators; and

(2) support meritorious, unsolicited research proposals from individual researchers community colleges, State advisory councils,

and State and local educators relating to the goals of this chapter.

(c) Preference; public and postsecondary institutions

The Secretary shall give preference in carrying out the provisions of this part to public and private postsecondary institutions in conducting vocational education research.

(d) Program improvement activities; material included in annual report

(1) The Secretary shall institute measures designed to ensure that program improvement activities carried out under this section represent a coordinated effort to improve the quality of vocational education.

(2) The Secretary shall include in the annual report of the Secretary a summary of activities funded under this section, together with an appraisal of their contributions to the improvement and expansion of vocational education.

(Pub. L. 88-210, title IV, § 402, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2466.)

§ 2403. National assessment of vocational education programs assisted under this chapter

(a) Secretary to conduct; assisted by National Institute of Education; consultation with and reports to Congressional committees; preparation of report

The Secretary shall conduct a national assessment of vocational education assisted under this chapter, through independent studies and analysis by the National Institute of Education. The assessment shall include descriptions and evaluations of—

(1) the vocational education activities and services delivered to the individuals who benefit from vocational education activities and services assisted under this chapter, including the expansion of access to quality vocational education for individuals described in section 2331(b) of this title and adults;

(2) the impact of this chapter in modernizing the Nation's vocational education system and expanding its capacity to meet the changing needs of the workplace;

(3) the resources needed to meet adequately the Nation's job training needs;

(4) the coordination of vocational education programs with employment training and economic development among the States;

(5) the impact of vocational education programs on the achievement of academic skills and employment opportunities of students;

(6) the coordination of vocational education and postsecondary programing for handicapped and disadvantaged individuals;

(7) the skill and competency levels developed by States pursuant to section 2323(b) of this title;

(8) the effectiveness of vocational education programs and services for individuals of limited English proficiency; and

(9) the effectiveness of bilingual vocational training, including bilingual vocational instructor training, to address the unmet needs of individuals of limited English proficiency.

The National Institute of Education shall consult with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives in the design and implementation of the assessment required by this section. The National Institute of Education shall report to Congress the preliminary results of the assessment required by this section in January and July of 1988, and a final report shall be prepared and submitted to the Congress not later than January 1, 1989.

(b) Analysis by Secretary; State plans; suggestions for improvement

The Secretary shall conduct an analysis of State plans and of the findings of evaluations conducted pursuant to section 2323(b) of this title and make suggestions to State boards for improvements in planning or program operation.

(c) Review of report; additional recommendations to Congress

Notwithstanding any other provision of law or regulation, such reports shall not be subject to any review outside of the National Institute of Education before their transmittal to the Congress, but the President and the Secretary may make such additional recommendations to the Congress with respect to the assessment as they deem appropriate.

(d) Limitation on expenditure of funds

Not more than 20 percent of the amounts available under this part in any fiscal year may be expended to carry out the assessment authorized by this section.

(Pub. L. 88-210, title IV, § 403, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2467.)

§ 2404. National Center for Research in Vocational Education

(a) Establishment; support through grants; nonprofit agency; Director; advisory committee

(1) The National Center for Research in Vocational Education established pursuant to this chapter (hereinafter in this section referred to as the "National Center") shall continue to be operated with funds made available under this chapter.

(2) The Secretary shall provide support for the National Center through an annual grant for its operation. The National Center shall be a nonprofit entity associated with a public or private nonprofit university which is prepared to make a substantial financial contribution toward its establishment. The Secretary shall, on the basis of solicited applications, designate the entity to be the National Center once every five years, acting with the advice of a panel composed of individuals appointed by the Secretary who are not Federal employees and who are recognized nationally as experts in vocational education administration and research.

(3) The National Center shall have a Director, appointed by the university with which it is associated, and shall be assisted by the advisory committee under subsection (c) of this section.

(b) Purpose; functions

The National Center shall have as its primary purposes the design and conduct of research and developmental projects and programs, including longitudinal studies, which extend over a period of years (with such supplementary and short-term activities through other grants and contracts as the Director may choose to undertake consistent with the purpose of this chapter). Such projects, programs, and activities shall be conducted by the National Center directly and through subcontracts (subject to the availability of appropriations therefor) with other public agencies and public or private institutions of higher education. The National Center shall—

(1) conduct applied research and development on—

(A) effective methods for providing quality vocational education to handicapped individuals, disadvantaged individuals, men and women in nontraditional fields, adults, individuals who are single parents or homemakers, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(B) the constructive involvement of the private sector in public vocational education;

(C) successful methods of reinforcing and enhancing basic academic skills in vocational settings;

(D) the development of curriculum materials and instructional methods relating to new and emerging technologies, and assessments of the nature of change in the workplace and its effect on individual jobs; and

(E) the identification of institutional characteristics which improve the preparation of youth and adults for employment;

(2) provide leadership development through an advanced study center and inservice education activities for State and local leaders in vocational education;

(3) disseminate the results of the research and development projects funded by the Center;

(4) develop and provide information to facilitate national planning and policy development in vocational education;

(5) provide technical assistance to programs serving special populations, including the handicapped and individuals with limited English proficiency;

(6) act as a clearinghouse for information on contracts or grants made by the States to carry out research, curriculum, and personnel development activities and on contracts or grants made by the Secretary pursuant to this subchapter;

(7) work with States, local educational agencies, and other public agencies in developing methods of planning and evaluating programs, including the followup studies of individuals who complete the program so that such agencies can offer vocational education programs which are more closely related to the types of jobs available in their communities, States, and regions; and

(8) after consultation with the National Commission for Employment Policy, report annually to the Congress, the Secretary of Education, and the Secretary of Labor on the extent, efficiency, and effectiveness of joint planning and coordination under this chapter and the Job Training Partnership Act [29 U.S.C. 1501 et seq.].

(c) Advisory committee: meetings; functions; membership

The Secretary shall appoint an advisory committee which shall advise the Secretary and the Director with respect to policy issues in the administration of the National Center and in the selection and conduct of major research and demonstration projects and activities of the National Center. The advisory committee shall meet at the call of the Secretary at least three times annually at the site of the National Center. The advisory committee shall consist of not more than twelve members, who shall not be employees of the Federal Government, who shall include—

(1) two members designated by the university with which the National Center is associated;

(2) at least one member selected from individuals nominated by national organizations representing State and local education administrators and teachers;

(3) one member who is an individual recognized nationally for work in the field of vocational education research;

(4) one member who is the owner, chief executive officer, or senior manager of a private business or industry which employs skilled workers and technicians in high-technology occupations;

(5) one member who is an individual recognized nationally for work in the field of labor market economics;

(6) one member who is recognized nationally for work in curriculum in vocational education;

(7) one member who represents organized labor;

(8) one member who is an individual recognized nationally for work with individuals with limited English proficiency in the field of vocational education;

(9) one member who is an individual recognized nationally for work in guidance and counseling in the field of vocational education; and

(10) one member who is an individual recognized nationally for work with the handicapped in the field of vocational education.

(Pub. L. 88-210, title IV, § 404, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2468.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsec. (b)(8), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2451 of this title.

PART B—DEMONSTRATION PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 2451 of this title.

SUBPART 1—COOPERATIVE DEMONSTRATION PROGRAMS

§ 2411. Program authorized

(a) Secretary authorized to carry out model programs; examples of successful cooperation with private sector and public agencies

From the amounts available for this part under section 2451 of this title for each fiscal year, the Secretary is authorized to carry out, directly or through grants to or contracts with State and local educational agencies, postsecondary educational institutions, institutions of higher education, and other public and private agencies, organizations, and institutions, programs and projects which support—

(1) model programs providing improved access to quality vocational education programs for those individuals described in section 2331(b) of this title and for men and women seeking nontraditional occupations;

(2) examples of successful cooperation between the private sector and public agencies in vocational education, involving employers or consortia of employers or labor organizations and building trade councils, and State boards or eligible recipients designed to demonstrate ways in which vocational education and the private sector of the economy can work together effectively to assist vocational education students to attain the advanced level of skills needed to make the transition from school to productive employment, including—

(A) work experience and apprenticeship programs;

(B) transitional worksite job training for vocational education students which is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(C) placement services in occupations which the students are preparing to enter; and

(D) where practical, projects (such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas) that will benefit the public;

(3) programs to overcome national skill shortages, as designated by the Secretary in cooperation with the Secretary of Labor, Secretary of Defense, and Secretary of Commerce; and

(4) such other activities which the Secretary may designate which are related to the purposes of this chapter.

(b) Institutional and on-the-job training; supportive services; other necessary assistance

(1) Projects described in clause (2) of subsection (a) of this section may include institutional and on-the-job training, supportive services authorized by this chapter, and such other necessary assistance as the Secretary determines to be necessary for the successful completion of the project.

(2) Not less than 25 percent of the cost of the demonstration programs authorized by this subpart shall be provided by the recipient of the grant or contract, and such share may be in the form of cash or in-kind contributions, including facilities, overhead, personnel, and equipment fairly valued.

(c) Program requirements

All programs assisted under this section shall be—

(1) of direct service to individuals enrolled in such programs; and

(2) capable of wide replication by service providers.

(d) Dissemination of program and project results by Secretary

The Secretary shall disseminate the results of the programs and projects assisted under this section in a manner designed to improve the training of teachers, other instructional personnel, counsellors, and administrators who are needed to carry out the purposes of this chapter.

(e) Coordination plan; education and apprenticeship training programs; Secretaries of Education and Labor

Not later than one year after October 19, 1984, the Secretary of Labor and the Secretary of Education shall develop and implement a plan for greater coordination between vocational education programs and apprenticeship training programs. Linkages between such programs shall be established relating to apprentice-school programs, and preapprenticeship programs, and program evaluation and performance standards (particularly with respect to apprenticeship training and programs of related instruction). The Secretaries shall establish such other collaborative and cooperative efforts as are considered feasible and appropriate.

(Pub. L. 88-210, title IV, § 411, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2470.)

SUBPART 2—STATE EQUIPMENT POOLS

§ 2412. Program authorized

From funds made available to carry out this subpart, the Secretary shall develop and implement a program of competitive grants to State boards for the operation of State programs involving the loan of high-technology, state-of-the-art equipment to eligible recipients for use in local vocational education programs. The Secretary shall determine the appropriate amount of any grant. No State may qualify for more than two consecutive years for a grant under this subpart.

(Pub. L. 88-210, title IV, § 413, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2471.)

SUBPART 3—DEMONSTRATION CENTERS FOR THE RETRAINING OF DISLOCATED WORKERS

§ 2415. Program authorized

The Secretary shall establish one or more demonstration centers for the retraining of dislocated workers in order to demonstrate the application of general theories of vocational education to the specific problems of retraining displaced workers.

(Pub. L. 88-210, title IV, § 415, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2471.)

SUBPART 4—MODEL CENTERS FOR VOCATIONAL EDUCATION FOR OLDER INDIVIDUALS

§ 2417. Program authorized

(a) Model center grant program; authority of Secretary to establish

The Secretary shall establish a grant program to establish and operate model centers to focus greater attention on the special vocational education needs of older individuals and to promote employment opportunities for older individuals in accordance with this subpart.

(b) Requirements for centers

Any center established and operated by an eligible recipient under this subpart [1]—

(1) provide training or retraining to update older individuals' skills, prepare such individuals for new careers when their skills have been rendered obsolete by technological advances, and promote employment through training or retraining in areas of job potential in growth industries utilizing new technologies;

(2) provide assistance for later-life career changes, with special emphasis on the needs of older individuals who are displaced homemakers;

(3) provide information, counseling, and support services to assist older individuals in obtaining employment;

(4) encourage providers of vocational education, including community colleges and technical schools, to offer more job training opportunities targeted to or easily accessible to older individuals; and

(5) promote training of paraprofessionals in gerontology and geriatrics.

(c) National clearinghouse within Department of Education; Secretary to establish

The Secretary shall establish and operate a national clearinghouse within the Department of Education to provide State and local governments, and interested organizations and individuals with information concerning centers established under this subpart and their programs.

(d) "Older individual" defined

For purposes of this subpart, the term "older individual" means an individual fifty-five years of age or older.

(Pub. L. 88-210, title IV, § 417, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2471.)

PART C—VOCATIONAL EDUCATION AND OCCUPATIONAL INFORMATION DATA SYSTEMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 2451 of this title.

§ 2421. Data systems authorized

(a) Development by Secretary; information included; participation of special populations; securing system at reasonable cost

(1) The Secretary shall develop, within the National Center for Education Statistics, a national vocational education data reporting and accounting system using uniform definitions. The system required by this section shall include information on vocational education—

(A) students (including information concerning race, sex, and handicapping condition),

(B) programs,

(C) program completers and leavers,

(D) placement and followup,

(E) staff,

(F) facilities, and

(G) expenditures in relation to the principal purposes of this chapter.

Such information shall include the participation of special populations, including women, the disadvantaged, the handicapped, individuals of limited English proficiency, and minorities.

(2) The Secretary shall take such action as may be necessary to secure the data required by this section at reasonable cost. The Secretary, in consultation with the Congress, shall determine the number and types of vocational education institutions to be sampled, the methodology to be used, group sample sizes, appropriate breakdown analyses of such groups, and the frequency with which such studies under this section are to be conducted.

(b) Compatibility with other systems; cooperation by States; updates of system; special studies on enrollment of disadvantaged students

(1) In maintaining and updating such system, the Secretary shall endeavor to the fullest extent feasible to make the system compatible with the occupational information system (established pursuant to section 2422 of this title), with the vocational education data system authorized under section 161(a) of the Vocational Education Act of 1963, and with other systems developed or assisted under the Job Training Partnership Act [29 U.S.C. 1501 et seq.] and with information collected pursuant to the Education of the Handicapped Act [20 U.S.C. 1400 et seq.].

(2) Any State receiving assistance under this chapter shall cooperate with the Secretary in supplying the information required to be submitted by the Secretary and shall comply in its

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[1] So in original. Probably should be followed by "shall".

reports with the vocational education data system developed by the Secretary pursuant to subsection (a) of this section. Each State shall submit the data required to carry out this subsection to the Secretary in whatever form the Secretary requires.

(3) The Secretary shall every 2 years update the national vocational education information and accounting system and prepare acquisition plans of data for operating the system. In carrying out the requirements under this paragraph, the Secretary shall use scientific sample surveys for the information required, except that the information required with respect to handicapped students shall be furnished in accordance with section 2423 of this title.

(4) The Secretary may conduct special studies on enrollment of disadvantaged students in vocational education programs, on the participation of handicapped students in vocational education programs, and any other similar subjects which the Secretary deems appropriate.

(c) Cooperation with Secretary of Labor

In carrying out the responsibilities imposed by this section, the Secretary shall cooperate with the Secretary of Labor in implementing section 463 of the Job Training Partnership Act [29 U.S.C. 1753] to ensure that the data system operated under this section is compatible with and complementary to other occupational supply and demand information systems developed or maintained with Federal assistance.

(Pub. L. 88-210, title IV, § 421, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2472.)

References in Text

Section 161(a) of the Vocational Education Act of 1963, referred to in subsec. (b)(1), is section 161(a) of Pub. L. 88-210, title I, as added by Pub. L. 94-482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2197, and amended, which was classified to section 2391(a) of this title prior to the complete revision of Pub. L. 88-210 by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435.

The Job Training Partnership Act, referred to in subsec. (b)(1), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

The Education of the Handicapped Act, referred to in subsec. (b)(1), is title VI of Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 175, as amended, which is classified generally to chapter 33 (§ 1400 et seq.) of this title. For complete classification of this Act to the Code, see section 1400 of this title and Tables.

§ 2422. Occupational information system

(a) Establishment of National Occupational Information Coordinating Committee; membership; functions

There is established a National Occupational Information Coordinating Committee which shall consist of the Assistant Secretary for Vocational and Adult Education, the Commissioner of the Rehabilitative Services Administration, the Director of the Office of Bilingual Education and Minority Language Affairs, and the Administrator of the National Center for Education Statistics of the Department of Education, the Commissioner of Labor Statistics and the Assistant Secretary for Employment and Training of the Department of Labor, the Undersecretary for Small Community and Rural Development of the Department of Agriculture, the Assistant Secretary for Economic Development of the Department of Commerce, and the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics). The Committee, with funds available to it under section 2451 of this title, shall provide funds, on an annual basis, to State occupational information coordinating committees and to eligible recipients and shall—

(1) in the use of program data and employment data, improve coordination and communication among administrators and planners of programs authorized by this chapter and by the Job Training Partnership Act [29 U.S.C. 1501 et seq.], employment security agency administrators, research personnel, and personnel of employment and training planning and administering agencies (including apprenticeship training agencies) at the Federal, State, and local levels;

(2) develop and implement, in cooperation with State and local agencies, an occupational information system to meet the common occupational information needs of vocational education programs and employment and training programs at the national, State, and local levels, which system shall include data on occupational demand and supply based on uniform definitions, standardized estimating procedures, and standardized occupational classifications;

(3) conduct studies on the effects of technological change on new and existing occupational areas and the required changes in knowledge and job skills; and

(4) assist State occupational information coordinating committees established pursuant to subsection (b) of this section.

(b) State occupational information coordinating committees; membership; functions

Each State receiving assistance under this chapter shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State economic development agency, the State job training coordinating council, and the agency administering the vocational rehabilitation program. Such committee shall, with funds available to it from the National Occupational Information Coordinating Committee established pursuant to subsection (a) of this section—

(A) implement an occupational information system in the State which will meet the common needs for the planning for, and the operation of, programs of the State board assisted under this chapter and of the administering agencies under the Job Training Partnership Act [29 U.S.C. 1501 et seq.]; and

(B) use the occupational information system to implement a career information delivery system.

(Pub. L. 88-210, title IV, § 422, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2473.)

REFERENCES IN TEXT

The Job Training Partnership Act, referred to in subsecs. (a)(1) and (b)(A), is Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

TRANSITION PROVISIONS

Section 3(b)(1) of Pub. L. 98-524 provided that: "On the effective date of the Carl D. Perkins Vocational Education Act [see Effective Date note set out under section 2301 of this title], the personnel, property, and records of the National Occupational Information Coordinating Committee established under section 161(b) of the Vocational Education Act of 1963 [Pub. L. 88-210, title I, as added Pub. L. 94-482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2197, and amended, formerly 20 U.S.C. 2391(b)] shall be transferred to the National Occupational Information Coordinating Committee established pursuant to section 422 of this Act [this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2421, 2451 of this title; title 29 sections 1753, 1754.

§ 2423. Information base for vocational education data system

The Secretary shall assure that adequate information on the access to vocational education programs by handicapped secondary school students be included in the national vocational education data system, required by section 161 of the Vocational Education Act of 1963 and by this part, for the biennial survey. The information base for the biennial survey for the handicapped shall be in 4-digit detail as defined in A Classification of Instructional Programs published by the National Center for Educational Statistics. The survey shall include information with respect to total handicapped enrollment by program, by type of instructional setting, and by type of handicapping condition.

(Pub. L. 88-210, title IV, § 423, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2474.)

REFERENCES IN TEXT

Section 161 of the Vocational Education Act of 1963, referred to in text, is section 161 of Pub. L. 88-210, title I, as added by Pub. L. 94-482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2197, and amended, which was classified to section 2391 of this title prior to the complete revision of Pub. L. 88-210 by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2421 of this title.

PART D—NATIONAL COUNCIL ON VOCATIONAL EDUCATION

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 2451 of this title; title 29 section 1773.

§ 2431. Council established

(a) Establishment; membership; terms of members; Chairperson; meetings

(1) There is established the National Council on Vocational Education. The Council shall consist of 17 members appointed by the President of whom 9 shall be representative of the private sector.

(2) The members of the Council shall serve for such terms as the President may prescribe. Members of the Council shall be individuals who are owners, chief executives or chief operating officers of private business concerns, private for profit and nonprofit health and educational institutions and executives of business concerns and business associations who have substantial management and policy responsibility including agriculture, small business, and organized labor, except that at least one member shall be a nonpublic member appointed from among members of the National Commission for Employment Policy established under the Job Training Partnership Act [29 U.S.C. 1501 et seq.], and at least 3 members shall be individuals with broad experience in education and human resources development.

(3) The Chairperson of the Council shall be selected by the President. The Council shall meet not fewer than 4 times each year at the call of the Chairperson. A majority of the members of the Council shall constitute a quorum (but a lesser number may conduct hearings on behalf of the Council), and recommendations may be made, or other actions taken, only by a majority of the members present.

(b) Function of Council

The Council shall advise the President, Congress, and the Secretary on—

(1) the effectiveness of this chapter or its implementation in achieving the stated purposes of this chapter and in providing students with skills that meet needs of employers;

(2) strategies for increasing cooperation between business and vocational education so that training is available for new technologies for which there is a demand;

(3) practical approaches to retraining adult workers, and to enhancing education, business, and labor cooperation in retraining efforts;

(4) effective ways of providing access to information regarding the market demand for skills that will enable State and local personnel to develop responsive vocational education curricula;

(5) the vocational education needs of the handicapped and the level of participation of the handicapped in vocational education programs; and

(6) the implementation of this chapter and the Job Training Partnership Act [29 U.S.C. 1501 et seq.], and policies needed to expand and improve vocational-technical education programs (and apprenticeship programs) in order to build a coordinated capacity to adequately prepare America's work force for employment.

(c) Authority of Chairperson

Subject to such rules and regulations as may be adopted by the Council, the Chairperson is authorized to—

(1) prescribe such rules and regulations as may be necessary for conducting the business of the Council;

(2) appoint and fix the compensation of such personnel as the Chairperson considers necessary (including not to exceed five professional personnel), and appoint (with the approval of the Council) a Director, who shall be the chief executive officer of the Council and perform such duties as are prescribed by the Chairperson;

(3) procure the services of experts and consultants in accordance with section 3109 of title 5;

(4) accept voluntary and uncompensated services of professional personnel, consultants, and experts, notwithstanding any other provision of the law;

(5) accept in the name of the United States and employ or dispose of gifts or bequests to carry out the functions of the Council under this section;

(6) enter into contracts and grants and make such other arrangements and modifications, as may be necessary;

(7) conduct such hearings, studies, and research activities as the Council deems necessary to enable it to carry out its functions under this section;

(8) use the services, personnel, facilities, and information of any department, agency, or instrumentality of the executive branch of the Federal Government and the services, personnel, facilities, and information of State and local public agencies and private agencies and organizations, with the consent of such agencies, with or without reimbursement therefor; and

(9) make advance, progress, and other payments necessary under this section without regard to the provisions of section 3324(a) and (b) of title 31.

(d) Cooperation of other Federal agencies with Council

Upon request made by the Chairperson of the Council, each department, agency, and instrumentality of the executive branch of the Federal Government is authorized and directed to make its services, personnel, facilities, and information available to the greatest practicable extent to the Council in the performance of its functions under this section.

(e) Establishment of working groups on occupational competencies; membership; appointment; qualifications

The Council may establish working groups on occupational competencies to provide the Secretary, the President, the Congress, and the States with current information on the types and levels of occupational competencies necessary for entry and sustained productive employment in given jobs or industries, including levels of skills required, and equipment, methods, and facilities needed for the occupation. The Council may establish working groups for the occupations the Council considers important or necessary and may reconstitute such groups as occupational priorities are revised. Members of the working groups shall be appointed by the Council on the advice of national trade and professional associations and labor organizations. Working group members shall be individuals with specific knowledge in the technology and practice of the occupations relevant to the task of the group. The Council may provide the results and recommendations of the working groups to each State council on vocational education and other appropriate State agencies.

(f) Use of funds; service of staff specialists; working groups

The Council may use funds available for this part to obtain the services of staff specialists for working groups who have demonstrated technical skills and instructional ability in the occupations in question.

(g) Report to Congress and President

The Council shall make a report of its findings and recommendations to the President, the Congress, and the Secretary every second year, and may make such interim reports and recommendations as the Council may consider desirable. The Council shall include in such reports the manner in which the competency statements provided by the Council have been used by the States. The Council may include in such reports its evaluation of the status, progress, and needs of vocational education (including recommendations for Federal legislation and appropriations). Each such report shall include any minority, dissenting, or supplementary view submitted by any member of the Council.

(Pub. L. 88–210, title IV, § 431, as added Pub. L. 98–524, § 1, Oct. 19, 1984, 98 Stat. 2474.)

References in Text

The Job Training Partnership Act, referred to in subsecs. (a)(2) and (b)(6), is Pub. L. 97–300, Oct. 13, 1982, 96 Stat. 1322, as amended, which is classified generally to chapter 19 (§ 1501 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1501 of Title 29 and Tables.

Codification

In subsec. (c)(9), "section 3324(a) and (b) of title 31" was substituted for "section 3648 of the Revised Statutes (31 U.S.C. 529)" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Transition Provisions

Section 3(b)(2) of Pub. L. 98–524 provided that: "On the effective date of this Act [see Effective Date note set out under section 2301 of this title], the personnel, property, and records of the National Advisory Council on Vocational Education shall be transferred to the National Council on Vocational Education established under section 431 of this Act [this section]."

Section Referred to in Other Sections

This section is referred to in title 29 sections 1772, 1773.

PART E—BILINGUAL VOCATIONAL TRAINING

Part Referred to in Other Sections

This part is referred to in sections 2302, 2311, 3223 of this title.

§ 2441. Program authorized

(a) Authority of Secretary; institutions serving individuals with limited English proficiency; uses of grants and contracts

(1) From the sums made available to carry out this section in each fiscal year under section 2302(d) of this title, the Secretary is authorized to make grants to and to enter into contracts with appropriate State agencies, local educational agencies, postsecondary educational institutions, private nonprofit vocational training institutions, and other nonprofit organizations specially created to serve individuals who normally use a language other than English, for bilingual vocational education and training for individuals with limited English proficiency to prepare such individuals for jobs in recognized occupations and new and emerging occupations. Such training shall include instruction in the English language to ensure that participants in such training will be equipped to pursue such occupations in an English language environment. The Secretary may also enter into contracts with private for-profit agencies and organizations for bilingual vocational education and training programs.

(2) Grants and contracts under this subsection may be used for—

(A) bilingual vocational training programs for individuals who have completed or left elementary or secondary school and who are available for education in a postsecondary educational institution;

(B) bilingual vocational education and training programs for individuals who have already entered the labor market and who desire or need training or retraining to achieve year-round employment, adjust to changing manpower needs, expand their range of skills, or advance in employment; and

(C) training allowances for participants in bilingual vocational training programs.

(b) Instructor training; preservice or inservice training; fellowships or traineeships; limitation on grant authority of Secretary

(1) From the sums made available to carry out this section, the Secretary is authorized to make grants to and to enter into contracts with State agencies and public and private nonprofit educational institutions and to enter into contracts with private for-profit educational institutions to assist such entities in conducting training for instructors of bilingual vocational education and training programs.

(2) Grants and contracts under this subsection may be used for—

(A) preservice and inservice training for instructors, aides, counselors, or other ancillary personnel participating or preparing to participate in bilingual vocational training programs; and

(B) fellowships and traineeships for individuals participating in preservice or inservice training.

(3) The Secretary may not make a grant or enter into a contract under this subsection unless the Secretary determines that the applicant has an ongoing vocational training program in the field in which participants will be trained and can provide instructors with adequate language capabilities in the language other than English to be used in the program.

(c) Instructional and curriculum materials; methods; techniques; research and training

(1) From the sums made available to carry out this section, the Secretary is authorized to make grants to and to enter into contracts with State agencies, educational institutions, and appropriate nonprofit organizations, and to enter into contracts with private for-profit organizations and individuals, to assist in the development of instructional and curriculum materials, methods, or techniques for bilingual vocational training.

(2) Grants and contracts under this subsection may be used for—

(A) research in bilingual vocational training;

(B) training programs to familiarize State agencies and training institutions with research findings and with successful pilot and demonstration projects in bilingual vocational education and training; and

(C) experimental, developmental, pilot, and demonstration projects.

(d) Submission of application to Secretary; contents; Secretary to consult with State board; approval of application

(1) Any eligible entity which desires to receive a grant from the Secretary under subsection (a), (b), or (c) of this section shall submit an application to the Secretary in such form, at such times, and accompanied by such information as the Secretary may require. Such application shall provide that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant.

(2) An application pursuant to subsection (a) of this section shall (A) set forth a program of such size, scope, and design as will make a substantial contribution toward carrying out the purposes of this section, and (B) be submitted to the State board or agency under section 2321 of this title for review and comment. Any such comments shall be included for submission to the Secretary.

(3) An application pursuant to subsection (c) of this section shall set forth the qualifications of staff responsible for any such program.

(4) An application pursuant to subsection (b) of this section shall—

(A) describe the capabilities of the applicant (including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies);

(B) describe the qualifications of principal staff responsible for any program under subsection (b) of this section; and

(C) describe minimum qualifications for individuals participating or to participate in any program, describe the selection process for such individuals, and the projected amount of the fellowships or traineeships, if any.

(5) Prior to making grants or contracts under subsection (a) or (b) of this section, the Secretary shall consult with the State board under section 2321 of this title to ensure an equitable distribution of assistance among populations of individuals with limited English proficiency within the State.

(6) The Secretary may approve an application for assistance under this section only if the application meets the requirements set forth under this section. An amendment to an application shall, except as the Secretary may otherwise provide, be subject to approval in the same manner as the initial application.

(e) Consultation with Secretary of Labor; programs in Puerto Rico; gathering and dissemination of information

(1) The Secretary shall administer programs under this section in consultation with the Secretary of Labor.

(2) Programs of bilingual vocational education and training under this section in the Commonwealth of Puerto Rico may provide for the needs of students of limited Spanish proficiency.

(3) The Secretary of Education, in consultation with the Secretary of Labor, shall gather and disseminate information concerning the status of bilingual vocational education in all geographic regions and shall evaluate the impact of bilingual vocational education on occupational shortages of skilled workers, the unemployment or underemployment of individuals with limited English proficiency, and the ability of such individuals to acquire sufficient job skills and English language skills to fully contribute to the economy. The Secretary of Education and the Secretary of Labor shall annually report their findings to the President and the Congress.

(f) Minimum funding for grants and contracts

(1) For each fiscal year, not less than 75 per centum of sums appropriated for the purposes of this section shall be available only for grants and contracts under subsection (a) of this section.

(2) For each fiscal year, not less than 15 per centum of the sums appropriated for the purposes of this section shall be available only for grants and contracts under subsection (b) of this section.

(3) For each fiscal year, not less than 10 per centum of sums appropriated for the purposes of this section shall be available only for grants and contracts under subsection (c) of this section.

(Pub. L. 88-210, title IV, § 441, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2477.)

PART F—GENERAL PROVISIONS

§ 2451. Distribution of assistance

(a) Subject to the provisions of subsection (b) of this section, of the amounts available pursuant to section 2302(e) of this title for any fiscal year for this subchapter—

(1) 35 percent shall be available for part A, relating to research,

(2) 35 percent shall be available for part B, relating to demonstration projects; and

(3) 30 percent shall be available for part C, relating to vocational education in occupational information data systems.

(b) Notwithstanding the provisions of subsection (a) of this section—

(1) there shall be available in each fiscal year not less than $6,000,000 to carry out the provisions of section 2404 of this title, relating to the National Center for Research;

(2) there shall be available for each fiscal year not less than $3,500,000 for the purpose of carrying out section 2422 of this title, relating to the occupational information system; and

(3) there shall be available in each fiscal year $500,000 for the purpose of carrying out part D, relating to the National Council.

(Pub. L. 88-210, title IV, § 451, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2479.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2411, 2422 of this title.

SUBCHAPTER V—GENERAL PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2323 of this title.

PART A—FEDERAL ADMINISTRATIVE PROVISIONS

§ 2461. Payments

(a) Federal share of costs of carrying out State plan

The Secretary shall pay from its allotment under section 2311 of this title to each State for any fiscal year for which the State has a State plan approved in accordance with section 2324 of this title (including any amendment to such plan) the Federal share of the costs of carrying out the State plan.

(b) State councils

The Secretary shall pay to each State council of a State which has a State plan approved in accordance with section 2324 of this title, from its allotment under section 2322(f) of this title, an amount equal to the reasonable amounts expended by the State council in carrying out its functions under this chapter in such fiscal year.

(Pub. L. 88-210, title V, § 501, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2479.)

§ 2462. Federal share

(a) Composition of share

The Federal share for each fiscal year shall be—

(1) 50 percent of the costs of administration of the State plan;

(2) not to exceed 50 percent of the costs of administration of vocational education services and activities of eligible recipients;

(3)(A) 50 percent of the costs of vocational education services and activities under part A of subchapter II of this chapter for individuals described in clauses (1), (2), and (3) of section 2331(b) of this title;

(B) 100 percent of the costs of vocational education programs, services, and activities under part A of subchapter II of this chapter for individuals described in clauses (4), (5), and (6) of section 2331(b) of this title;

(4) 50 percent of the costs of vocational education improvement, innovation, and expansion programs under part B of subchapter II of this chapter;

(5) 100 percent of the costs of the State council under section 2322 of this title;

(6) 100 percent of the costs to carry out the provisions of section 2321(b)(3) of this title; and

(7) except as otherwise provided, 100 percent of the costs of programs under subchapter III of this chapter.

(b) Non-Federal contributions

The non-Federal contribution for the costs of vocational education programs, services, and activities for the handicapped and the disadvantaged under part A of subchapter II of this chapter shall be furnished equitably by the State from State and local sources, except that the non-Federal contributions of such costs shall be furnished by the State from State sources if the State board determines that an eligible recipient cannot reasonably be expected to provide such costs from local sources.

(Pub. L. 88-210, title V, § 502, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2479.)

§ 2463. Maintenance of effort

(a) Limitation on payments; determination by Secretary

No payments shall be made under this chapter for any fiscal year to a State unless the Secretary determines that the fiscal effort per student or the aggregate expenditures of such State for vocational education for the fiscal year preceding the fiscal year for which the determination is made, equaled or exceeded such effort or expenditures for vocational education for the second preceding fiscal year.

(b) Waiver of requirements

The Secretary may waive the requirements of this section for one fiscal year only, upon making a determination that such waiver would be equitable due to exceptional or uncontrollable circumstances affecting the ability of the applicant to meet such requirements, such as a natural disaster or an unforeseen and precipitous decline in financial resources. No level of funding permitted under such a waiver may be used as the basis for computing the fiscal effort required under this section for years subsequent to the year covered by such waiver; such fiscal effort shall be computed on the basis of the level of funding which would, but for such waiver, have been required.

(Pub. L. 88-210, title V, § 503, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2480.)

§ 2464. Withholding; judicial review

(a) Withholding of payments; conditions

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State board, finds that—

(1) the State plan approved under section 2324 of this title has been so changed that it no longer complies with the provisions of this chapter; or

(2) in the administration of the State plan or of programs conducted pursuant to it there is a failure to comply substantially with any such provision,

the Secretary shall notify such State board that no further payments will be made to the State under this chapter (or, further payments to the State will be limited to programs under or portions of the State plan not affected by such failure) until satisfied that there will no longer be any failure to comply. Until so satisfied, the Secretary shall make no further payments to such State under this chapter (or shall limit payments to programs under, or portions of, the State plan not affected by such failure).

(b) State board; judicial review

A State board which is dissatisfied with a final action of the Secretary under this section may appeal to the United States court of appeals for the circuit in which the State is located, by filing a petition with such court within sixty days after such final action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose. The Secretary thereupon shall file in the court the record of the proceedings on which action is based, as provided in section 2112 of title 28. Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Secretary or to set aside such action, in whole or in part, temporarily or permanently, but until the filing of the record, the Secretary may modify or set aside his action. The findings of the Secretary as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Secretary shall be final, subject to review by the Supreme Court of the United States upon certiorari certification as provided in section 1254 of title 28. The commencement of proceedings under this subsection shall, unless specifically ordered otherwise by the court, operate as a stay of the Secretary's action.

(c) Eligible recipient; judicial review

(1) If any eligible recipient is dissatisfied with the final action of the State board or other appropriate State administering agency with respect to approval of its local application, such eligible recipient may, within sixty days after such final action or notice thereof, whichever is later, file with the United States court of appeals for the circuit in which the State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the State board or

other appropriate State administering agency. The State board or such other agency thereupon shall file in the court the record of the proceeding on which the State board or such other agency based its action, as provided in section 2112 of title 28.

(2) The findings of fact by the State board or other appropriate administering agency, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the State board or such other agency to take further evidence, and the State board or such other agency may thereupon make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings.

(3) The court shall have jurisdiction to affirm the action of the State board or other appropriate administering agency or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari certification as provided in section 1254 of title 28.

(d) Rules; hearings funds made available from appropriations; definitions

(1) The Secretary shall prescribe and implement rules to assure that any hearing conducted under section 434(c) of the General Education Provisions Act [1] in connection with funds made available from appropriations under this chapter shall be held within the State of the affected unit of local government or geographic area within the State.

(2) For the purposes of paragraph (1)—

(A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(Pub. L. 88-210, title V, § 504, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2480.)

References in Text

Section 434(c) of the General Education Provisions Act, referred to in subsec. (d)(1), probably should refer to section 434(b) of that Act, which is classified to section 1232c(b) of this title, because of the subject matter of subsec. (b) of that section and because that section does not contain a subsec. (c).

§ 2465. Audits

Each State shall obtain financial and compliance audits of any funds which the State receives under this chapter. Such audits shall be made public within the State on a timely basis. Audits shall be conducted at least every two years and shall be conducted in accordance with the Comptroller General's Standard for Audit of Governmental Organizations, Programs, Activities, and Functions.

(Pub. L. 88-210, title V, § 505, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2482.)

§ 2466. Authority to make payments

Any authority to make payments or to enter into contracts under this chapter shall be available only to such extent or in such amounts as are provided in advance appropriation Acts.

(Pub. L. 88-210, title V, § 506, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2482.)

Part B—Definitions

§ 2471. Definitions

As used in this chapter:

(1) The term "administration" means activities of a State necessary for the proper and efficient performance of its duties under this chapter, including supervision, but does not include curriculum development activities, personnel development, technical assistance, or research activities.

(2) The term "apprenticeship training program" means a program registered with the Department of Labor or the State apprenticeship agency in accordance with the Act of August 16, 1937, known as the National Apprenticeship Act [29 U.S.C. 50 et seq.], which is conducted or sponsored by an employer, a group of employers, or a joint apprenticeship committee representing both employers and a union, and which contains all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.

(3) The term "area vocational education school" means—

(A) a specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(B) the department of a high school exclusively or principally used for providing vocational education in no less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(C) a technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(D) the department or division of a junior college or community college or university operating under the policies of the State board and which provides vocational education in no less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in subparagraph (C) or this subparagraph, it admits as regular students both individuals who have completed high school and individuals who have left high school.

(4) The term "career guidance and counseling" means those programs (A) which pertain to the body of subject matter and related techniques and methods organized for the de-

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[1] See References in Text note below.

velopment in individuals of career awareness, career planning, career decisionmaking, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities, and (B) which assist them in making and implementing informed educational and occupational choices.

(5) The term "community-based organization" means any such organization of demonstrated effectiveness described in section 4(5) of the Job Training Partnership Act [29 U.S.C. 1503(5)].

(6) The term "construction" includes construction of new buildings and acquisition, and expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement and architect fees.

(7) The term "cooperative education" means a method of instruction of vocational education for individuals who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field, but the two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and to his or her employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

(8) The term "criminal offender" means any individual who is charged with or convicted of any criminal offense, including a youth offender or a juvenile offender.

(9) The term "correctional institution" means any—

- (A) prison,
- (B) jail,
- (C) reformatory,
- (D) work farm,
- (E) detention center, or
- (F) halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

(10) The term "Council" means the National Council on Vocational Education.

(11) The term "curriculum materials" means instructional and related or supportive material, including materials using advanced learning technology, in any occupational field which is designed to strengthen the academic foundation and prepare individuals for employment at the entry level or to upgrade occupational competencies of those previously or presently employed in any occupational field, and appropriate counseling and guidance material.

(12) The term "disadvantaged" means individuals (other than handicapped individuals) who have economic or academic disadvantages and who require special services and assistance in order to enable them to succeed in vocational education programs. Such term includes individuals who are members of economically disadvantaged families, migrants, individuals who have limited English proficiency and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school.

(13) The term "economically depressed area" means an economically integrated area within any State in which a chronically low level of economic activity or a deteriorating economic base has caused such adverse effects as (A) a rate of unemployment which has exceeded by 50 per centum or more the average rate of unemployment in the State, or in the Nation, for each of the three years preceding the year for which such designation is made, or (B) a large concentration of low-income families, and for which such designation for the purposes of this chapter is approved by the Secretary as consistent with these and such other criteria as may be prescribed, and with the purposes of this chapter.

(14) The term "eligible recipient" means a local educational agency or a postsecondary educational institution.

(15) The term "handicapped", when applied to individuals, means individuals who are mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired persons, or persons with specific learning disabilities, who by reason thereof require special education and related services, and who, because of their handicapping condition, cannot succeed in the regular vocational education program without special education assistance.

(16) The term "high technology" means state-of-the-art computer, microelectronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, and other technologies being used to enhance productivity in manufacturing, communication, transportation, agriculture, mining, energy, commercial, and similar economic activity, and to improve the provision of health care.

(17) The term "homemaker" means an individual who—

- (A) is an adult, and
- (B) has worked as an adult primarily without remuneration to care for the home and family, and for that reason has diminished marketable skills.

The Secretary may not prescribe the manner in which the States will comply with the application of the definition contained in this paragraph.

(18) The term "limited English proficiency" has the meaning given such term in section 703(a)(1) of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 3223(a)(1)].

(19) The term "local educational agency" means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program.

(20) The term "economically disadvantaged family or individual" means such families or individuals who are determined by the Secretary to be low-income according to the latest available data from the Department of Commerce.

(21) The term "postsecondary educational institution" means an institution legally authorized to provide postsecondary education within a State, or any postsecondary educational institution operated by or on behalf of any Indian tribe which is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination Act [25 U.S.C. 450f et seq.] or under the Act of April 16, 1934 [25 U.S.C. 452-457].

(22) The term "private vocational training institution" means a business or trade school, or technical institution or other technical or vocational school, in any State, which (A) admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by such institution; (B) is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations; (C) has been in existence for two years or has been specially accredited by the Secretary as an institution meeting the other requirements of this subsection; and (D) is accredited (i) by a nationally recognized accrediting agency or association listed by the Secretary pursuant to this clause, or (ii) if the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretary pursuant to this clause, or (iii) if the Secretary determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specially qualified to evaluate training provided by schools of that category, which committee shall prescribe the standards of content, scope, and quality which must be met by those schools and shall also determine whether particular schools meet those standards. For the purpose of this paragraph, the Secretary shall publish a list of nationally recognized accrediting agencies or associations and State agencies which the Secretary determines to be reliable authority as to the quality of education or training afforded.

(23) The term "school facilities" means classrooms and related facilities (including initial equipment) and interests in lands on which such facilities are constructed. Such term shall not include any facility intended primarily for events for which admission is to be charged to the general public.

(24) The term "Secretary" means the Secretary of Education.

(25) The term "single parent" means an individual who—

(A) is unmarried or legally separated from a spouse, and

(B) has a minor child or children for which the parent has either custody or joint custody.

(26) The term "small business" means for-profit enterprises employing five hundred or fewer employees.

(27) The term "State" includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(28) The term "State board" means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education, or for supervision of the administration of vocational education in the State.

(29) The term "State council" means the State council on vocational education established in accordance with section 2322 of this title.

(30) The term "State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary or secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(31) The term "vocational education" means organized educational programs which are directly related to the preparation of individuals in paid or unpaid employment in such fields as agriculture, business occupations, home economics, health occupations, marketing and distributive occupations, technical and emerging occupations, modern industrial and agriculture arts, and trades and industrial occupations, or for additional preparation for a career in such fields, and in other occupations, requiring other than a baccalaureate or advanced degree and vocational student organization activities as an integral part of the program; and for purposes of this paragraph, the term "organized education program" means only (A) instruction (including career guidance and counseling) related to the occupation or occupations for which the students are in training or instruction necessary for students to benefit from such training, and (B) the acquisition (including leasing), maintenance, and repair of instructional equipment, supplies, and teaching aids; but the terms do not mean the construction, acquisition, or initial equipment of buildings, or the acquisition or rental of land.

(32) The term "vocational student organizations" means those organizations for individuals enrolled in vocational education programs which engage in activities as an integral part of the instructional program. Such organizations may have State and national units which aggregate the work and purposes of instruction in vocational education at the local level.

(Pub. L. 88-210, title V, § 521, as added Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2482.)

REFERENCES IN TEXT

The Act of August 16, 1937, known as the National Apprenticeship Act, referred to in par. (2), is act Aug. 16, 1937, ch. 663, 50 Stat. 664, as amended, which is classified generally to chatper 4C (§ 50 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 50 of Title 29 and Tables.

The Indian Self-Determination Act, referred to in par. (21), is title I of Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2206, which is classified principally to subchapter II (§ 450f et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The Act of April 16, 1934, referred to in par. (21), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, known as the Johnson-O'Malley Act, which is classified to section 452 to 457 of Title 25. For complete classification of this Act to the Code, see Short Title note set out under section 452 of Title 25 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3902 of this title; title 19 section 2296; title 29 section 1503.

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This subchapter is referred to in sections 244, 425, 1087ee, 1231b-2, 1232d, 1401, 2323, 3383, 3801, 3802, 3803, 3804, 3806, 3875; title 29 section 777b.

§ 2701. Declaration of policy

SUBCHAPTER I—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF CHILDREN

EFFECTIVE DATE OF 1984 AMENDMENT

Pub. L. 98-511, title VII, § 711, Oct. 19, 1984, 98 Stat. 2408, provided that:

"(a) Except as provided in subsection (b), this Act and the amendments made by this Act [see Short Title of 1984 Amendment note below] shall take effect on the date of enactment of this Act [Oct. 19, 1984] or October 1, 1984, whichever occurs later.

"(b) The amendments made by title I of this Act [amending sections 1201 to 1207a, 1208a to 1209, 1211, 1211a and 1211c of this title and repealing sections 1208a and 1211c of this title] shall take effect on July 1, 1985."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-511, § 1, Oct. 19, 1984, 98 Stat. 2366, provided that: "This Act [enacting sections 4101 to 4108 of this title and sections 2020 to 2023 of Title 25, Indians, amending sections 237 to 240, 241-1, 241aa to 241ff, 633, 646, 1201 to 1207a, 1208a to 1209, 1211, 1211a, 1211c, 1211e, 1211e-1, 1221g, 1226c, 1232d, 1232e, 3221 to 3223, 3231 to 3233, 3241 to 3247, 3251 to 3255, 3261, 3262, 3341 to 3348, 3385 to 3385b, and 3414 of this title and sections 2001, 2004, 2006, 2008, 2009, 2011, 2012, 2016, and 2018 of Title 25, repealing sections 1208a, 1211c and 1232-1 of this title, enacting provisions set out as notes under sections 240, 241ff, 2701, 3473, and 4101 of this title and section 2001 of Title 25, amending provisions set out as notes under sections 237, 238, 1070a, 1078, 1089, and 3804 of this title, and repealing provisions set out as notes under section 631 of this title] may be cited as the 'Education Amendments of 1984'."

Pub. L. 98-511, title IV, § 401(a), Oct. 19, 1984, 98 Stat. 2389, provided that: "This title [amending sections 3341 to 3348 of this title] may be cited as the 'Women's Educational Equity Amendments of 1984'."

CONTRACT AUTHORITY

Pub. L. 98-511, title VII, § 710, Oct. 19, 1984, 98 Stat. 2408, provided that: "Any authority to make payments or to enter into contracts under this Act [see Short Title of 1984 Amendments note above] shall be available only to such extent or in such amounts as are provided in advance in appropriation Acts."

PART A—PROGRAMS OPERATED BY LOCAL EDUCATIONAL AGENCIES

SUBPART 1—BASIC GRANTS

§ 2711. Amount and eligibility for grants

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1087ee, 2721, 2722, 2734, 2752, 2843, 2853, 3223, 3807, 3966 of this title.

SUBPART 4—EXEMPTIONS FROM CERTAIN PROGRAM REQUIREMENTS

§ 2751. Exclusions from excess costs and comparability provisions for certain special State and local programs

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2721, 2732, 2736, 2737, 2752, 3807 of this title.

§ 2753. Schoolwide projects

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2733, 3805 of this title.

PART B—PROGRAMS OPERATED BY STATE AGENCIES

SUBPART 1—PROGRAMS FOR MIGRATORY CHILDREN

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 2791, 2792, 2802, 2843, 2851, 2853, 3414, 3803, 3804 of this title.

§ 2762. Program requirements

AMENDMENT OF SUBSECTION (a)(3)

Pub. L. 98-211, §§ 19(a)(1), (b), 25(a), Dec. 8, 1983, 97 Stat. 1418, 1419, provided that, effective July 1, 1983, only with respect to funds for use under the Education Consolidation and Improvement Act of 1981, Pub. L. 97-35, title V, subtitle D (§§ 551-596), Aug. 13, 1981, 95 Stat. 463 (20 U.S.C. 3801 et seq.), subsection (a)(3) of this section is amended to read as follows:

"(3) that such programs and projects will be administered and carried out in a manner consistent with the basic objectives of section 556 (other than subsection (b)(1)) [20 U.S.C. 3805] and section 558 [20 U.S.C. 3807] of the Education Consolidation and Improvement Act of 1981;".

SUBPART 2—PROGRAMS FOR HANDICAPPED CHILDREN

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 1422, 2791, 2792, 2811, 2816, 2843, 2853, 3803, 3804 of this title.

§ 2772. Program requirements

AMENDMENT OF SECTION

Pub. L. 98-211, §§ 19(a)(2), (b), 25(a), Dec. 8, 1983, 97 Stat. 1418, 1419, provided that, effective July 1, 1983, only with respect to funds for use under the Education Consolidation and Improvement Act of 1981, Pub. L. 97-35, title V, subtitle D (§§ 551-596), Aug.

13, 1981, 95 Stat. 463 (20 U.S.C. 3801 et seq.), this section is amended to read as follows:

"A State shall use the payments made under this subpart only for programs and projects (including the acquisition of equipment and, where necessary, the construction of school facilities) which are designed to meet the special educational needs of handicapped children. Such programs and projects shall be administered and carried out in a manner consistent with section 556 (other than subsection (b)(1)) [20 U.S.C. 3805] and section 558 (other than subsection (c)) [20 U.S.C. 3807] of the Education Consolidation and Improvement Act of 1981. The State agency shall provide assurances to the Secretary that each such child in average daily attendance counted under subsection (b) of section 2771 of this title will be provided with such a program, commensurate with his special needs, during any fiscal year for which such payments are made."

SUBPART 3—PROGRAMS FOR NEGLECTED AND DELINQUENT CHILDREN

Subpart Referred to in Other Sections

This subpart is referred to in sections 2711, 2791, 2792, 2811, 2816, 2843, 2853, 3803, 3804 of this title.

§ 2782. Program requirement

Amendment of Subsection (a)

Pub. L. 98-211, §§ 19(a)(2), (b), 25(a), Dec. 8, 1983, 97 Stat. 1418, 1419, provided that, effective July 1, 1983, only with respect to funds for use under the Education Consolidation and Improvement Act of 1981, Pub. L. 97-35, title V, subtitle D (§§ 551-596), Aug. 13, 1981, 95 Stat. 463 (20 U.S.C. 3801 et seq.), subsection (a) of this section is amended to read as follows:

"A State agency shall use payments under this subpart only for programs and projects (including the acquisition of equipment and where necessary the construction of school facilities) which are designed to meet the special educational needs of children in institutions for neglected or delinquent children or in adult correctional institutions. Such programs and projects shall be designed to support educational services supplemental to the basic education of such children which must be provided by the State, and such programs and projects shall be administered and carried out in a manner consistent with section 556 (other than subsection (b)(1)) [20 U.S.C. 3805] and section 558 (other than subsection (c)) [20 U.S.C. 3807] of the Education Consolidation and Improvement act of 1981."

Part F—General Provisions

§ 2854. Definitions

Section Referred to in Other Sections

This section is referred to in sections 1070d-32, 3610, 3803, 3902, 4020, 4032, 4101 of this title; title 42 section 9877.

SUBCHAPTER VII—BILINGUAL EDUCATION PROGRAMS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1205, 1234a, 1401, 3381, 3489 of this title.

§ 3221. Short title

This subchapter may be cited as the "Bilingual Education Act."

(Pub. L. 89-10, title VII, § 701, as added Pub. L. 95-561, title VII, § 701, Nov. 1, 1978, 92 Stat. 2268, and amended Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2370.)

Amendments

1984—Pub. L. 98-511 in amending this subchapter generally reenacted this section without change.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3222. Policy; appropriations

(a) Recognizing—

(1) that there are large and growing numbers of children of limited English proficiency;

(2) that many of such children have a cultural heritage which differs from that of English proficient persons;

(3) that the Federal Government has a special and continuing obligation to assist in providing equal educational opportunity to limited English proficient children;

(4) that the Federal Government has a special and continuing obligation to assist language minority students to acquire the English language proficiency that will enable them to become full and productive members of society;

(5) that a primary means by which a child learns is through the use of such child's native language and cultural heritage;

(6) that, therefore, large numbers of children of limited English proficiency have educational needs which can be met by the use of bilingual educational methods and techniques;

(7) that in some school districts establishment of bilingual education programs may be administratively impractical due to the presence of small numbers of students of a particular native language or because personnel who are qualified to provide bilingual instructional services are unavailable;

(8) that States and local school districts should be encouraged to determine appropriate curricula for limited English proficient students within their jurisdictions and to develop and implement appropriate instructional programs;

(9) that children of limited English proficiency have a high dropout rate and low median years of education;

(10) that the segregation of many groups of limited English proficient students remains a serious problem;

(11) that both limited English proficient children and children whose primary language is English can benefit from bilingual education programs, and that such programs help develop our national linguistic resources;

(12) that research, evaluation, and data collection capabilities in the field of bilingual education need to be strengthened so as to better identify and promote those programs and instructional practices which result in effective education;

(13) that parent and community participation in bilingual education programs contributes to program effectiveness; and

(14) that because of limited English proficiency, many adults are not able to participate fully in national life, and that limited English proficient parents are often not able to participate effectively in their children's education,

the Congress declares it to be the policy of the United States, in order to establish equal educational opportunity for all children and to promote educational excellence (A) to encourage the establishment and operation, where appropriate, of educational programs using bilingual educational practices, techniques, and methods, (B) to encourage the establishment of special alternative instructional programs for students of limited English proficiency in school districts where the establishment of bilingual education programs is not practicable or for other appropriate reasons, and (C) for those purposes, to provide financial assistance to local educational agencies, and, for certain related purposes, to State educational agencies, institutions of higher education, and community organizations. The programs assisted under this subchapter include programs in elementary and secondary schools as well as related preschool and adult programs which are designed to meet the educational needs of individuals of limited English proficiency, with particular attention to children having the greatest need for such programs. Such programs shall be designed to enable students to achieve full competence in English. Such programs may additionally provide for the development of student competence in a second language.

(b)(1) For the purposes of carrying out the provisions of this subchapter, there are authorized to be appropriated for fiscal year 1985 and each of the three succeeding years such sums as may be necessary, subject to paragraph (7).

(2) There are further authorized to be appropriated to carry out the provisions of section 3242 of this title, such sums as may be necessary for fiscal year 1985 and each of the three succeeding fiscal years, subject to paragraph (7).

(3) From the sums appropriated under paragraph (1) for any fiscal year which do not exceed $140,000,000, the Secretary shall reserve 4 percent for special alternative instructional programs and related activities authorized under this Act. From the sums appropriated under paragraph (1) for any fiscal year in excess of $140,000,000, the Secretary shall reserve 50 percent for special alternative instructional programs and related activities authorized under this Act, except that the amount of funds reserved for special alternative instructional programs and related activities pursuant to this paragraph shall not exceed 10 percent of the funds appropriated under paragraph (1).

(4) From the sums appropriated under paragraph (1) for any fiscal year, the Secretary shall reserve at least 60 percent for the programs carried out under part A of this subchapter; and of this amount, at least 75 percent shall be reserved for the programs of transitional bilingual education carried out under section 3231(a)(1) of this title.

(5) From the sums appropriated under paragraph (1) for any fiscal year, the Secretary shall reserve at least 25 percent for training activities carried out under part C of this subchapter.

(6) The Secretary shall reserve from the amount not reserved pursuant to paragraphs (4) and (5) of this subsection such amount as may be necessary, but not in excess of 1 percent thereof, for the purposes of section 3262 of this title.

(7) Notwithstanding paragraphs (1) and (2), no amount in excess of $176,000,000 is authorized to be appropriated to carry out the provisions of this subchapter (including section 3242 of this title) for fiscal year 1985.

(Pub. L. 89-10, title VII, § 702, as added Pub. L. 95-561, title VII, § 701, Nov. 1, 1978, 92 Stat. 2268, and amended Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2370.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b)(3), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152, known as the Elementary and Secondary Education Act of 1965, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

1984—Pub. L. 98-511 amended section generally substituting provisions relating to policy and authorization of appropriations for prior similar provisions.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3232, 3242, 3261 of this title.

§ 3223. General provisions

(a) Definitions

The following definitions shall apply to the terms used in this subchapter:

(1) The terms "limited English proficiency" and "limited English proficient" when used with reference to individuals means—

(A) individuals who were not born in the United States or whose native language is a language other than English;

(B) individuals who come from environments where a language other than English is dominant, as further defined by the Secretary by regulation; and

(C) individuals who are American Indian and Alaskan Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, subject to such regulations as the Secretary determines to be necessary;

and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(2) The term "native language", when used with reference to an individual of limited English proficiency, means the language normally used by such individuals, or in the case of a child, the language normally used by the parents of the child.

(3) The term "low-income" when used with respect to a family means an annual income for such a family which does not exceed the poverty level determined pursuant to section 2711(c)(2) of this title.

(4)(A) The term "program of transitional bilingual education" means a program of instruction, designed for children of limited English proficiency in elementary or secondary schools, which provides, with respect to the years of study to which such program is applicable, structured English language instruction, and, to the extent necessary to allow a child to achieve competence in the English language, instruction in the child's native language. Such instruction shall incorporate the cultural heritage of such children and of other children in American society. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

(B) In order to prevent the segregation of children on the basis of national origin in programs of transitional bilingual education, and in order to broaden the understanding of children about languages and cultural heritages other than their own, a program of transitional bilingual education may include the participation of children whose language is English, but in no event shall the percentage of such children exceed 40 percent. The program may provide for centralization of teacher training and curriculum development, but it shall serve such children in the schools which they normally attend.

(C) In such courses or subjects of study as art, music, and physical education, a program of transitional bilingual education shall make provision for the participation of children of limited English proficiency in regular classes.

(D) Children enrolled in a program of transitional bilingual education shall, if graded classes are used, be placed, to the extent practicable, in classes with children of approximately the same age and level of educational attainment. If children of significantly varying ages or levels of educational attainment are placed in the same class, the program of transitional bilingual education shall seek to insure that each child is provided with instruction which is appropriate for his or her level of educational attainment.

(5)(A) The term "program of developmental bilingual education" means a full-time program of instruction in elementary and secondary schools which provides, with respect to the years of study to which such program is applicable, structured English-language instruction and instruction in a second language. Such programs shall be designed to help children achieve competence in English and a second language, while mastering subject matter skills. Such instruction shall, to the extent necessary, be in all courses or subjects of study which will allow a child to meet grade-promotion and graduation standards.

(B) Where possible, classes in programs of developmental bilingual education shall be comprised of approximately equal numbers of students whose native language is English and limited English proficient students whose native language is the second language of instruction and study in the program.

(6) The term "special alternative instructional programs" means programs of instruction designed for children of limited English proficiency in elementary and secondary schools. Such programs are not transitional or developmental bilingual education programs, but have specially designed curricula and are appropriate for the particular linguistic and instructional needs of the children enrolled. Such programs shall provide, with respect to the years of study to which such program is applicable, structured English language instruction and special instructional services which will allow a child to achieve competence in the English language and to meet grade-promotion and graduation standards.

(7) The term "family English literacy program" means a program of instruction designed to help limited English proficient adults and out-of-school youth achieve competence in the English language. Such programs of instruction may be conducted exclusively in English or in English and the student's native language. Where appropriate, such programs may include instruction on how parents and family members can facilitate the educational achievement of limited English proficient children. To the extent feasible, preference for participation in such programs shall be accorded to the parents and immediate family members of children enrolled in programs assisted under this subchapter.

(8) The term "programs of academic excellence" means programs of transitional bilingual education, developmental bilingual education, or special alternative instruction which have an established record of providing effective, academically excellent instruction and which are designed to serve as models of exemplary bilingual education programs and to facilitate the dissemination of effective bilingual educational practices.

(9) The term "Office" means the Office of Bilingual Education and Minority Language Affairs.

(10) The term "Director" means the Director of the Office of Bilingual Education and Minority Languages Affairs.

(11) The term "Council" means the National Advisory and Coordinating Council on Bilingual Education.

(12) The term "Secretary" means the Secretary of Education.

(13) The term "other programs for persons of limited English proficiency" when used in this subchapter means any programs within the Department of Education directly involving bilingual education activities serving persons of limited English proficiency, such as the programs carried out in coordination with the provisions of this subchapter pursuant to part E of title IV of the Carl D. Perkins Vocational Education Act [20 U.S.C. 2441 et seq.], and section 1205(a)(11)[1] of this title and programs and projects serving areas with high concentrations of persons of limited English proficiency pursuant to section 351d(b)(4) of this title.

(b) Regulations; consultations; limitations

(1) In prescribing regulations under this subchapter, the Secretary shall, through the National Advisory and Coordinating Council on Bilingual Education, consult with State and local educational agencies, organizations representing persons of limited English proficiency, and organizations representing teachers and other personnel involved in bilingual education.

(2) The Secretary shall not prescribe under this subchapter any regulations further defining the terms defined in paragraphs (4), (5), (6), (7), and (8) of subsection (a) of this section, or any regulations restricting or expanding the definitions contained in such paragraphs.

(c) Instructional goals; progress reports

Parents of children participating in programs assisted under this subchapter shall be informed of the instructional goals of the program and the progress of their children in such program.

(Pub. L. 89-10, title VII, § 703, as added Pub. L. 95-561, title VII, § 701, Nov. 1, 1978, 92 Stat. 2269, and amended Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2371; Pub. L. 98-524, § 4(b), Oct. 19, 1984, 98 Stat. 2488.)

REFERENCES IN TEXT

The Carl D. Perkins Vocational Education Act, referred to in subsec. (a)(13), is Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435. Part E of title IV of the Act is classified generally to part E (§ 2441 et seq.) of subchapter IV of chapter 44 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

AMENDMENTS

1984—Pub. L. 98-511 amended section generally substituting provisions relating to definitions, regulations, and instructional goals and progress reports for prior provisions relating to definitions, models for programs, and regulations.

Subsec. (a)(8). Pub. L. 98-524 which directed the substitution of "the Carl D. Perkins Vocational Education Act" for "section 122(a)(4) and part J of the Vocational Education Act of 1963" could not be executed in view of amendment by Pub. L. 98-511.

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

Amendment by Pub. L. 98-524 effective for fiscal years beginning on or after Oct. 1, 1984, except as otherwise provided, see section 2 of Pub. L. 98-524, set out as an Effective Date note under section 2301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1205, 1401, 2471 of this title.

PART A—FINANCIAL ASSISTANCE FOR BILINGUAL EDUCATION PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3222, 3243 of this title.

§ 3231. Bilingual education programs

(a) General and special programs; establishment; operation, and improvement

Funds available for grants under this part shall be used for the establishment, operation, and improvement of—

(1) programs of transitional bilingual education;

(2) programs of developmental bilingual education;

(3) special alternative instructional programs for students of limited English proficiency;

(4) programs of academic excellence;

(5) family English literacy programs;

(6) bilingual preschool, special education, and gifted and talented programs preparatory or supplementary to programs such as those assisted under this Act; and

(7) programs to develop instructional materials in languages for which such materials are commercially unavailable.

(b) Eligible grantees

(1)(A)[1] A grant may be made under subsection (a)(1), (2), (3), or (4) of this section only upon application therefore[2] by one or more local educational agencies or by institutions of higher education, including junior or community colleges, applying jointly with one or more local educational agencies.

(B) A grant may be made under subsection (a)(5) or (6) of this section only upon application therefore[2] by one or more local educational agencies; institutions of higher education, including junior or community colleges; and private nonprofit organizations, applying separately or jointly.

(c) Applications for grants; time and manner of making; contents

(1) Any application for a grant authorized under subsection (a) of this section shall be

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[1] So in original. Probably should be "section 1205(b)(11)".

[1] So in original. Subsection enacted without a par. (2).

[2] So in original. Probably should be "therefor".

made to the Secretary at such time, and in such manner, as the Secretary deems appropriate.

(2) Applications for grants authorized under subsections (a)(1), (a)(2), and (a)(3) of this section, shall contain information regarding—

(A) the number of children enrolled in programs conducted by the local educational agency;

(B) the number of children residing in the area served by the local educational agency who are enrolled in private schools;

(C)(i) the number of children enrolled in public and private schools in the area served by the local educational agency who are limited in their English proficiency; (ii) the method used by the applicant to make this determination; and (iii) evidence of the educational condition of the limited English proficient students, such as reading, mathematics, and subject matter test scores, and, where available, data on grade retention rates, rates of referral to or placement in special education programs, and student dropout rates;

(D) the number of limited English proficient children who are enrolled in instructional programs specifically designed to meet their educational needs, as well as descriptions of such programs;

(E) the number of limited English proficient children enrolled in public or private schools in the area served by the local educational agency who need or could benefit from education programs such as those assisted under this subchapter;

(F) the number of children who are to receive instruction through the proposed program and the extent of their educational needs;

(G) a statement of the applicant's ability to serve children of limited English proficiency, including an assessment of the qualifications of personnel who will participate in the proposed project and of the need for further training of such personnel;

(H) the resources needed to develop and operate or improve the proposed program;

(I) the activities which would be undertaken under the grant and how these activities will improve the educational attainment of students and expand the capacity of the applicant to operate programs such as those assisted under this Act when Federal assistance under this section is no longer available; and

(J) the specific educational goals of the proposed program and how achievement of these goals will be measured.

(3) Applications for grants authorized under subsection (a)(3) of this section from applicants who desire to obtain priority in the awarding of such grants may contain information regarding (A) the administrative impracticability of establishing a bilingual education program due to the presence of small number of students of a particular native language, (B) the unavailability of personnel qualified to provide bilingual instructional services, or (C) the applicant's current or past efforts to establish a bilingual education program.

(4) Applications for grants authorized under subsection (a)(4) of this section shall contain information regarding—

(A) the number of children served by the existing bilingual education program and evidence of their educational condition prior to enrollment in the program;

(B) a description of the existing program as well as the educational background and linguistic competencies of program personnel;

(C) the extent to which the program has promoted student academic achievement as indicated by objective evidence, such as improvements in language, mathematics, and subject matter test scores; grade retention rates; rates of referral to or placement in special education programs; student dropout rates; and, where appropriate, postsecondary education and employment experiences of students;

(D) the extent of parent involvement in and satisfaction with the existing bilingual education program; and

(E) how the activities carried out under the grant would utilize and promote programs of academic excellence which employ bilingual educational practices, techniques, and methods.

(5) Applications for grants authorized under subsection (a)(5) of this section shall contain information regarding—

(A) the number of limited English proficient parents and out-of-school family members of limited English proficient students who would be served by the English literacy program;

(B) the activities which would be undertaken under the grant and how these activities will promote English literacy and enable parents and family members to assist in the education of limited English proficient children;

(C) the extent to which the persons to be served by the program have been involved in its development;

(D) applicant's prior experience and performance in providing educational programs to limited English proficient adults and out-of-school youth;

(E) with respect to applications by a local educational agency, the extent to which limited English proficient students enrolled in the educational agency are served by programs specifically designed to meet their needs; and

(F) with respect to other applicants, a description of how the applicant will coordinate its program with a local education agency to ensure that the program will help limited English proficient family members promote the academic progress of limited English proficient children.

(d) Duration of grants; preservice activities; commencement or waiver; renewals; information to parents of selection of children, alternative programs, and refusal option

(1)(A) Grants made pursuant to subsections (a)(1), (a)(2), and (a)(3) of this section shall be for three years.

(B) During the first six months of grants made pursuant to subsections (a)(1), (a)(2), and (a)(3) of this section, an applicant shall engage exclusively in preservice activities. Such activities may include program design, materials development, staff recruitment and training, development of evaluation mechanisms and procedures, and the operation of programs to involve parents in the educational program and to enable parents and family members to assist in the education of limited English proficient children. This subparagraph may be waived by the Secretary upon a determination that an applicant is prepared to operate successfully the proposed instructional program.

(C) Upon reapplication, grants authorized under subsections (a)(1), (a)(2), and (a)(3) of this section shall be renewed for two additional years unless the Secretary determines that—

(i) the applicant's program does not comply with the requirements set out in this subchapter;

(ii) the applicant's program has not made substantial progress in achieving the specific educational goals set out in the original application; or

(iii) there is no longer a need for the applicant's program.

(D) Parents or legal guardians of students identified for enrollment in bilingual education programs shall be informed of (i) the reasons for the selection of their child as in need of bilingual education, (ii) the alternative educational programs that are available, and (iii) the nature of the bilingual education program and of the instructional alternatives. Parents shall also be informed that they have the option of declining enrollment of their children in such programs and shall be given an opportunity to do so if they so choose.

(2) Grants made pursuant to subsections (a)(4) and (a)(5) of this section shall be for three years.

(3) Grants made pursuant to subsections (a)(6) and (a)(7) of this section shall be for a period of one to three years.

(e) Application consultations, documentation, assurances, and State educational agency recommendations

An application for a grant authorized under subsections (a)(1), (a)(2), and (a)(3) of this section shall—

(1) be developed in consultation with an advisory council, of which a majority shall be parents and other representatives of the children to be served in such programs, in accordance with criteria prescribed by the Secretary;

(2) be accompanied by documentation of such consultation and by the comments which the Council makes on the application;

(3) contain assurances that, after the application has been approved, the applicant will provide for the continuing consultation with, and participation by, the committee of parents, teachers, and other interested individuals which shall be selected by and predominantly composed of parents of children participating in the program, and in the case of programs carried out in secondary schools, representatives of the secondary students to be served; and

(4) include evidence that the State educational agency has been notified of the application and has been given the opportunity to offer recommendations thereon to the applicant and to the Secretary.

(f) Conditions determinative of application approval

An application for a grant under subsections (a)(1), (a)(2), and (a)(3) of this section may be approved only if the Secretary determines—

(1) that the program will use qualified personnel, including only those personnel who are proficient in the language or languages used for instruction;

(2) that in designing the program for which application is made, the needs of the children in nonprofit private elementary and secondary schools have been taken into account through consultation with appropriate private school officials; and, consistent with the number of such children enrolled in such schools in the area to be served whose educational needs are of the type and whose language and grade levels are of a similar type which the program is intended to address, after consultation with appropriate private school officials, provision has been made for the participation of such children on a basis comparable to that provided for public school children;

(3) that the program will be evaluated in accordance with a plan that meets the requirements of section 3243 of this title;

(4) that Federal funds made available for the project or activity will be used so as to supplement the level of State and local funds that, in the absence of those Federal funds, would have been expended for special programs for children of limited English proficiency and in no case to supplant such State and local funds, except that nothing in this clause shall—

(A) preclude a local education agency from using funds under this subchapter for activities carried out under an order of a court of the United States or of any State respecting services to be provided such children, or to carry out a plan approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] with respect to services to be provided such children; or

(B) authorize any priority or preference to be assigned by the Secretary to the funding of the activities under this subchapter;

(5) that the assistance provided under the application will contribute toward building the capacity of the applicant to provide a program on a regular basis, similar to that proposed for assistance, which will be of sufficient size, scope, and quality to promise significant improvement in the education of children of limited English proficiency, and that the applicant will have the resources and commitment to continue the program when assistance under this subchapter is reduced or no longer available;

(6) that the applicant will provide or secure training for personnel participating, or preparing to participate, in the program and that, to the extent possible, college or university credit will be awarded for such training; and

(7) that the provision of assistance proposed in the application is consistent with criteria established by the Secretary, after consultation with the State educational agency, for the purpose of achieving an equitable distribution of assistance under this part within the State in which the applicant is located, taking into consideration—

(A) the geographic distribution of children of limited English proficiency;

(B) the relative need of persons in different geographic areas within the State for the kinds of services and activities authorized under this subchapter;

(C) and with respect to grants to carry out programs described in subsections (a)(1), (a)(2), and (a)(3) of this section, the relative ability of particular local educational agencies within the State to provide such services and activities; and

(D) with respect to such grants, the relative numbers of persons from low-income families sought to be benefited by such programs.

(g) Priority of special alternative programs

An application for a grant under subsection (a)(3) of this section may receive priority based upon the information provided by the applicant pursuant to clause (A), (B), or (C) of subsection (c)(3) of this section.

(h) Priority of local educational agency programs; proportional allocation of funds

In the consideration of applications from local educational agencies to carry out programs authorized under this section, the Secretary shall give priority to applications from local educational agencies which are located in various geographical regions of the Nation and which propose to assist children of limited English proficiency who have historically been underserved by programs of bilingual education, taking into consideration the relative numbers of such children in the schools of such local educational agencies and the relative need for such programs. In approving such applications, the Secretary shall, to the extent feasible, allocate funds appropriated in proportion to the geographical distribution of children of limited English proficiency throughout the Nation, with due regard for the relative ability of particular local educational agencies to carry out such programs and the relative numbers of persons from low-income families sought to be benefited by such programs.

(i) Puerto Rican programs

Programs authorized under this subchapter in the Commonwealth of Puerto Rico may, notwithstanding any other provision of this subchapter, include programs of instruction, teacher training, curriculum development, research, evaluation, and testing designed to improve the English proficiency of children, and may also make provision for serving the needs of students of limited proficiency in Spanish.

(j) Withholding approval of application or reduction of grant for nonparticipation of children with limited English proficiency in private school programs

If the Secretary determines that an applicant for assistance under this subchapter is unable or unwilling to provide for the participation in the program for which assistance is sought of children of limited English proficiency enrolled in nonprofit, private schools, as required by subsection (f)(2) of this section, the Secretary shall—

(1) withhold approval of such application until the applicant demonstrates that it is in compliance with those requirements; or

(2) reduce the amount of the grant to such applicant by the amount which is required for the Secretary to arrange (such as through a contract with a nonprofit, nonsectarian agency, organization, or institution) to assess the needs of the children in the area to be served for programs of the type authorized in this subchapter and to carry out such programs for the children.

(Pub. L. 89-10, title VII, § 721, as added Pub. L. 95-561, title VII, § 701, Nov. 1, 1978, 92 Stat. 2271, and amended Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2374.)

References in Text

This Act, referred to in subsecs. (a)(6) and (c)(2)(I), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152, known as the Elementary and Secondary Education Act of 1965, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (f)(4)(A), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

Amendments

1984—Pub. L. 98-511 amended section generally substituting provisions relating to bilingual education programs for prior similar provisions.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

Section Referred to in Other Sections

This section is referred to in sections 3222, 3242, 3251 of this title.

§ 3232. Indian children in schools

(a) Indian tribe or tribally sanctioned education authority considered as local educational agency

For the purpose of carrying out programs under this subchapter for individuals served by elementary, secondary, or postsecondary schools operated predominantly for Indian or Alaskan Native children, an Indian tribe or a tribally sanctioned educational authority may be considered to be a local educational agency as such term is used in this subchapter, subject to the following qualifications:

(1) The term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et seq.] which is recognized for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) The term "tribally sanctioned educational authority" means any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe, as well as any nonprofit institution or organization which is chartered by the governing body of an Indian tribe to operate any such school or otherwise to oversee delivery of educational services to members of that tribe and which is approved by the Secretary for the purposes of this section.

(b) Payments to applicants

From the sums appropriated pursuant to section 3222(b) of this title, the Secretary is authorized to make payments to the applicants to carry out programs of bilingual education for Indian children on reservations served by elementary and secondary schools operated or funded by the Bureau of Indian Affairs.

(c) Annual reports to Congress, President, and Secretary

The Assistant Secretary of the Interior for the Bureau of Indian Affairs shall submit to the Congress, the President, and the Secretary by September 30 of each year an annual report which provides—

(1) an assessment of the needs of the Indian children with respect to the purposes of this subchapter in schools operated or funded by the Department of the Interior, including those tribes and local educational agencies receiving assistance under the Johnson-O'Malley Act (25 U.S.C. 452 et seq.); and

(2) an assessment of the extent to which such needs are being met by funds provided to such schools for educational purposes through the Secretary of the Interior.

(Pub. L. 89-10, title VII, § 722, as added Pub. L. 95-561, title VII, § 701, Nov. 1, 1978, 92 Stat. 2276, and amended Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2379.)

REFERENCES IN TEXT

The Alaskan Native Claims Settlement Act, referred to in subsec. (a)(1), probably means the Alaska Native Claims Settlement Act, Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Johnson O'Malley Act, referred to in subsec. (c)(1), is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, which is classified to sections 452 to 457 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 452 of Title 25 and Tables.

AMENDMENTS

1984—Pub. L. 98-511 amended section generally adding in subsec. (a) references to postsecondary schools and Alaskan Native children and qualifications for considerations as a local educational agency and in subsec. (c) requiring the report to be submitted annually.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3233. Omitted

CODIFICATION

Section, Pub. L. 89-10, title VII, § 723, as added Pub. L. 95-561, title VII, § 701, Nov. 1, 1978, 92 Stat. 2276, and amended S. Res. 30, Mar. 7, 1979; Pub. L. 96-88, title III, § 301(a)(1), title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692, which covered training provisions and defined "eligible applicants", was omitted in the general revision of this subchapter by Pub. L. 98-511. See section 3251 et seq. of this title.

A prior section 723 of Pub. L. 89-10, title VII, as added Pub. L. 93-380, title I, § 105(a)(1), Aug. 21, 1974, 88 Stat. 508, was classified to section 880b-9 of this title prior to the complete revision of Pub. L. 89-10 by Pub. L. 95-561.

PART B—DATA COLLECTION, EVALUATION, AND RESEARCH

§ 3241. Use of funds

Funds available under this part shall be used for (1) collecting data on the number of limited English proficient persons and the educational services available to such persons, (2) evaluating the operation and effectiveness of programs assisted under this subchapter, (3) conducting research to improve the effectiveness of bilingual education programs, and (4) collecting, analyzing, and disseminating data and information on bilingual education.

(Pub. L. 89-10, title VII, § 731, as added Pub. L. 95-561, title VII, § 701, Nov. 1, 1978, 92 Stat. 2278, and amended Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2380.)

AMENDMENTS

1984—Pub. L. 98-511 amended section generally substituting provisions relating to use of funds for provisions establishing an Office of Bilingual Education. See section 3261 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3242. Grants for State programs

(a) State data and information program on number of eligible persons and available State educational services

Upon an application from a State educational agency, the Secretary shall make provision for the submission and approval of a State program for the collection, aggregation, analysis, and publication of data and information on the State's population of limited English proficient persons and the educational services provided or available to such persons.

(b) Annual State reports to Secretary; contents, form, and date of submission; dissemination of information

State programs under this part shall provide for the annual submission of a report to the Secretary containing data and information on such matters as the Secretary shall, by regulation, determine necessary and proper to achieve the purposes of this subchapter, including the matters specified in section 3231(c)(2) of this title. Such reports shall be in such form and shall be submitted on such date as the Secretary shall specify by regulation. State programs shall provide for the dissemination of information regarding these matters to the public, and particularly to persons of limited English proficiency.

(c) Specific State program activities and services

State programs authorized under this section may also provide for—

(1) the planning and development of educational programs such as those assisted under this subchapter;

(2) the review and evaluation of programs of bilingual education, including bilingual education programs that are not funded under this subchapter;

(3) the provision, coordination, or supervision of technical and other forms of nonfinancial assistance to local educational agencies, community organizations, and private elementary and secondary schools that serve limited English proficient persons;

(4) the development and administration of instruments and procedures for the assessment of the educational needs and competencies of persons of limited English proficiency;

(5) the training of State and local educational agency staff to carry out the purposes of this subchapter; and

(6) other activities and services designed to build the capacity of State and local educational agencies to serve the educational needs of persons of limited English proficiency.

(d) Payments to State educational agencies; limitations

Except as provided in the second sentence of this subparagraph, the Secretary shall pay from the amounts appropriated for the purposes of this section pursuant to section 3222(b)(2) of this title for each fiscal year to each State educational agency which has a State program submitted and approved under subsection (a) of this section such sums as may be necessary for the proper and efficient conduct of such State program. The amount paid by the Secretary to any State educational agency under the preceding sentence for any fiscal year shall not be less than $50,000 nor greater than 5 percent of the aggregate of the amounts paid under section 3231 of this title for programs within such State in the fiscal year preceding the fiscal year to which this limitation applies.

(e) Supplementation and increase of level of funds

Funds made available under this section for any fiscal year shall be used by the State educational agency to supplement and, to the extent practical, to increase the level of funds that would, in the absence of such funds, be made available by the State for the purposes described in this section, and in no case to supplant such funds.

(Pub. L. 89-10, title VII, § 732, as added Pub. L. 95-561, title VII, § 701, Nov. 1, 1978, 92 Stat. 2280, and amended Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2380.)

AMENDMENTS

1984—Pub. L. 98-511 amended section generally substituting provisions relating to grants for State programs for provisions establishing a National Advisory Council on Bilingual Education. See section 3262 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3222 of this title.

§ 3243. Program evaluation requirements

(a)[1] The Secretary shall issue, within six months of October 19, 1984, regulations which set forth a comprehensive design for evaluating the programs assisted under part A of this subchapter. Such regulations shall be developed by the Director in consultation with the National Advisory and Coordinating Council on Bilingual Education. Such regulations shall provide for the collection of information and data including—

(1) the educational background, needs, and competencies of the limited English proficient persons served by the program;

(2) the specific educational activities undertaken pursuant to the program; the pedagogical materials, methods, and techniques utilized in the program; and with respect to classroom activities, the relative amount of instructional time spent with students on specified tasks;

(3) the educational and professional qualifications, including language competencies, of the staff responsible for planning and operating the program; and

(4) the extent of educational progress achieved through the program measured, as appropriate, by (A) tests of academic achievement in English language arts, and where appropriate, second language arts; (B) tests of academic achievement in subject matter areas; and (C) changes in the rate of student grade-retention, dropout, absenteeism, referral to or placement in special education classes, placement in programs for the gifted and talented, and enrollment in postsecondary education institutions.

(Pub. L. 89-10, title VII, § 733, as added Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2381.)

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[1] So in original. Section enacted without a subsec. (b).

Effective Date

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of this title.

Section Referred to in Other Sections

This section is referred to in section 3231 of this title.

§ 3244. Evaluation assistance centers

The Secretary shall establish, through competitive grants to institutions of higher education, at least two evaluation assistance centers. Such centers shall provide, upon the request of State or local educational agencies, technical assistance regarding methods and techniques for identifying the educational needs and competencies of limited English proficient persons and assessing the educational progress achieved through programs such as those assisted under this subchapter. Grants made pursuant to this section shall be for a period of three years.

(Pub. L. 89-10, title VII, § 734, as added Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2381.)

Effective Date

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of this title.

§ 3245. Bilingual education research and development

(a) Competitive contracts

The Secretary shall, through competitive contracts under this section, provide financial assistance for research and development proposals submitted by institutions of higher education, private for-profit and nonprofit organizations, State and local educational agencies, and individuals.

(b) Scope of authorized activities

Research activities authorized to be assisted under this section shall include—

(1) studies to determine and evaluate effective models for bilingual education programs;

(2) studies which examine the process by which individuals acquire a second language and master the subject matter skills required for grade-promotion and graduation, and which identify effective methods for teaching English and subject matter skills within the context of a bilingual education program or special alternative instructional program to students who have language proficiencies other than English;

(3) longitudinal studies to measure the effect of this subchapter on the education of students who have language proficiencies other than English, and the effect of this subchapter on the capacity of local educational agencies to operate bilingual programs following the termination of assistance under this subchapter;

(4) studies to determine effective and reliable methods for identifying students who are entitled to services under this subchapter and for determining when their English language proficiency is sufficiently well developed to permit them to derive optimal benefits from an all-English instructional program;

(5) the operation of a clearinghouse which shall collect, analyze, and disseminate information about bilingual education and related programs;

(6) studies to determine effective methods of teaching English to adults who have language proficiencies other than English;

(7) studies to determine and evaluate effective methods of instruction for bilingual programs, taking into account language and cultural differences among students; and

(8) studies to determine effective approaches to preservice and inservice training for teachers, taking into account the language and cultural differences of their students.

(c) Delegation of authority; consultations

In carrying out the responsibilities of this section, the Secretary may delegate authority to the Director, and in any event, shall consult with the Director, the National Advisory and Coordinating Council on Bilingual Education, representatives of State and local educational agencies, and appropriate groups and organizations involved in bilingual education.

(d) Requests for proposals; publication and dissemination

The Secretary shall publish and disseminate all requests for proposals in research and development assisted under this subchapter.

(Pub. L. 89-10, title VII, § 735, as added Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2382.)

Effective Date

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of this title.

Section Referred to in Other Sections

This section is referred to in section 3253 of this title.

§ 3246. Coordination of research

Notwithstanding section 1221e(b)(1) of this title, the Director of the National Institute of Education shall consult with the Director and the National Advisory and Coordinating Council on Bilingual Education to insure that research activities undertaken pursuant to section 1221e(b)(2)(C) of this title complement and do not duplicate the activities conducted pursuant to this part.

(Pub. L. 89-10, title VII, § 736, as added Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2382.)

Effective Date

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of this title.

§ 3247. Education statistics

(a) Notwithstanding section 1221e-1 of this title, the National Center for Education Statistics shall collect and publish, as part of its annual report on the condition of education, data for States, Puerto Rico, and the Trust Territories with respect to the population of limited English proficient persons, the special educational services and programs available to limited English proficient persons, and the availability of educational personnel qualified to provide special educational services and programs to limited English proficient persons.

(b) In carrying out its responsibilities under this section, the National Center for Education Statistics shall utilize, to the extent feasible, data submitted to the Department of Education by State and local educational agencies and institutions of higher education pursuant to the provisions of this subchapter.

(Pub. L. 89-10, title VII, § 737, as added Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2383.)

EFFECTIVE DATE

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of this title.

PART C—TRAINING AND TECHNICAL ASSISTANCE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 3222 of this title.

§ 3251. Use of funds

(a) Description of specific program activities

Funds available under this part shall be used for—

(1) the establishment, operation, and improvement of training programs for educational personnel preparing to participate in, or personnel participating in, the conduct of programs of bilingual education or special alternative instructional programs for limited English proficient students, which shall emphasize opportunities for career development, advancement, and lateral mobility, and may provide training to teachers, administrators, counselors, paraprofessionals, teacher aides, and parents;

(2) the training of persons to teach and counsel such persons;

(3) the encouragement of reform, innovation, and improvement in applicable education curricula in graduate education, in the structure of the academic profession, and in recruitment and retention of higher education and graduate school faculties, as related to bilingual education;

(4) the operation of short-term training institutes designed to improve the skills of participants in programs of bilingual education or special alternative instructional programs for limited English proficient students; which may include summer programs designed to improve the instructional competence of educational personnel in the languages used in the program; and

(5) the provision of inservice training and technical assistance to parents and educational personnel participating in, or preparing to participate in, bilingual education programs or special alternative instructional programs for limited English proficient students.

(b) Eligible grantees or contractees

(1) A grant or contract may be made under subsection (a)(1), (a)(2), or (a)(3) of this section upon application of an institution of higher education.

(2) A grant or contract may be made under subsection (a)(4) of this section upon application of (A) institutions of higher education (including junior colleges and community colleges) and private for-profit or nonprofit organizations which apply, after consultation with, or jointly with, one or more local educational agencies or a State educational agency; (B) local educational agencies; or (C) a State educational agency.

(3) A grant or contract may be made under subsection (a)(5) of this section upon application of (A) institutions of higher education (including junior colleges and community colleges), (B) private for-profit or nonprofit organizations, or (C) a State educational agency.

(c) Application under subsection (a)(1) as application for section 3231(e) purposes

An application for a grant or contract for preservice or inservice training activities described in subsection (a)(1) of this section shall be considered an application for a program of bilingual education for the purposes of section 3231(e) of this title.

(d) Preference to certain preservice training programs

In making a grant or contract for preservice training programs described in subsection (a)(1) of this section, the Secretary shall give preference to programs which contain coursework in—

(1) teaching English as a second language;

(2) use of a non-English language for instructional purposes;

(3) linguistics; and

(4) evaluation and assessment;

and involving parents in the educational process. Preservice training programs shall be designed to ensure that participants become proficient in English and a second language of instruction.

(Pub. L. 89-10, title VII, § 741, as added Pub. L. 95-561, title VII, § 701, Nov. 1, 1978, 92 Stat. 2281, and amended Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2383.)

AMENDMENTS

1984—Pub. L. 98-511 amended section generally substituting provisions relating to use of funds for provisions relating to administration of supportive services and activities. See section 3261 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3252, 3253 of this title.

§ 3252. Multifunctional resource centers

(a) Competitive awards; number of centers; award considerations

Pursuant to subsection (a)(5) of section 3251 of this title, the Secretary shall establish, through competitive grants or contracts, at least 16 multifunctional resource centers (hereafter in this section referred to as "centers"). Grants and contracts shall be awarded with consideration given to the geographic and linguistic distribution of children of limited English proficiency.

(b) Duties and activities of centers

In addition to providing technical assistance and training to persons participating in or preparing to participate in bilingual education programs or special alternative instructional programs for limited English proficient students, each center shall be responsible for gathering and providing information to other centers on a particular area of bilingual education, including (but not limited to) bilingual special education, bilingual education for gifted and talented limited English proficient students, bilingual vocational education, bilingual adult education, bilingual education program administration, literacy, education technology in bilingual programs, mathematics and science education in bilingual programs, counseling limited English proficient students, and career education programs for limited English proficient students.

(Pub. L. 89-10, title VII, § 742, as added Pub. L. 95-561, title VII, § 701, Nov. 1, 1978, 92 Stat. 2281, and amended Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2384.)

AMENDMENTS

1984—Pub. L. 98-511 amended section generally substituting provisions relating to multifunctional resource centers for provisions relating to bilingual research and development. See section 3245 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3253. Fellowships

(a) Description of study areas; number; preference to students in specialized areas; report of program operations

Pursuant to subsection (a)(2) of section 3251 of this title, the Secretary is authorized to award fellowships for advanced study of bilingual education or special alternative instructional programs for limited English proficient students in such areas as teacher training, program administration, research and evaluation, and curriculum development. For the fiscal year ending September 30, 1985, not less than 500 fellowships leading to a graduate degree shall be awarded under the preceding sentence. Such fellowships shall be awarded, to the extent feasible, in proportion to the needs of various groups of individuals with limited English proficiency. In awarding fellowships, the Secretary shall give preference to individuals intending to study bilingual education or special alternative instructional programs for limited English proficient students in the following specialized areas: vocational education, adult education, gifted and talented education, special education, education technology, literacy, and mathematics and science education. The Secretary shall include information on the operation of the fellowship program in the report required under section 3261(c) of this title.

(b) Study of impact on recipients; dissemination of undertaken research

The Secretary shall undertake an on-going longitudinal study of the impact of recipients of such fellowships on the field of bilingual education and alternative instructional programs for students of limited English proficiency and shall, through the clearinghouse established pursuant to section 3245(b)(5) of this title, disseminate research undertaken by recipients of such fellowships.

(c) Repayment or work requirement; waiver

Any person receiving a fellowship under this section shall agree either to repay such assistance or to work for a period equivalent to the period of time during which such person received assistance, and such work shall be in an activity related to programs and activities such as those authorized under this Act. The Secretary may waive this requirement in extraordinary circumstances.

(Pub. L. 89-10, title VII, § 743, as added Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2384.)

REFERENCES IN TEXT

This Act, referred to in subsec. (c), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152, known as the Elementary and Secondary Education Act of 1965, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of this title.

§ 3254. Priority

In making grants or contracts under this part, the Secretary shall give priority to eligible applicants with demonstrated competence and experience in programs and activities such as those authorized under this Act.

(Pub. L. 89-10, title VII, § 744, as added Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2385.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152, known as the Elementary and Secondary Education Act of 1965, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of this title.

§ 3255. Stipends

In the terms of any arrangement described in this part, the Secretary shall provide for the payment, to persons participating in training programs so described, of such stipends (including allowances for subsistence and other expenses for such persons and their dependents) as the Secretary may determine to be consistent with prevailing practices under comparable federally supported programs.

(Pub. L. 89-10, title VII, § 745, as added Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2385.)

EFFECTIVE DATE

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of this title.

PART D—ADMINISTRATION

§ 3261. Office of Bilingual Education and Minority Languages Affairs

(a) Office of Department of Education

There shall be, in the Department of Education, an Office of Bilingual Education and Minority Languages Affairs (hereafter in this section referred to as the "Office") through which the Secretary shall carry out functions relating to bilingual education.

(b) Director of Office; appointment; duties: delegated functions, coordination of programs, and organization of Office; division for data and information

(1) The Office shall be headed by a Director of Bilingual Education and Minority Languages Affairs, appointed by the Secretary, to whom the Secretary shall delegate all delegable functions relating to bilingual education. The Director shall also be assigned responsibility for coordinating the bilingual education aspects of other programs administered by the Secretary.

(2) The Office shall be organized as the Director determines to be appropriate in order to enable the Director to carry out such functions and responsibilities effectively, except that there shall be a division, within the Office, which is exclusively responsible for the collection, aggregation, analysis, and publication of data and information on the operation and effectiveness of programs assisted under this subchapter.

(c) Report to Congress and President; contents

The Secretary, in consultation with the Council, shall prepare and, not later than February 1 of 1986 and 1988, shall submit to the Congress and the President a report on the condition of bilingual education in the Nation and the administration and operation of this subchapter and of other programs for persons of limited English proficiency. Such report shall include—

(1) a national assessment of the educational needs of children and other persons with limited English proficiency and of the extent to which such needs are being met from Federal, State, and local efforts;

(2) a plan, including cost estimates, to be carried out during the five-year period beginning on such date, for extending programs of bilingual education and bilingual vocational and adult education programs to all such preschool and elementary school children and other persons of limited English proficiency, including a phased plan for the training of the necessary teachers and other educational personnel necessary for such purpose;

(3) a report on and evaluation of the activities carried out under this subchapter during the preceding two fiscal years and the extent to which each of such activities achieves the policy set forth in section 3222(a) of this title;

(4) a statement of the activities intended to be carried out during the succeeding period, including an estimate of the cost of such activities;

(5)(A) an assessment of the number of teachers and other educational personnel needed to carry out programs of bilingual education under this subchapter and those carried out under other programs for persons of limited English proficiency;

(B) a statement describing the activities carried out thereunder designed to prepare teachers and other educational personnel for such programs; and

(C) the number of other educational personnel needed to carry out programs of bilingual education in the States; and

(6) an estimate of the number of fellowships in the field of training teachers for bilingual education which will be necessary for the two succeeding fiscal years.

(d) Coordination of certain programs and specified area activities

In order to maximize Federal efforts aimed at serving the educational needs of children of limited English proficiency, the Secretary shall coordinate and closely cooperate with other programs administered by the Department of Education, including such areas as teacher training, program content, research, and curriculum. The Secretary's report under subsection (c) of this section shall include demonstration that such coordination has taken place.

(e) Staff of Office; qualified personnel

The Secretary shall ensure that the Office of Bilingual Education and Minority Languages Affairs is staffed with sufficent personnel trained, or with experience in, bilingual education to discharge effectively the provisions of this subchapter.

(Pub. L. 89-10, title VII, § 751, as added Pub. L. 95-561, title VII, § 701, Nov. 1, 1978, 92 Stat. 2282, and amended Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2385.)

AMENDMENTS

1984—Pub. L. 98-511 amended section generally substituting provisions establishing an Office of Bilingual Education and Minority Languages Affairs for provisions for assistance to local educational agencies eligible under the Emergency School Aid Act.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3253, 3262 of this title.

§ 3262. National Advisory and Coordinating Council on Bilingual Education

(a) Number, appointment, and experience of members; Chairman; representation of specific experiences and interests; termination

Subject to part D of the General Education Provisions Act [20 U.S.C. 1233 et seq.], there shall be a National Advisory and Coordinating Council on Bilingual Education composed of twenty members appointed by the Secretary, one of whom shall be designated by the Secretary as Chairman. Members of the Council shall be persons experienced in dealing with the educational problems of children and other persons who are of limited English proficiency. Five members of the Council shall be State directors of bilingual education programs, at least three of whom shall represent States with large populations of limited English proficient students. Two members of the Council shall be experienced in research on bilingual education or evaluation of bilingual education programs. One member of the Council shall be experienced in research on methods of alternative instruction for language minority students or evaluation of alternative methods of instruction for such students. One member of the council[1] shall be a classroom teacher of demonstrated teaching abilities using bilingual methods and techniques. One member of the Council shall be a classroom teacher of demonstrated teaching abilities using alternative instructional methods and techniques. One member of the Council shall be experienced in the training of teachers for programs of bilingual education. One member of the Council shall be experienced in the training of teachers for programs of alternative instruction. Two members of the Council shall be parents of students whose language is other than English, and one member of the Council shall be an officer of a professional organization representing bilingual education personnel. The members of the Council shall be appointed in such a way as to be generally representative of the significant segments of the population of persons of limited English proficiency and the geographic areas in which they reside. Subject to section 448(b) of the General Education Provisions Act [20 U.S.C. 1233g(b)], the Council shall continue to exist until October 1, 1988.

(b) Meetings

The Council shall meet at the call of the Chairman, but, notwithstanding the provisions of section 446(a) of the General Education Provisions Act [20 U.S.C. 1233e(a)], not less often than four times in each year.

(c) Advisory functions; annual report to Congress and President

The Council shall advise the Secretary in the preparation of general regulations and with respect to policy matters arising in the administration and operation of this subchapter, including the development of criteria for approval of applications and plans under this subchapter, and in the administration and operation of other programs for persons of limited English proficiency. The Council shall prepare and, not later than March 31 of each year, submit a report to the Congress and the President on the condition of bilingual education in the Nation and on the administration and operation of this subchapter, including those items specified in section 3261(c) of this title, and the administration and operation of other programs for persons of limited English proficiency.

(d) Personnel, staff, information, and other assistance

The Secretary shall procure temporary and intermittent services of such personnel as are necessary for the conduct of the functions of the Council, in accordance with section 445 of the General Education Provisions Act [20 U.S.C. 1233d], and shall make available to the Council such staff, information, and other assistance as it may require to carry out its activities effectively.

(Pub. L. 89-10, title VII, § 752, as added Pub. L. 98-511, title II, § 201, Oct. 19, 1984, 98 Stat. 2386.)

REFERENCES IN TEXT

The General Education Provisions Act, referred to in subsec. (a), is title IV of Pub. L. 90-247, Jan. 2, 1968, 81 Stat. 814, as amended. Part D of the General Education Provisions Act was added as part C of title IV by Pub. L. 91-230, § 401(a)(10), Apr. 13, 1970, 84 Stat. 166, redesignated part D by Pub. L. 92-318, § 301(a)(1), June 23, 1972, 86 Stat. 326, and is classified generally to subchapter IV (§ 1233 et seq.) of chapter 31 of this title. For complete classification of this Act to the Code, see section 1221 of this title and Tables.

EFFECTIVE DATE

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3222 of this title.

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[1] So in original. Probably should be "Council".

SUBCHAPTER IX—ADDITIONAL PROGRAMS

PART C—WOMEN'S EDUCATIONAL EQUITY

§ 3341. General provisions

[See main edition for text of (a)]

(b) Declaration of findings; purpose

(1) The Congress finds and declares that educational programs in the United States, as presently conducted, are frequently inequitable as such programs relate to women and frequently limit the full participation of all individuals in American society. The Congress finds and declares that excellence in education cannot be achieved without equity for women and girls.

(2) It is the purpose of this part to provide educational equity for women in the United States and to provide financial assistance to enable educational agencies and institutions to meet the requirements of title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.]. It is also the purpose of this part to provide educational equity for women and girls who suffer multiple discrimination, bias, or stereotyping based on sex and on race, ethnic origin, disability, or age.

[See main edition for text of (c)]

(As amended Pub. L. 98-511, title IV, § 402, Oct. 19, 1984, 98 Stat. 2389.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-511, § 402(a), added finding that excellence in education cannot be achieved without equity for women and girls.

Subsec. (b)(2). Pub. L. 98-511, § 402(b), added second sentence relating to purpose to provide educational equity for women and girls who suffer multiple discrimination, bias, or stereotyping based on sex and on race, ethnic origin, disability, or age.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SHORT TITLE OF 1984 AMENDMENT

For short title of title IV of Pub. L. 98-511, which amended sections 3341 to 3348 of this title, as the "Women's Educational Equity Amendments of 1984", see section 401(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3342. Granting and contracting authority; funding requirements

(a) The Secretary of Education is authorized to make grants to, and enter into contracts with, public agencies, private nonprofit agencies, organizations, and institutions, including student and community groups, and individuals, for activities designed to achieve the purpose of this part at all levels of education, including preschool, elementary and secondary education, higher education, and adult education. The activities may include—

[See main edition for text of (1) and (2)]

Not less than 75 per centum of funds used to support activities covered by paragraph (2) shall be used for awards to local educational agencies. The Secretary shall ensure that at least 1 grant or contract is available during each fiscal year for the performance of each of the activities described in paragraph (1) of this subsection.

(b) For each fiscal year, the Secretary of Education shall use $6,000,000 from the funds available under this part to support activities described in paragraph (1) of subsection (a) of this section. Any funds in excess of $6,000,000 available under this part may be used to support new activities described in paragraph (1) or to support activities described in paragraph (2), or both.

(Pub. L. 89-10, title IX, § 932, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2298, and amended Pub. L. 98-511, title IV, §§ 401(b), 403, Oct. 19, 1984, 98 Stat. 2389.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-511, §§ 401(b), 403(a), substituted "Secretary of Education" for "Commissioner" in provisions preceding par. (1) and added provision at the end requiring the Secretary to ensure that at least 1 grant or contract is available during each fiscal year for performance of each of the activities described in subsec. (a)(1) of this section.

Subsec. (b). Pub. L. 98-511, §§ 401(b), 403(b), substituted "Secretary of Education" for "Commissioner", "$6,000,000" for "$15,000,000" in two places, and "may be used to support new activities described in paragraph (1) or to support activities described in paragraph (2), or both" for "shall be used to support activities described in paragraph (2) of subsection (a) of this section".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3343, 3344, 3345 of this title.

§ 3343. Application; participation

(a) A grant may be made, and a contract may be entered into, under this part only upon application to the Secretary of Education, at such time, in such form, and containing or accompanied by such information as the Secretary of Education may prescribe. Each such application shall—

[See main edition for text of (1) to (3); (b)]

(Pub. L. 89-10, title IX, § 933, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2299, and amended Pub. L. 98-511, title IV, § 401(b), Oct. 19, 1984, 98 Stat. 2389.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-511, § 401(b), substituted "Secretary of Education" for "Commissioner" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3344. Challenge grants

(a) Amount of individual grants; description of projects

In addition to the authority of the Secretary under section 3342 of this title, the Secretary shall carry out a program of challenge grants (as part of the grant program administered under section 3342(a)(1) of this title), not to exceed $40,000 each, in order to support projects to develop—

(1) comprehensive plans for implementation of equity programs at every educational level;

(2) innovative approaches to school-community partnerships;

(3) new dissemination and replication strategies; and

(4) other innovative approaches to achieving the purposes of this part.

(b) Eligible grantees

For the purposes described in clauses (1) through (4) of subsection (a) of this section, the Secretary is authorized to make grants to public and private nonprofit agencies and to individuals.

(Pub. L. 89-10, title IX, § 934, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2299, and amended Pub. L. 98-511, title IV, §§ 401(b), 404, Oct. 19, 1984, 98 Stat. 2389.)

Amendments

1984—Pub. L. 98-511 substituted "Secretary of Education" for "Commissioner" and amended section generally to replace provisions authorizing small grants up to $25,000, with provisions authorizing challenge grants up to $40,000.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3345. Criteria and priorities

The Secretary of Education shall establish separate criteria and priorities for awards under sections 3342(a)(1) and 3342(a)(2) of this title under this part [1] to insure that available funds are used for programs that most effectively will achieve the purposes of this part. Those criteria and priorities shall be promulgated in accordance with section 1232 of this title.

(Pub. L. 89-10, title IX, § 935, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2299, and amended Pub. L. 98-511, title IV, §§ 401(b), 405, Oct. 19, 1984, 98 Stat. 2389, 2390.)

Amendments

1984—Pub. L. 98-511 substituted "Secretary of Education" for "Commissioner", inserted "separate" after "shall establish", and inserted "sections 3342(a)(1) and 3342(a)(2) of this title" after "priorities for awards".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3346. National Advisory Council on Women's Educational Programs

(a) Establishment; composition; Chairperson

There is established in the Department of Education a National Advisory Council on Women's Educational Programs. The Council shall be composed of—

(1) seventeen individuals, some of whom shall be students, and who shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals, broadly representative of the general public and including (A) individuals who are experts in a wide range of issues of educational equity for women at all levels of education, including preschool, elementary and secondary education, higher education, and vocational and adult education; (B) individuals who are representative of and expert in the educational needs of racial and ethnic minority women, older women, and disabled women; (C) both women and men who have demonstrated commitment to and expertise in the purposes of this part; and (D) individuals who are representative of and expert in student financial assistance programs authorized under title IV of the Higher Education Act of 1965 [20 U.S.C. 1070 et seq.];

[*See main edition for text of* (2) *to* (4)]

The Council shall elect its own Chairperson from among the members described in paragraph (1).

[*See main edition for text of* (*b*)]

(c) Functions

The Council shall—

(1) advise the Secretary and the Congress on matters relating to equal educational opportunities for women and policy matters relating to the administration of this part;

(2) make recommendations to the Secretary of Education with respect to the selection of funding priorities and allocation of any funds pursuant to this part, including criteria developed to insure an appropriate geographical distribution of approved programs and projects throughout the Nation;

(3) advise all Federal agencies which have education programs concerning those aspects of the programs which relate to the educational needs and opportunities of women;

[*See main edition for text of* (4) *and* (5); (*d*)]

(Pub. L. 89-10, title IX, § 936, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2300, and amended Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 98-511, title IV, §§ 401(b), 406, Oct. 19, 1984, 98 Stat. 2389, 2390.)

References in Text

The Higher Education Act of 1965, referred to in subsec. (a)(1), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Title IV of the Higher Education Act of 1965 is classified generally to subchapter IV (§ 1070 et seq.) of chapter 28 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

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[1] So in original. The words "under this part" probably should not appear.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-511, § 406(1), (2), substituted "Department of Education" for "Office of Education" in provisions preceding par. (1) and amended par. (1) generally substituting provision for making appointments from individuals describd in cls. (A) through (D) for prior provision for appointment of individuals, who by virtue of their knowledge or experience, are versed in the role and status of women in American society.

Subsec. (c)(1). Pub. L. 98-511, § 406(3), substituted "advise the Secretary and the Congress" for "advice the Secretary, Assistant Secretary, and the Commission".

Subsec. (c)(2). Pub. L. 98-511, §§ 401(b), 406(4), substituted "Secretary of Education" for "Commissioner" and inserted "selection of funding priorities and" before "allocation of any funds".

Subsec. (c)(3). Pub. L. 98-511, § 406(5), substituted "advise all Federal agencies which have education programs concerning those aspects of the programs which relate to the educational needs and opportunities of women" for "recommend criteria for the establishment of program priorities".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3347. Reports, evaluation, and dissemination

(a) The Secretary of Education is directed, not later than September 30 of each of the years 1985 through 1989, to submit to the President and the Congress and to the Council a report setting forth the programs and activities assisted under this part, and to provide for the distribution of this report to all interested groups and individuals, including the Congress, from funds authorized under this part. After receiving the report from the Secretary of Education, the Council shall oversee the evaluation of the program and projects assisted under this part and report on such evaluation in its annual report.

(b) The Office of Women's Educational Equity shall evaluate and disseminate (at low cost) all materials and programs developed under this part.

(Pub. L. 89-10, title IX, § 937, as added Pub. L. 95-561, title VIII, § 802, Nov. 1, 1978, 92 Stat. 2300, and amended Pub. L. 98-511, title IV, §§ 401(b), 407, Oct. 19, 1984, 98 Stat. 2389, 2391.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-511, §§ 401(b), 407(2)-(5), designated existing provisions as subsec. (a), and in subsec. (a) as so designated, substituted "Secretary of Education" for "Commissioner" in two places, "of each of the years 1985 through 1989" for ", 1980, 1982, and 1984", "shall oversee the evaluation of" for "shall evaluate", and "report on such evaluation" for "include such evaluation".

Subsec. (b). Pub. L. 98-511, § 407(5), added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3348. Authorization of appropriations

For the purpose of carrying out this part there are authorized to be appropriated $10,000,000 for fiscal year 1985, $12,000,000 for fiscal year 1986, $14,000,000 for fiscal year 1987, $16,000,000 for fiscal year 1988, and $20,000,000 for fiscal year 1989.

(As amended Pub. L. 98-511, title IV, § 408, Oct. 19, 1984, 98 Stat. 2391.)

AMENDMENTS

1984—Pub. L. 98-511 substituted appropriations authorization of ten million, twelve million, fourteen million, sixteen million, and twenty million dollars for fiscal years 1985 through 1989, respectively, for authorization of 80 million dollars for each fiscal year 1980 through 1983.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SUBCHAPTER X—GENERAL PROVISIONS

§ 3383. Waiver of requirements for certain jurisdictions

(a) Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands

(1) If the Secretary determines that compliance with any of the requirements of this chapter, or the Education Consolidation and Improvement Act of 1981 [20 U.S.C. 3801 et seq.] by Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands is impractical or inappropriate because of conditions or circumstances particular to any of such jurisdictions, he may waive any of those requirements upon the request of the State educational agency for such jurisdiction. At least thirty days prior to approving any such request for a waiver, the Secretary shall publish in the Federal Register a notice of his intent to grant such a waiver and the terms and conditions upon which such a waiver will be granted.

[*See main edition for text of* (2); (*b*)]

(As amended Pub. L. 98-211, § 21(b), Dec. 8, 1983, 97 Stat. 1418.)

REFERENCES IN TEXT

The Education Consolidation and Improvement Act of 1981, referred to in subsec. (a)(1), is subtitle D [§§ 551 to 596] of title V of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 463, as amended, which is classified principally to chapter 51 (§ 3801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of this title and Tables.

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-211 added reference to the Education Consolidation and Improvement Act of 1981.

§ 3385. Improvement of educational opportunities for Indian students

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Authorization of appropriations

(1) For the purpose of making grants under this section there are hereby authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1973, and $35,000,000 for each of the succeeding fiscal year ending prior to October 1, 1989.

(2) For the purpose of making grants under subsection (e) of this section there are hereby authorized to be appropriated $8,000,000 for each of the fiscal years ending prior to October 1, 1989. The sum of the grants made to State educational agencies under subsection (e) of this section shall not exceed 15 per centum in any fiscal year of the sums appropriated for that year.

(3) Notwithstanding paragraphs (1) and (2), the amount that is authorized to be appropriated to [1] under this subsection for each of the fiscal years 1987, 1988, and 1989, is the amount appropriated for such purpose for fiscal year 1986.

(As amended Pub. L. 98-511, title V, § 513(c), Oct. 19, 1984, 98 Stat. 2400.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-511 substituted "October 1, 1989" for "October 1, 1983" in pars. (1) and (2) and added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3385a. Special educational training programs for teachers of Indian people

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Authorization of appropriations

There is authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1975, and for each of the succeeding fiscal years ending prior to October 1, 1986, to carry out the provisions of this section. There is also authorized to be appropriated to carry out the provisions of this section for each of the fiscal years 1987, 1988, and 1989, an amount not to exceed the amount appropriated for such purpose for fiscal year 1986.

(As amended Pub. L. 98-511, title V, § 513(b)(1), (2), Oct. 19, 1984, 98 Stat. 2400.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-511 substituted "October 1, 1986" for "October 1, 1983" and authorized annual appropriations for fiscal years 1987 through 1989 in an amount not to exceed amount appropriated for fiscal year 1986.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

§ 3385b. Fellowships for Indian students

(a) Fiscal years for which authorized; graduate and professional program studies; academic year limitations; award of vacated fellowships for remainder of period

During the fiscal year ending June 30, 1975, and each of the succeeding fiscal years ending prior to October 1, 1989, the Secretary of Education is authorized to award fellowships to be used for study in graduate and professional programs at institutions of higher education. Such fellowships shall be awarded to Indian students in order to enable them to pursue a course of study of not more than four academic years leading toward a postbaccalaureate degree in medicine, psychology, law, education, and related fields or leading to an undergraduate or graduate degree in engineering, business administration, natural resources, and related fields. The Secretary of Education may, if a fellowship is vacated prior to the end of the period for which it was awarded, award an additional fellowship for the remainder of such period.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Authorization of appropriations

The amount that is authorized to be appropriated to carry out the provisions of this section for each of the fiscal years 1987, 1988, and 1989, is the amount appropriated for such purpose for fiscal year 1986.

(As amended Pub. L. 98-511, title V, § 513(b)(3), (4), Oct. 19, 1984, 98 Stat. 2400.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-511, § 513(b)(3), substituted "1989" for "1983", struck out "not to exceed two hundred" before "fellowships to be used for", added "psychology," after "medicine,", and substituted provision for an award of an additional fellowship for remainder of period where fellowship is vacated prior to end of period for which it was awarded for prior provision which authorized the award of additional fellowships equal to the number previously awarded during any fiscal year but vacated prior to the end of the period during which they were awarded for a period of study not in excess of the remainder of the period for which the fellowship it replaced was awarded.

Subsec. (d). Pub. L. 98-511, § 513(b)(4), added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

TRANSFER OF FUNCTIONS

"Secretary of Education" was substituted for "Commissioner" in text pursuant to sections 301(a)(1) and 507 of Pub. L. 96-88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred all functions of the Commissioner of Education to the Secretary of Education.

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[1] So in original.

CHAPTER 48—DEPARTMENT OF EDUCATION

SUBCHAPTER II—ESTABLISHMENT OF THE DEPARTMENT

§ 3414. Office of Elementary and Secondary Education; inclusion of Office of Migrant Education

There shall be in the Department an Office of Elementary and Secondary Education, to be administered by the Assistant Secretary for Elementary and Secondary Education appointed under section 3412(b) of this title. The Assistant Secretary shall administer such functions affecting elementary and secondary education, both public and private, as the Secretary shall delegate. There shall be within the Office of Elementary and Secondary Education and directly under the supervision of the Assistant Secretary for Elementary and Secondary Education, an Office of Migrant Education, which shall be responsible for the administration of programs established by subpart 1 of part B of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2761 et seq.] and by subpart 5 of part A of title IV of the Higher Education Act of 1965 [20 U.S.C. 1070d-2].

(As amended Pub. L. 98-511, title VII, § 701(a), Oct. 19, 1984, 98 Stat. 2405.)

References in Text

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Subpart 1 of part B of title I of the 1965 Act is classified generally to subpart 1 (§ 2761 et seq.) of part B of subchapter I of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

The Higher Education Act of 1965, referred to in text, is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Subpart 5 of part A of title IV of this Act is classified generally to subpart 5 (§ 1070d-2) of part A of subchapter IV of chapter 28 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

Amendments

1984—Pub. L. 98-511 added provisions establishing the Office of Migrant Education and specifying its functions.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of this title.

SUBCHAPTER III—TRANSFERS OF AGENCIES AND FUNCTIONS

§ 3441. Transfers from Department of Health, Education, and Welfare

References in Text

The Vocational Education Act of 1963, referred to in subsec. (a)(2)(K), was title I of Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 94-482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2169, which was classified to chapter 44 (§ 2301 et seq.) of this title, prior to amendment by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, striking out all after the enacting clause and inserting in lieu thereof titles I to V, to be cited as the Carl D. Perkins Vocational Education Act. For additional details, see the Codification note preceding section 2301 of this title.

§ 3442. Transfers from Department of Defense

(a) Functions relating to operation of overseas schools for and education of dependents

Notwithstanding the provisions of section 601 of this Act, at such time not earlier than May 4, 1986, and in such manner, as the President may designate, there shall be transferred to the Secretary all functions of the Secretary of Defense and of the Department of Defense (or any officer or component thereof) relating to the operation of overseas schools for dependents of the Department of Defense and all functions of the Secretary of Defense and of the Department of Defense (or any officer or component thereof) under the Defense Dependents' Education Act of 1978 [20 U.S.C. 921 et seq.]. There shall be transferred to the Department the offices established by such Act.

[See main edition for text of (b) to (d)]

(As amended Pub. L. 98-94, title XII, § 1223, Sept. 24, 1983, 97 Stat. 692.)

Amendments

1983—Subsec. (a). Pub. L. 98-94 substituted "not earlier than May 4, 1986" for "not later than May 4, 1984".

SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS

PART B—GENERAL ADMINISTRATIVE PROVISIONS

§ 3473. Reorganization of Department

Office of Migrant Education

Pub. L. 98-511, title VII, § 701(b), Oct. 19, 1984, 98 Stat. 2405, provided that: "For the purposes of section 413(a) of the Department of Education Organization Act (20 U.S.C. 3473), the Office of Migrant Education shall be considered to be an organizational entity established by such Act [20 U.S.C. 3401 et seq.] and shall not be subject to the reorganizational authority of the Secretary of Education under that section or any other provision of law."

§ 3488. Authorization of appropriations

Limitations on Authorization of Appropriations for Salaries and Expenses of the Department of Education for Fiscal Years 1982, 1983, and 1984

Pub. L. 97-35, title V, § 510, Aug. 13, 1981, 95 Stat. 443, as amended by Pub. L. 98-312, § 2(a), June 12, 1984, 98 Stat. 233, provided that: "The total amount of appropriations for salaries and expenses of the Department of Education shall not exceed $308,000,000 for each of the fiscal years 1982, 1983, and 1984, of which—

"(1) $49,396,000 shall be available for the Office of Civil Rights for each such year; and

"(2) $12,989,000 shall be available for each of the fiscal years 1982 and 1983, and $14,961,000 shall be available for fiscal year 1984 for the Office of Inspector General."

[Section 2(b) of Pub. L. 98-312 provided that: "The amendment made by subsection (a) of this section [amending this note] shall take effect October 1, 1983."]

READEX FICHE

§ 3489. General extension of authorizations

Subject to the limitations contained in subtitle A of this title, there are authorized to be appropriated for fiscal years 1982, 1983, and 1984 such sums as may be necessary to carry out each of the following provisions of law:

[*See main edition for text of (1) to (12)*]

(13) the Navajo Community College Act [25 U.S.C. 640a to 640c-2] and the Tribally Controlled Community College Assistance Act of 1978 [25 U.S.C. 1801 et seq.];

(14) part C of title IX of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 3341 et seq.], relating to Women's Educational Equity; and

(15) title VII of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 3221 et seq.].

(As amended Pub. L. 98-211, § 20, Dec. 8, 1983, 97 Stat. 1418.)

REFERENCES IN TEXT

The Vocational Education Act of 1963, referred to in par. (10), was title I of Pub. L. 88-210, Dec. 18, 1963, 77 Stat. 403, as amended generally by Pub. L. 94-482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2169, which was classified to chapter 44 (§ 2301 et seq.) of this title, prior to amendment by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435, striking out all after the enacting clause and inserting in lieu thereof titles I to V, to be cited as the Carl D. Perkins Vocational Education Act. For additional details, see the Codification note preceding section 2301 of this title.

The Elementary and Secondary Education Act of 1965, referred to in pars. (14) and (15), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Part C of title IX of the Elementary and Secondary Education Act of 1965 is classified generally to part C (§ 3341 et seq.) of subchapter IX of chapter 47 of this title. Title VII of that Act, known as the Bilingual Education Act, was formerly classified to subchapter IV-A (§ 880b et seq.) of chapter 24 of this title, and is classified generally to subchapter VII (§ 3221 et seq.) of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

1983—Par. (15). Pub. L. 98-211 added par. (15).

CHAPTER 49—ASBESTOS SCHOOL HAZARD DETECTION AND CONTROL

CROSS REFERENCES

Abatement of asbestos hazards in schools, see section 4011 et seq. of this title.

CHAPTER 51—ELEMENTARY AND SECONDARY EDUCATION BLOCK GRANT

SUBCHAPTER I—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

Sec.
3808. National assessment of compensatory education assisted under this subchapter; independent study and analysis by National Institute of Education; consultations; reports to Congress without outside review.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3383 of this title.

SUBCHAPTER I—FINANCIAL ASSISTANCE TO MEET SPECIAL EDUCATIONAL NEEDS OF DISADVANTAGED CHILDREN

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1119d-2, 1422, 2323 of this title.

§ 3804. Authorized programs

[*See main edition for text of (a)*]

(b) Program design

State agency programs shall be designed to serve migratory children of migratory agricultural workers or of migratory fishermen, handicapped children, and neglected and delinquent children (as described in subparts 1, 2, and 3, respectively, of part B of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2761 et seq., 2771 et seq., 2781 et seq.]) in accordance with section 3803(a)(2) of this title and the other applicable requirements of this subchapter. The Secretary shall continue to use the definitions of "agricultural activity", "currently migratory child", and "fishing activity" which were in effect on June 30, 1982, in regulations prescribed under subpart 1 of part B of title I of the Elementary and Secondary Education Act of 1965. No additional definition of "migratory agricultural worker" or "migratory fisherman" may be applied after December 8, 1983, to such subpart 1, except that such definition shall be modified to include children of migratory fishermen, if such children reside in a school district of more than 18,000 square miles and migrate a distance of 20 miles or more to temporary residences to engage in fishing activity.

[*See main edition for text of (c) and (d)*]

(e) Evaluation

Each State educational agency shall—

(1) conduct an evaluation of the programs assisted under this subchapter at least every two years and shall make public the results of that evaluation; and

(2) collect data on the race, age, and gender of children served by the programs assisted under this subchapter and on the number of children served by grade-level under the programs assisted under this subchapter.

(As amended Pub. L. 98-211, § 1, Dec. 8, 1983, 97 Stat. 1412; Pub. L. 98-312, § 5, June 12, 1984, 98 Stat. 234.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsecs. (b) and (c), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Title I of the 1965 Act, which was formerly classified generally to subchapter II (§ 241a et seq.) of chapter 13 of this title, is classified generally to subchapter I (§ 2701 et seq.) of chapter 47 of this title. Subparts 1 to 3 of part B of title I of the 1965 Act are classified generally to subparts 1 (§ 2761 et seq.), 2 (§ 2771 et seq.), and 3 (§ 2781 et seq.), respectively, of part B of subchapter I of chapter 47 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

CODIFICATION

In subsec. (b), "December 8, 1983" was substituted for "the date of enactment of this subsection", meaning the date of enactment of Pub. L. 98-211, section 1(a) of which amended subsec. (b) generally.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-312 added: ", except that such definition shall be modified to include children of migratory fishermen, if such children reside in a school district of more than 18,000 square miles and migrate a distance of 20 miles or more to temporary residences to engage in fishing activity".

1983—Subsec. (b). Pub. L. 98-211, § 1(a), amended subsec. (b) generally, substituting provisions relating to programs designed to serve migratory children of migratory agricultural workers or of migratory fishermen, handicapped children, and neglected and delinquent children, for provisions relating to programs designed to serve those categories of children counted for eligibility for grants under section 3803(a)(2) of this title.

Subsec. (e). Pub. L. 98-211, § 1(b), added subsec. (e).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 25 of Pub. L. 98-211, as amended by Pub. L. 98-511, title VII, § 708, Oct. 19, 1984, 98 Stat. 2408, provided that:

"(a) Except as provided in subsection (b), the amendments made by this Act to the Education Consolidation and Improvement Act of 1981 [enacting section 3808 of this title and amending sections 3804 to 3807, 3811 to 3816, 3823, 3871 to 3873, and 3876 of this title] and title I of the Elementary and Secondary Education Act of 1965 [amending sections 2762, 2772, and 2782 of this title] shall be effective July 1, 1983.

"(b) With respect to the period beginning July 1, 1982, and ending June 30, 1984, no recipient of funds under the Education Consolidation and Improvement Act of 1981 [this chapter] shall be held to have expended such funds in violation of the requirements of such Act if such funds are expended either in accordance with such Act as in effect prior to the date of enactment of this Act [Dec. 8, 1983] or in accordance with such Act as amended by this Act."

§ 3805. Approval of applications

[*See main edition for text of* (*a*)]

(b) Application assurances

The application described in subsection (a) of this section shall be approved if it provides assurances satisfactory to the State educational agency that the local educational agency will keep such records and provide such information to the State educational agency as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the State agency under this subchapter), and that the programs and projects described—

(1)(A) are conducted in attendance areas of such agency having the highest concentrations of low-income children; or

(B) are located in all attendance areas of an agency which has a uniformly high concentration of such children;

(2) are based upon an annual assessment of educational needs which identifies educationally deprived children in all eligible attendance areas, requires, among the educationally deprived children selected, the inclusion of those children who have the greatest need for special assistance, and determines the needs of participating children with sufficient specificity to ensure concentration on those needs;

[*See main edition for text of* (*3*)]

(4) will be evaluated in terms of their effectiveness in achieving the goals set for them, and that such evaluations shall include objective measurements of educational achievement in basic skills and a determination of whether improved performance is sustained over a period of more than one year, and that the results of such evaluation will be considered by such agency in the improvement of the programs and projects assisted under this subchapter; and; and [1]

[*See main edition for text of* (*5*)]

(c) Exemption from targeting

The requirements of subsection (b)(1) of this section shall not apply in the case of a local educational agency with a total enrollment of less than one thousand children, but this subsection does not relieve such an agency from the responsibility to serve children under the assurances set forth in subsection (b)(2) of this section.

(d) Local educational agency discretion

Notwithstanding subsection (b)(1) of this section, a local educational agency shall have discretion to make educational decisions which are consistent with achieving the purposes of this subchapter as set forth in this subsection, as follows:

(1) A local educational agency may designate any school attendance area in which at least 25 per centum of the children are from low-income families as an eligible school attendance area.

(2) A local educational agency may, with the approval of the State educational agency, designate as eligible (and serve) school attendance areas with substantially higher numbers or percentages of educationally deprived children before school attendance areas with higher concentrations of children from low-income families, but this provision shall not permit the provision of services to more school attendance areas than could otherwise be served. A State educational agency shall approve such a proposal only if the State educational agency finds that the proposal will not substantially impair the delivery of compensatory education services to educationally deprived children from low-income families in project areas served by the local educational agency.

(3) Funds received under this subchapter may be used for educationally deprived children who are in a school which is not located in an eligible school attendance area when the proportion of children from low-income families in average daily attendance in such school is substantially equal to the proportion of such children in an eligible school attendance area of such agency.

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[1] So in original.

(4) If an eligible school attendance area or eligible school was so designated in accordance with subsection (b)(1)(A) of this section in either of two preceding fiscal years, it may continue to be so designated for a single additional fiscal year even though it does not qualify in accordance with subsection (b)(1)(A) of this section.

(5) With approval of the State educational agency, eligible school attendance areas or eligible schools which have higher proportions of children from low-income families may be skipped if they are receiving, from non-Federal funds, services of the same nature and scope as would otherwise be provided under this subchapter, but (A) the number of children attending private elementary and secondary schools who receive services under this subchapter shall be determined without regard to non-Federal compensatory education funds which serve eligible children in public elementary and secondary schools, and (B) children attending private elementary and secondary schools who receive assistance under this subchapter shall be identified in accordance with this section and without regard to skipping public school attendance areas or schools under this paragraph.

(6) A child who, in any previous year, was identified as being in greatest need of assistance, and who continues to be educationally deprived, but who is no longer identified as being in greatest need of assistance, may participate in a program or project assisted under this subchapter for the current year.

(7) Educationally deprived children who begin participation in a program or project assisted under this subchapter who, in the same school year, are transferred to a school attendance area or a school not receiving funds under this subchapter, may continue to participate in a program or project funded under this subchapter for the remainder of such year.

(8) The local educational agency is not required to use funds under this subchapter to serve educationally deprived children in greatest need of assistance if such children are receiving, from non-Federal sources, services of the same nature and scope as would otherwise be provided under this subchapter.

(9) In the case of any school serving an attendance area that is eligible to receive services under this subchapter and in which not less than 75 per centum of the children are from low-income families, funds received under this subchapter may be used for a project designed to upgrade the entire educational program in that school in the same manner and only to the same extent as permitted under section 2753(b) of this title (but without regard to paragraph (4) of such section).

(10) Public school personnel paid entirely by funds made available under this subchapter may be assigned limited, rotating, supervisory duties which are assigned to similarly situated personnel who are not paid with such funds, and such duties need not be limited to classroom instruction or to the benefit of children participating in programs or projects funded under this subchapter. Such duties may not exceed the same proportion of total time as is the case with similarly situated personnel at the same school site, or 10 per centum of the total time, whichever is less.

(e) Parental involvement

For the purposes of complying with the assurances given pursuant to subsection (b)(3) of this section with respect to consultation with parents of participating children, (1) a local educational agency shall convene annually a public meeting, to which all parents of eligible students shall be invited, to explain to parents the programs and activities provided with funds made available under this subchapter, and (2) if parents desire further activities, the local educational agency may, upon request, provide reasonable support for such activities.

(As amended Pub. L. 98-211, §§ 2-4, Dec. 8, 1983, 97 Stat. 1412-1414.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (d)(6), was in the original "this title", meaning title V of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 441 (see Tables for classification), which, as the probable intent of Congress, was translated as reading "this chapter", meaning chapter 1 of subtitle D of title V of Pub. L. 97-35.

AMENDMENTS

1983—Subsec. (b)(1)(C). Pub. L. 98-211, § 2(a), struck out subpar. (C) which related to programs and projects designed to utilize part of the available funds for services which promise to provide significant help for all such children served by such agency.

Subsec. (b)(2). Pub. L. 98-211, § 2(c), substituted provisions relating to mandatory inclusion from among educationally deprived children selected, for provisions relating to discretionary selection.

Subsec. (b)(4). Pub. L. 98-211, § 2(d), added provisions relating to agency consideration of results of evaluation in program and project improvement.

Subsec. (c). Pub. L. 98-211, § 2(b), added subsec. (c).

Subsec. (d). Pub. L. 98-211, § 3, added subsec. (d).

Subsec. (e). Pub. L. 98-211, § 4, added subsec. (e).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2762, 2772, 2782, 3804, 3806, 3808, 3876 of this title.

§ 3806. Participation of children enrolled in private schools

(a) General requirements

To the extent consistent with the number of educationally deprived children in the school district of the local educational agency who are enrolled in private elementary and secondary schools, such agency shall make provisions for including special educational services and arrangements (such as dual enrollment, educational radio and television, and mobile educational services and equipment) in which such children can participate and which meet the requirements of sections 3804(c), 3805(b)(1), (2), (3), and (4), and 3807(b) of this title. Expenditures for educational services and arrangements pursuant to this section for educationally deprived children in private schools shall be equal (taking into account the number of children to be served and the special educational needs of such children) to expenditures for children enrolled in the public schools of the local educational agency.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98-211, § 5, Dec. 8, 1983, 97 Stat. 1415.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-211 added "(1)," after "3805(b)".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3805, 3971, 4108 of this title.

§ 3807. General provisions

[*See main edition for text of* (*a*)]

(b) Federal funds to supplement, not supplant regular non-Federal funds

A State educational agency or other State agency in operating its State level programs or a local educational agency may use funds received under this subchapter only so as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this subchapter, and in no case may such funds be so used as to supplant such funds from such non-Federal sources. In order to demonstrate compliance with this subsection no State educational agency, other State agency, or local educational agency shall be required to provide services under this subchapter outside the regular classroom or school program.

[*See main edition for text of* (*c*)]

(d) Exclusion of special State and local program funds

For the purposes of determining compliance with the requirements of subsections (b) and (c) of this section, a local educational agency may exclude State and local funds expended for carrying out special programs to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children (which meets the requirements of section 2751(c) of this title). For the purpose of determining compliance with the requirements of subsection (c) of this section, a local educational agency may exclude State and local funds expended for—

(1) bilingual education for children of limited English proficiency,

(2) special education for handicapped children or children with specific learning disabilities, and

(3) certain State phase-in programs as described in section 2751(d) of this title.

(e) Allocation of funds in certain States

Notwithstanding section 2711(a)(3)(C) of this title, in any State in which a large number of local educational agencies overlap county boundaries, the State educational agency is authorized to make allocations of basic grants and special incentive grants directly to local educational agencies without regard to counties, if such allocations were made during fiscal year 1982, except that (1) precisely the same factors are used to determine the amount of such grants to counties, and (2) a local educational agency dissatisfied with such determination is afforded an opportunity for a hearing on the matter by the State educational agency.

(As amended Pub. L. 98-211, §§ 6-8, Dec. 8, 1983, 97 Stat. 1415.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-211, § 6, added references to State educational agencies or other State agencies.

Subsec. (d). Pub. L. 98-211, § 7, added provisions relating to determining compliance with the requirements of subsection (c) of this section, and substituted provisions relating to inclusion of compensatory education for educationally deprived children, for provisions relating to condition that programs are consistent with the purposes of this subchapter.

Subsec. (e). Pub. L. 98-211, § 8, added provisions relating to applicability of section 2711(a)(3)(C) of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2762, 2772, 2782, 3806, 3876 of this title.

§ 3808. National assessment of compensatory education assisted under this subchapter; independent study and analysis by National Institute of Education; consultations; reports to Congress without outside review

(a) The Secretary shall conduct a national assessment of compensatory education assisted under this subchapter, through independent studies and analysis by the National Institute of Education. The assessment shall include descriptions and assessments of the impact of (1) services delivered, (2) recipients of services, (3) background and training of teachers and staff, (4) allocation of funds (to school sites), (5) coordination with other programs, (6) effectiveness of programs on student's basic and higher order academic skills, school attendance, and future education, and (7) a national profile of the way in which local educational agencies implement activities described under section 3805(b) of this title. The National Institute of Education shall consult with the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives in the design and implementation of the assessment required by this section. The National Institute of Education shall report to Congress the preliminary results of the assessment required by this section in January and July of 1986, and a final report shall be prepared and submitted to the Congress not later than January 1, 1987.

(b) Notwithstanding any other provision of law or regulation, such reports shall not be subject to any review outside of the Department of Education before their transmittal to the Congress, but the President and the Secretary may make such additional recommendations to the Congress with respect to the assessment as they deem appropriate.

(Pub. L. 97-35, title V, § 559, as added Pub. L. 98-211, § 22, Dec. 8, 1983, 97 Stat. 1418.)

EFFECTIVE DATE

Section effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as an Effective Date of 1983 Amendment note under section 3804 of this title.

SUBCHAPTER II—CONSOLIDATION OF FEDERAL PROGRAMS FOR ELEMENTARY AND SECONDARY EDUCATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 4060 of this title.

§ 3811. Statement of purpose

[*See main edition for text of* (*a*)]

(b) Responsibility for administration of funds

The basic responsibility for the administration of funds made available under this subchapter is in the State educational agencies, but it is the intent of Congress that this responsibility be carried out with a minimum of paperwork and that the responsibility for the design and implementation of programs assisted under the subchapter shall be mainly that of local educational agencies, school superintendents and principals, and classroom teachers and supporting personnel, because they have the most direct contact with students and are most directly responsible to parents and because they are the most likely to be able to design programs to meet the educational needs of the students in their own districts.

(As amended Pub. L. 98-211, § 9(a), Dec. 8, 1983, 97 Stat. 1415.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-211 added provisions relating to ability to design programs to meet educational needs of the students in their own district.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3812 of this title.

§ 3812. Appropriations

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Availability of previously authorized funds

Funds available under previously authorized programs shall be available for the purpose of such payments in accordance with section 514(b)(2) of the Omnibus Education Reconciliation Act of 1981. Until September 30, 1983, such funds may also be used to assist in phasing out programs described in section 3811(a) of this title and in promoting an orderly transition to operations under this subchapter.

(As amended Pub. L. 98-211, § 10, Dec. 8, 1983, 97 Stat. 1416.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-211 added provisions relating to availability of funds until September 30, 1983.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

§ 3813. Allotment to States

(a) Formula

From the sums appropriated to carry out this subchapter in any fiscal year, the Secretary shall reserve 1 per centum for payments to Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, to be allotted in accordance with their respective needs. The Secretary shall reserve an additional amount, not to exceed 6 per centum of the sums appropriated, to carry out the purposes of section 3851 of this title. From the remainder of such sums the Secretary shall allot to each State an amount which bears the same ratio to the amount of such remainder as the school-age population of the State bears to the school-age population of all States, except that no State shall receive less than an amount equal to 0.5 per centum of such remainder.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-211, § 11, Dec. 8, 1983, 97 Stat. 1416.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-211 struck out "not to exceed" following "shall reserve".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

§ 3814. State applications

(a) Contents

Any State which desires to receive grants under this subchapter shall file an application with the Secretary which—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) beginning with fiscal year 1984, provides for an annual evaluation of the effectiveness of programs assisted under this subchapter,

which shall include comments of the advisory committee, and shall be made available to the public;

(6) provides that the State educational agency will keep such records and provide such information to the Secretary as may be required for fiscal audit and program evaluation (consistent with the responsibilities of the Secretary under this subchapter);

(7) provides assurance that, apart from technical and advisory assistance and monitoring compliance with this subchapter, the State educational agency has exercised and will exercise no influence in the decisionmaking processes of local educational agencies as to the expenditures made pursuant to its application under section 3816 of this title; and

(8) contains assurances that there is compliance with the specific requirements of this subchapter.

[*See main edition for text of* (*b*)]

(c) Audit of local educational agencies receiving less than $5,000 a year

Notwithstanding section 7305 of title 31, local educational agencies receiving less than an average $5,000 each year under this subchapter need not be audited more frequently than once every five years.

(As amended Pub. L. 98-211, §§ 9(b), 12, Dec. 8, 1983, 97 Stat. 1415, 1416.)

CODIFICATION

In subsec. (c), "section 7305 of title 31" was substituted for "section 1745 of this Act [Pub. L. 97-35, 31 U.S.C. 1243 note]" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1983—Subsec. (a)(7), (8). Pub. L. 98-211, § 9(b), added par. (7) and redesignated former par. (7) as (8).

Subsec. (c). Pub. L. 98-211, § 12, added subsec. (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3815, 3831, 3841, 3876 of this title.

§ 3815. Allocation to local educational agencies

(a) Priorities

From the sum made available each year under section 3813 of this title, the State educational agency shall distribute not less than 80 per centum to local educational agencies within such State according to the relative enrollments in public and private, nonprofit schools within the school districts of such agencies, adjusted, in accordance with criteria approved by the Secretary, to provide higher per pupil allocations to local educational agencies which have the greatest numbers or percentages of children whose education imposes a higher than average cost per child, such as—

[*See main edition for text of* (*1*) *to* (*3*); (*b*) *and* (*c*)]

(As amended Pub. L. 98-211, § 21(a), Dec. 8, 1983, 97 Stat. 1418.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-211 substituted "private, nonprofit" for "nonpublic".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

§ 3816. Local applications

(a) Certification; contents

A local educational agency may receive its allocation of funds under this subchapter for any year for which its application to the State educational agency has been certified to meet the requirements of this subsection. The State educational agency shall certify any such application if such application—

[*See main edition for text of* (*1*) *to* (*4*); (*b*)]

(c) Discretion in expenditure of funds

Each local educational agency shall have complete discretion, subject only to the provisions of this subchapter, in determining how funds the agency receives under this section shall be divided among the purposes of this subchapter in accordance with the application submitted under this section. In exercising such discretion, it shall be the responsibility of each local educational agency to ensure that each expenditure of funds under this subchapter is for the purpose of meeting the educational needs within the schools of that local educational agency.

(As amended Pub. L. 98-211, §§ 9(c), 13, Dec. 8, 1983, 97 Stat. 1416.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-211, § 13, added provisions preceding par. (1) relating to certification of applications as prerequisite for allocation of funds.

Subsec. (c). Pub. L. 98-211, § 9(c), added requirement that expenditures are for the purpose of meeting the educational needs within the schools of that local educational agency.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3814, 3815, 3831, 3841 of this title.

PART A—BASIC SKILLS DEVELOPMENT

§ 3823. School level programs

(a) Contents

In planning for the utilization of funds it allocates for this part (from its allotment under section 3815 of this title) a local educational agency shall provide for the participation of children enrolled in private elementary and secondary schools (and of teachers in such schools) in accordance with section 3862 of this title. Such plans shall be developed in conjunction with and involve continuing consultation with teachers and principals in such district. Such planning shall include a systematic strategy for improving basic skills instruction for all children which provides for planning and implementation at the school building level, involving teachers, administrators, and (to the extent practicable) parents, and utilizing all available resources in a comprehensive program. The programs shall include—

[*See main edition for text of* (*1*) *to* (*5*); (*b*)]

(As amended Pub. L. 98-211, § 14, Dec. 8, 1983, 97 Stat. 1416.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-211 substituted "part" for "subchapter" in provisions preceding par. (1).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

PART B—EDUCATIONAL IMPROVEMENT AND SUPPORT SERVICES

§ 3832. Authorized activities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4060 of this title.

PART D—SECRETARY'S DISCRETIONARY FUNDS

§ 3851. Discretionary program authorized

[*See main edition for text of* (*a*)]

(b) Funding

From the funds reserved for the purposes of this section, the Secretary shall first fund—

[*See main edition for text of* (*1*)]

(2) the programs of national significance in the "Arts in Education" Program as formerly authorized by part C of title III of such Act [20 U.S.C. 2961 et seq.],

(3) programs in alcohol and drug abuse education as formerly authorized by the Alcohol and Drug Abuse Education Act [21 U.S.C. 1001 et seq.], and

(4) the law-related education program as formerly authorized by part G of title III of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 3001 et seq.],

at least in amounts necessary to sustain the activities described in this sentence at the level of operations during fiscal year 1981 (or $1,000,000 in the case of the program referred to in paragraph (4)), and then utilize the remainder of such funds for the other authorized activities described in subsection (a) of this section.

(As amended Pub. L. 98-312, § 4(b), June 12, 1984, 98 Stat. 234.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (b)(1), (2), and (4), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152. Part C of title II of the 1965 Act was classified generally to part C (§ 2911 et seq.) of subchapter II of chapter 47 of this title prior to its repeal by Pub. L. 97-35, title V, § 587(a)(1), Aug. 13, 1981, 95 Stat. 480. Parts C and G of title III of the 1965 Act were classified generally to parts C (§ 2961 et seq.) and G (§ 3001 et seq.), respectively, of subchapter III of chapter 47 of this title prior to its repeal by section 587(a)(1) of Pub. L. 97-35. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-312 added par. (4) and "(or $1,000,000 in the case of the program referred to in paragraph (4))" after "fiscal year 1981' in the provisions following par. (4).

SUBCHAPTER III—GENERAL PROVISIONS

§ 3871. Federal regulations

[*See main edition for text of* (*a*) *to* (*c*)]

(d) State rulemaking

Nothing in this chapter shall be interpreted (1) to authorize State regulations, issued pursuant to procedures as established by State law, applicable to local educational agency programs or projects funded under this chapter, except as related to State audit and financial responsibilities, or (2) to encourage, preempt, or prohibit regulations issued pursuant to State law which are not in conflict with the provisions of this chapter. The imposition of any State rule or policy relating to the administration and operation of programs funded by this chapter (including those based on State interpretation of any Federal law, regulation, or guideline) shall be identified as a State imposed requirement.

(As amended Pub. L. 98-211, § 15, Dec. 8, 1983, 97 Stat. 1416.)

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-211 added subsec. (d).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3876 of this title.

§ 3872. Withholding of payments

(a) Whenever the Secretary after reasonable notice to any State educational agency and an opportunity for a hearing, finds that there has been a failure to comply substantially with any assurances required to be given or conditions required to be met under this chapter the Secretary shall notify such agency of these findings and that beginning sixty days after the date of such notification, further payments will not be made to the State under this chapter; or affected subchapter thereof (or, in his discretion, that the State educational agency shall reduce or terminate further payments under the chapter or affected subchapter thereof, to specified local educational agencies or State agencies affected by the failure) until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied, (1) no further payments shall be made to the State under the chapter or affected subchapter thereof, or (2) payments by the State educational agency under the chapter or affected subchapter thereof shall be limited to local educational agencies and State agencies not affected by the failure, or (3) payments to particular local educational agencies shall be reduced, as the case may be. A transcript or recording shall be made of any hearing conducted under this subsection and shall be available for inspection by any person.

(b) Upon submission to a State of a notice under subsection (a) of this section that the Secretary is withholding payments, the Secretary shall take such action as may be necessary to bring his action to the attention of the public within the State.

(As amended Pub. L. 98-211, § 16, Dec. 8, 1983, 97 Stat. 1417.)

CODIFICATION

Subsec. (b) is set out in this supplement to correct a typographical error appearing in the main edition.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-211 struck out "on the record" after "a hearing", and added provisions relating to making and availability of a transcript or recording.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3873, 3876 of this title.

§ 3873. Judicial review

[*See main edition for text of* (*a*)]

(b) Presumption applicable; remand

A State educational agency and a local educational agency shall be presumed to have complied with this chapter, but the findings of fact by the Secretary, if supported by the weight of evidence, may overcome such presumption. The court may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall file in the court the record of the further proceedings.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-211, § 17, Dec. 8, 1983, 97 Stat. 1417.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-211 added reference to local educational agency.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3876 of this title.

§ 3875. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4206 of this title.

§ 3876. Application of other laws

(a) General Education Provisions Act

Except as otherwise specifically provided by this section, the General Education Provisions Act [20 U.S.C. 1221 et seq.] shall apply to the programs authorized by this chapter.

(b) Supersedure of provisions

The following provisions of the General Education Provisions Act [20 U.S.C. 1221 et seq.] shall be superseded by the specified provisions of this chapter with respect to the programs authorized by this chapter:

(1) Section 408(a)(1) of the General Education Provisions Act [20 U.S.C. 1221e-3(a)(1)] is superseded by section 3871(a) of this title.

(2) Section 426(a) of such Act [20 U.S.C. 1231c(a)] is superseded by section 3871(b) of this title.

(3) Section 427 of such Act [20 U.S.C. 1231d] is superseded by section 3805(b)(3) of this title.

(4) Section 430 of such Act [20 U.S.C. 1231g] is superseded by sections 3805(a) and 3814(b) of this title.

(5) Section 431A of such Act [20 U.S.C. 1232-1] is superseded by section 3807(a) of this title.

(6) Section 453 of such Act [20 U.S.C. 1234b] is superseded by section 3872 of this title.

(7) Section 455 of such Act [20 U.S.C. 1234d] is superseded by section 3873 of this title with respect to judicial review of withholding of payments.

(c) Administrative provisions

Sections 434, 435, and 436 of the General Education Provisions Act [20 U.S.C. 1232c, 1232d, 1232e], except to the extent that such sections relate to fiscal control and fund accounting procedures, shall not apply to the programs authorized by this chapter and shall not be construed to authorize the Secretary to require any reports or take any actions not specifically authorized by this chapter.

(As amended Pub. L. 98-211, § 18(a), Dec. 8, 1983, 97 Stat. 1417.)

REFERENCES IN TEXT

The General Education Provisions Act, referred to in subsecs. (a) and (b), is title IV of Pub. L. 90-247, Jan. 2, 1968, 81 Stat. 814, as amended, which is classified generally to chapter 31 (§ 1221 et seq.) of this title. For complete classification of this Act to the Code, see section 1221 of this title and Tables.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-211 substituted provisions relating to applicability of General Education Provisions Act, for provisions relating to applicability of sections 1232c, 1232d, and 1232e of this title. See subsec. (c) of this section.

Subsec. (b). Pub. L. 98-211 substituted provisions relating to supersedure of specific sections of the General Education Provisions Act, for provisions relating to applicability of section 1225 of this title.

Subsec. (c). Pub. L. 98-211 added subsec. (c).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-211 effective July 1, 1983, with an exception for the year prior to and following such date, see section 25 of Pub. L. 98-211, set out as a note under section 3804 of this title.

CHAPTER 52—EDUCATION FOR ECONOMIC SECURITY

Sec.
- 3901. Statement of purpose.
- 3902. Definitions.

SUBCHAPTER I—NATIONAL SCIENCE FOUNDATION MATHEMATICS AND SCIENCE PROGRAMS

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§ 3901. Statement of purpose

It is the purpose of this chapter to improve the quality of mathematics and science teaching and instruction in the United States.

(Pub. L. 98-377, § 2, Aug. 11, 1984, 98 Stat. 1267.)

Short Title

Section 1 of Pub. L. 98-377 provided: "That this Act [enacting this chapter] may be cited as the 'Education for Economic Security Act'."

Part C of title I of Pub. L. 98-377, which enacted part C of subchapter I of this chapter, is known as "Congressional Merit Scholarships in Mathematics, Science, and Engineering Education", see note set out under section 3931 of this title.

Title III of Pub. L. 98-377, which enacted subchapter III of this chapter, is known as "Partnerships in Education for Mathematics, Science, and Engineering Act", see note set out under section 3961 of this title.

Title V of Pub. L. 98-377, which enacted subchapter V of this chapter, is known as "Asbestos School Hazard Abatement Act of 1984", see note set out under section 4011 of this title.

Title VI of Pub. L. 98-377, which enacted subchapter VI of this chapter, is known as "Excellence in Education Act", see note set out under section 4031 of this title.

Title VIII of Pub. L. 98-377, which enacted subchapter VIII of this chapter, is known as "The Equal Access Act", see note set out under section 4071 of this title.

§ 3902. Definitions

For the purpose of this chapter—

(1) The term "area vocational education school" has the same meaning given that term under section 195(2) of the Vocational Education Act of 1965.[1]

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[1] See References in Text note below.

(2) The term "Director" means the Director of the National Science Foundation.

(3) The term "elementary school" has the same meaning given that term under section 2854(a)(7) of this title.

(4) The term "Governor" means the chief executive of a State.

(5) The term "Foundation" means the National Science Foundation.

(6) The term "institution of higher education" has the same meaning given that term by section 1141(a) of this title.

(7) The term "local educational agency" has the same meaning given that term under section 2854(a)(10) of this title.

(8) The term "secondary school" has the same meaning given that term under section 2854(a)(7) of this title.

(9) The term "Secretary" means the Secretary of Education.

(10) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(11) The term "State agency for higher education" means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or, if there is no such officer or agency, an officer or agency designated for the purpose of this chapter[1] by the Governor or by State law.

(12) The term "State educational agency" has the meaning given that term under section 2854(a)(17) of this title.

(Pub. L. 98-377, § 3, Aug. 11, 1984, 98 Stat. 1267.)

References in Text

Section 195(2) of the Vocational Education Act of 1965, referred to in par. (1), probably means section 195(2) of the Vocational Education Act of 1963 which was section 195(2) of Pub. L. 88-210, title I, as added Pub. L. 94-482, title II, § 202(a), Oct. 12, 1976, 90 Stat. 2211, and amended, and which was classified to section 2461(2) of this title prior to the complete revision of Pub. L. 88-210 by Pub. L. 98-524, § 1, Oct. 19, 1984, 98 Stat. 2435. See section 2471(3) of this title.

This chapter, referred to in par. (11), was in the original "this title" and has been translated as if the reference were to this Act to reflect the probable intent of Congress in view of the fact that this section is not part of a title of Pub. L. 98-377.

SUBCHAPTER I—NATIONAL SCIENCE FOUNDATION MATHEMATICS AND SCIENCE PROGRAMS

Subchapter Referred to in Other Sections

This subchapter is referred to in section 3967 of this title.

Part A—Teacher Institutes

Part Referred to in Other Sections

This part is referred to in section 3954 of this title.

§ 3911. Grants for teacher institutes authorized

The Foundation is authorized, in accordance with the provisions of this part, to make grants to State and local educational agencies and institutions of higher education, applying jointly, for the establishment and operation of teacher institutes for the enhancement of the subject matter skills of public and private elementary and secondary school teachers of mathematics and physical and life sciences.

(Pub. L. 98-377, title I, § 101, Aug. 11, 1984, 98 Stat. 1268.)

§ 3912. Applications

(a) Submission of joint applications

Each local educational agency and institution of higher education, and each State educational agency and institution of higher education desiring to receive a grant under this part shall submit a joint application at such time, in such manner, and containing or accompanied by such information as the Director may require. One or more local educational agencies may apply jointly with one or more institutions of higher education under the provisions of this section. A State educational agency may apply jointly with one or more institutions of higher education.

(b) Contents

Each such application shall—

(1) describe the establishment and operation of a teacher institute for elementary and secondary school teachers of mathematics and physical and life sciences, including—

(A) the designation of the institute as a full-time summer or part-time school year, or both;

(B) a description of the courses of study to be offered at the institute;

(C) an estimate of the number of teachers, including the number of teachers from private elementary and secondary schools, to attend the institute and describe the selection procedures;

(D) the nature and location of existing facilities to be used in the operation of the institute;

(E) the teaching and administrative staff for the institute;

(F) the academic credits, if any, to be awarded for the completion of the courses of study to be offered at the institute; and

(G) a schedule of stipends to be paid teacher participants in the institute, including (i) allowances for subsistence and other expenses for teachers attending the institute and their dependents and (ii) provisions assuring that there will be no duplication of Federal benefits paid to participants;

(2) provide assurances that the design and operation of the institute will involve the participation of both the subject matter departments or divisions of each institution of higher education making application as well as the teacher education department or division, if any, of each such institution;

(3) provide for prior and continuing consultation with the State educational agency in the formulation and operation of the institute; and

(4) provide such additional assurances as the Director deems essential to assure compliance with the requirements of this part.

(Pub. L. 98-377, title I, § 102, Aug. 11, 1984, 98 Stat. 1268.)

§ 3913. Distribution of assistance

(a) Equitable distribution of institutes

In approving applications under this part, the Director shall assure that there is an equitable distribution of institutes established and operated under approved applications among States and within States. The Director shall award not less than one institute in each State, except that the Director may waive the requirements of this sentence if there is no proposal from a State that meets the requirements of this part.

(b) Limitation of grant

No grant to a single applicant may exceed $200,000 in any fiscal year.

(Pub. L. 98-377, title I, § 113, Aug. 11, 1984, 98 Stat. 1269.)

§ 3914. Cooperation with business concerns

Institutes assisted under this part may, to the extent possible, involve the cooperation of advanced technology business concerns and other business concerns which are able to supply assistance in the teaching of mathematics and science.

(Pub. L. 98-377, title I, § 114, Aug. 11, 1984, 98 Stat. 1269.)

§ 3915. Special consideration of underrepresented and underserved populations

In providing financial assistance under this part the Foundation shall make every effort to ensure that consideration is given to applications which contain provisions designed to meet the needs of underrepresented and underserved populations.

(Pub. L. 98-377, title I, § 115, Aug. 11, 1984, 98 Stat. 1269.)

PART B—MATHEMATICS AND SCIENCE EDUCATION DEVELOPMENT PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 3954 of this title.

§ 3921. Program authorized

The Foundation is authorized, in accordance with the provisions of this part, to enter into agreements with institutions of higher education or local educational agencies for—

(1) developing and disseminating programs and materials for training, retraining, and inservice training for elementary and secondary school teachers in the fields of mathematics, science, including physical and life sciences, computer learning; and

(2) the research, development, and dissemination of instructional programs and materials for courses of study in elementary and secondary schools in the fields of mathematics, science, including physical and life sciences, and computer learning.

(Pub. L. 98-377, title I, § 121, Aug. 11, 1984, 98 Stat. 1269.)

§ 3922. Applications

(a) Requirements; contents

No grant may be made under this part unless an eligible applicant,[1] at such time, in such manner, and containing or accompanied by such information as the Director may reasonably require. Each application shall contain assurances—

(1) that (A) in the case of an institution of higher education, the institution will enter into a cooperative agreement with one or more local educational agencies, (B) in the case of a State or local educational agency, the agency will enter into a cooperative agreement with one or more institutions of higher education[2] in the case of a profession of a society[3] or association described in subsection (b)(3) of this section[4] the association or society will enter into a cooperative agreement with one or more local educational agencies and one or more institutions of higher education, for the purpose of furnishing the activities authorized by this part;

(2) that the planning and implementation of the cooperative agreement will involve the participation of both the subject matter departments or divisions of each institution of higher education as well as the teacher education department or division, if any, of each such institution; and

(3) that the applicant has consulted with, as appropriate, the State agency for higher education or the State educational agency in the development of the program for which assistance is sought, and will assure appropriate participation of such agencies in the program.

(b) "Eligible applicant" defined

For the purpose of this part an eligible applicant means—

(1) an institution of higher education,

(2) a State or local educational agency, and

(3) a professional society or association, in the fields of mathematics, physical or biological sciences, or engineering.

(Pub. L. 98-377, title I, § 122, Aug. 11, 1984, 98 Stat. 1269.)

§ 3923. Special consideration of underrepresented and underserved populations

In providing financial assistance under this part, the Foundation shall make every effort to ensure that consideration is given to applications which provide for the development and improvement of instructional programs and materials designed to meet the needs of underrepresented and underserved populations.

(Pub. L. 98-377, title I, § 123, Aug. 11, 1984, 98 Stat. 1270.)

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[1] So in original. Probably should be "unless an eligible applicant submits an application,".

[2] So in original. Probably should be followed by ", (C)".

[3] So in original. Probably should be "a professional society".

[4] So in original. Probably should be followed by a comma.

Part C—Congressional Merit Scholarships

Part Referred to in Other Sections

This part is referred to in section 3954 of this title.

§ 3931. Merit scholarships established

(a) Qualifications

The Foundation is authorized, in accordance with the provisions of this part, to award scholarships to individuals who are enrolled in institutions of higher education and who demonstrate outstanding potential for, and who plan to pursue, a career in teaching in the fields of mathematics, science, and engineering.

(b) Period of award; limitation

Scholarships under this part shall be awarded for such period as the Foundation may prescribe, but for not to exceed four academic years.

(c) Selection of institution eligibility

(1) A student awarded a scholarship under this part may attend any institution of higher education offering courses of study designed to prepare them for teaching careers. Such awards shall be available for periods of study commencing not sooner than the third undergraduate year.

(2) In order to be eligible for a scholarship under this part, each individual shall—

(A) concentrate, at the undergraduate level, in mathematics or science, and indicate a serious intent to teach at the elementary school level; or

(B) concentrate, at the undergraduate level, in mathematics or science, and indicate a serious intent to teach mathematics or science at the secondary school level; or

(C) concentrate, at the undergraduate level, in engineering and indicate a serious intent to teach at the postsecondary level, in an engineering discipline in which the Foundation has determined a shortage of qualified teachers.

(d) Limitation on engineering scholarships

Not to exceed 25 per centum of the scholarships available under this part shall be available for students meeting the criteria of subsection (c)(2)(C) of this section.

(Pub. L. 98-377, title I, § 132, Aug. 11, 1984, 98 Stat. 1270.)

Short Title

Section 131 of part C of title I of Pub. L. 98-377 provided that: "This part [enacting sections 3931 to 3933 of this title] may be cited as the 'Congressional Merit Scholarships in Mathematics, Science, and Engineering Education'."

Section Referred to in Other Sections

This section is referred to in section 3932 of this title.

§ 3932. Selection of merit scholars

(a) Criteria

The Foundation shall establish criteria for the selection of merit scholars under this part.

(b) Selection procedures; basis of numerical limitation; agreement between recipient and Foundation

The Foundation shall adopt selection procedures which are designed to assure that—

(1) the number of individuals to be selected will not exceed the product of the number of Members of Congress for each State, multiplied by two, and that the individuals will be selected from among the residents of each State (and in the case of the District of Columbia and the Commonwealth of Puerto Rico, not to exceed ten individuals will be selected); and

(2) each recipient of a merit scholarship will enter into an agreement with the Foundation under which the recipient will agree—

(A) to comply with provisions of paragraph (2) of section 3931(c)[1] of this title relating to concentration of study; and

(B) to pursue a career in teaching, as prescribed in section 3931(c)[1] of this title for not less than two years for each academic year in which a merit scholarship award is received.

(Pub. L. 98-377, title I, § 133, Aug. 11, 1984, 98 Stat. 1271.)

Codification

Section 3932(c) of this title, referred to in subsec. (b)(2), was in the original "section 142(c)" and has been translated as if the reference were to section 132(c) to reflect the probable intent of Congress in view of the subject matter of section 132(c) and as Pub. L. 98-377 did not contain a section 142(c).

§ 3933. Stipends and scholarship conditions

(a) Amount of award

Each student awarded a merit scholarship under this part shall receive an award of $5,000 for each academic year of study.

(b) Conditions

Each student awarded a merit scholarship under the provisions of this part shall continue to receive payments provided under this part for such scholarship only during such period as the Foundation determines that the student is maintaining satisfactory progress in, and devoting full time to, the course of study for which the scholarship is awarded.

(c) Reports and certificates of study and progress

The Foundation is authorized to require reports containing such information in such form and to be filed at such time as the Foundation determines to be necessary from any student awarded a merit scholarship under the provisions of this part. Such reports shall be accompanied by a certificate from any appropriate official of the institution of higher education, approved by the Foundation, stating that such student is making satisfactory progress in, and is devoting essentially full time to, the study described in subsection (b) of this section.

(Pub. L. 98-377, title I, § 134, Aug. 11, 1984, 98 Stat. 1271.)

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[1] See Codification note below.

Part D—Discretionary Funds of the Director

Part Referred to in Other Sections

This part is referred to in section 3954 of this title.

§ 3941. Authorization

(a) Authority of Director; programs and activities for women and minorities

From funds available for this part, the Director is authorized to make grants to and to enter into contracts with any public agency or any private organization to carry out any activity authorized by this subchapter. In addition, from such funds, the Director is authorized, directly or by way of grant or contract, to conduct—

(1) a faculty exchange program between institutions of higher education (particularly institutions having established and nationally recognized research facilities) and eligible institutions; and

(2) programs of national significance promoting the improvement of instruction in the fields of mathematics, science, and engineering.

In carrying out the provisions of this part, the Director shall give special consideration to programs and activities for women in science and minorities in science which have been assisted by the Foundation prior to August 11, 1984.

(b) "Eligible institution" defined

For the purpose of this section the term "eligible institution" means an institution of higher education in any State which—

(1)(A) has an enrollment which includes a substantial percentage of students who are members of a minority group or who are economically or educationally disadvantaged; or

(B) is located in a community that is not within commuting distance of a major institution of higher education; and

(2) demonstrates a commitment to meet the special educational needs of students who are members of a minority group or are economically or educationally disadvantaged.

(Pub. L. 98-377, title I, § 141, Aug. 11, 1984, 98 Stat. 1272.)

Part E—General Provisions

§ 3951. Administrative provisions

(a) General authority

In order to carry out the provisions of this subchapter, the Foundation is authorized to—

(1) appoint and fix the compensation of such personnel as may be necessary to carry out the provisions of this subchapter, except that in no case shall employees be compensated at a rate to exceed the rate provided for employees in grade GS-18 of the General Schedule set forth in section 5332 of title 5;

(2) procure temporary and intermittent services of experts and consultants as are necessary to the extent authorized by section 3109 of title 5, but at rates not to exceed the rate specified at the time of such service for grade GS-18 of section 5332 of such title;

(3) prescribe such regulations as it deems necessary governing the manner in which its functions shall be carried out;

(4) receive money and other property donated, bequeathed, or devised, without condition or restriction other than it be used for the purposes of this chapter; and to use, sell, or otherwise dispose of such property for the purpose of carrying out the functions of the Foundation under this chapter;

(5) accept and utilize the services of voluntary and noncompensated personnel and reimburse them for travel expenses, including per diem, as authorized by section 5703 of title 5;

(6) enter into contracts, grants, or other arrangements, or modifications thereof, to carry out the provisions of this subchapter, and such contracts or modifications thereof may, with the concurrence of two-thirds of the members of the National Science Board, be entered into without performance or other bonds, and without regard to section 5 of title 41;

(7) make advances, progress, and other payments which the Board deems necessary under this subchapter without regard to the provisions of section 3324 of title 31; and

(8) make other necessary expenditures.

(b) Report to President and Congress

The Foundation shall submit to the President and to the Congress an annual report of its operations under this subchapter.

(Pub. L. 98-377, title I, § 161, Aug. 11, 1984, 98 Stat. 1272.)

§ 3952. Participation of teachers from private schools

The Foundation shall, after consultation with appropriate private school representatives, make provision for the benefit of teachers in private elementary and secondary schools in the programs authorized by this subchapter, in order to assure equitable participation of such teachers.

(Pub. L. 98-377, title I, § 162, Aug. 11, 1984, 98 Stat. 1273.)

§ 3953. Prohibition against Federal control of education

The provisions of section 1232a of this title, relating to prohibition against Federal control of education, shall apply to each program authorized by this subchapter.

(Pub. L. 98-377, title I, § 163, Aug. 11, 1984, 98 Stat. 1273.)

§ 3954. Authorization of appropriations

(a) Teacher institutes

There are authorized to be appropriated $20,000,000 for each of the fiscal years 1984 and 1985 to carry out the provisions of part A of this subchapter.

(b) Mathematics and science education development programs

There are authorized to be appropriated $20,000,000 for the fiscal year 1985 to carry out the provisions of part B of this subchapter.

(c) Congressional merit scholarships

There are authorized to be appropriated $5,000,000 for the fiscal year 1984 and $15,000,000 for the fiscal year 1985 to carry out the provisions of part C of this subchapter.

(d) Discretionary funds

There are authorized to be appropriated $3,000,000 for the fiscal year 1985 to carry out the provisions of part D of this subchapter.

(e) Graduate fellowship program

There are authorized to be appropriated to the Foundation $20,000,000 for the fiscal year 1984 and $21,000,000 for the fiscal year 1985 to carry out the graduate fellowship program under the National Science Foundation Act of 1950 [42 U.S.C. 1861 et seq.].

(Pub. L. 98-377, title I, § 164, Aug. 11, 1984, 98 Stat. 1273.)

REFERENCES IN TEXT

The National Science Foundation Act of 1950, referred to in subsec. (e), is act May 10, 1950, ch. 171, 64 Stat. 149, as amended, which is classified generally to chapter 16 (§ 1861 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1861 of Title 42 and Tables.

SUBCHAPTER II—EDUCATION FOR ECONOMIC SECURITY

§ 3961. Statement of purpose

It is the purpose of this subchapter to make financial assistance available to State and local educational agencies, and to institutions of higher education, to improve the skills of teachers and instruction in mathematics, science, computer learning, and foreign languages, and to increase the access of all students to such instruction, and thereby contribute to strengthening the economic security of the United States.

(Pub. L. 98-377, title II, § 201, Aug. 11, 1984, 98 Stat. 1273.)

§ 3962. "Junior or community college" defined

As used in this subchapter, the term "junior or community college" means an institution of higher education—

(1) that admits as regular students individuals who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;

(2) that does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and

(3) that—

(A) provides an educational program of not less than two years that is acceptable for full credit toward such a degree, or

(B) offers a two-year program designed to prepare a student to work as a technician or at the semiprofessional level in engineering, scientific, or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

(Pub. L. 98-377, title II, § 202, Aug. 11, 1984, 98 Stat. 1274.)

§ 3963. Program authorized

(a) Grant objectives

The Secretary is authorized to make grants to States and to make discretionary grants, in accordance with the provisions of this subchapter, for strengthening the skills of teachers and instruction in mathematics, science, computer learning, and foreign languages.

(b) Authorization of appropriations

There are authorized to be appropriated $350,000,000 for the fiscal year 1984, and $400,000,000 for the fiscal year 1985 to carry out the provisions of this subchapter.

(Pub. L. 98-377, title II, § 203, Aug. 11, 1984, 98 Stat. 1274.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3972, 3973 of this title.

§ 3964. Allotment to States

(a) Percentage of appropriations for States and discretionary grants; State amount: number-of-children basis, minimum amount; "State" defined to exclude territories

(1) From 90 per centum of the amount appropriated to carry out this subchapter for each fiscal year, the Secretary shall allot to each State an amount which bears the same ratio to such 90 per centum as the number of children aged five to seventeen, inclusive, in the State bears to the number of such children in all States, except that no State shall receive less than one-half of 1 per centum of the amount available under this subsection in any fiscal year.

(2) The Secretary shall reserve the remaining 10 per centum to carry out section 3972 of this title, relating to discretionary grants of national significance.

(3) For the purpose of this subsection, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

(4) The number of children aged five to seventeen, inclusive, in the State and in all States shall be determined by the Secretary on the basis of the most recent satisfactory data available to him.

(b) Reallotments

The amount of any State's allotment under subsection (a) of this section for any fiscal year to carry out this subchapter which the Secretary determines will not be required for that fiscal year to carry out this subchapter shall be available for reallotment from time to time, on such dates during that year as the Secretary may fix, to other States in proportion to the original allotments to those States under subsection (a) of this section for that year but with such proportionate amount for any of those other States being reduced to the extent it exceeds the sum the Secretary estimates that State needs and will be able to use for that year; and the total of those reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amounts reallotted to a State under this subsection during a year shall be deemed a part of its allotment under subsection (a) of this section for that year.

(c) Authorization of appropriations for allotment to territories and for benefit of Indian children

There are authorized to be appropriated for each fiscal year for the purpose of this subsection amounts equal to not more than 1 per centum of the amount appropriated for such year under this subchapter. The Secretary shall allot the amount appropriated pursuant to this subsection among Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands according to their respective needs for assistance under this subchapter. In addition for each fiscal year the Secretary shall allot from not less than one-half of such amount, to such agency as the Secretary deems appropriate, for programs authorized by this subchapter for children in elementary and secondary schools operated for Indian children by the Department of the Interior. The terms upon which payments are made under the previous sentence shall be determined by such criteria as the Secretary determines will best carry out the purpose of this subchapter.

(Pub. L. 98-377, title II, § 204, Aug. 11, 1984, 98 Stat. 1274.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3965 of this title.

§ 3965. In-State apportionment

(a) Elementary and secondary education programs

For each of the fiscal years 1984 and 1985, 70 per centum of each State's allotment under section 3964 of this title shall be used for elementary and secondary education programs in accordance with section 3966 of this title.

(b) Higher education programs

For each of the fiscal years 1984 and 1985, 30 per centum of each State's allotment under section 3964 of this title shall be used for higher education programs in accordance with section 3967 of this title.

(Pub. L. 98-377, title II, § 205, Aug. 11, 1984, 98 Stat. 1275.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3966, 3967 of this title.

§ 3966. Elementary and secondary education programs

(a) Statement of purpose

The amount apportioned under section 3965(a) of this title from each State's allotment under this subchapter shall be used by the State educational agency to strengthen elementary and secondary education programs in accordance with the provisions of this section.

(b) Local educational agency minimum percentage of funds; specified uses; implementing entities; joint undertakings; underrepresented group factor; percentage of funds on numerical basis of public and nonpublic school enrollment and of public school enrollment from below and above poverty level families; renewal of payments

(1) Not less than 70 per centum of the amount available under this section shall be distributed to local educational agencies within the State. Each local educational agency shall use funds distributed under this paragraph for—

(A) the expansion and improvement of inservice training and retraining of teachers and other appropriate school personnel in the fields of mathematics and science, including vocational education teachers who use mathematics and science in the courses of study the teachers teach; or

(B) if the local educational agency determines that the agency has met its need for such training and retraining and subject to the provisions of section 3970(c) of this title, computer learning and instruction, foreign language instruction, and instructional materials and equipment related to mathematics and science instruction.

Such training and instruction may be carried out through agreements with public agencies, private industry, institutions of higher education, and nonprofit private organizations, including museums, libraries, educational television stations, professional science, mathematics and engineering associations, and other appropriate institutions. A local educational agency may carry out the activities authorized by this paragraph with one or more other local educational agencies within the State, or with the State educational agency, or both. Each local educational agency shall assure that programs of inservice training and retraining will take into account the need for greater access to and participation in mathematics, science, and computer learning programs and careers of students from historically underrepresented groups, including females, minorities, individuals with limited-English proficiency, the handicapped, and migrants.

(2)(A) The State educational agency shall distribute 50 per centum of the funds available under this subsection to local educational agencies within the State according to the relative number of children enrolled in public and nonpublic schools within the school districts of such agencies.

(B) The State educational agency shall distribute 50 per centum of the funds available under this subsection based on the relative number of children aged five to seventeen who—

(i) are from families below the poverty level as determined under section 2711(c)(2)(A) of this title; and

(ii) are from families above the poverty level as determined under section 2711(c)(2)(B) of this title;

in the public schools of the local educational agencies within the State.

(3) The State educational agency shall renew payments to local educational agencies under this subsection based upon the criteria set forth in paragraph (2) of this subsection and a determination by the State educational agency that the local educational agency is implementing the program assisted under this subchapter so that a substantial number of teachers in the public and private schools in the school district of such agency are served and several grade levels of instruction in such schools are involved in the program.

(c) Local educational agency percentage limitation for purchase of computer-related equipment and for foreign language instruction

(1) If a local educational agency is spending funds under subsection (b)(1)(B) of this section, not to exceed 30 per centum of the funds available to the local educational agency under subsection (b) of this section may be used for the purchase of computer and computer-related instructional equipment.

(2) If a local educational agency is spending funds under subsection (b)(1)(B) of this section, not to exceed 15 per centum of the funds available to the local educational agency under subsection (b) of this section may be used to strengthen instruction in foreign languages.

(d) State educational agency minimum percentage for demonstration and exemplary programs; minimum percentage for special projects for underrepresented and underserved students and for programs for superior students

Not less than 20 per centum of the amount available under this section shall be used by the State educational agency for demonstration and exemplary programs for—

(1) teacher training and retraining and inservice upgrading of teacher skills in the fields of mathematics and science, foreign language instruction, and computer learning,

(2) instructional equipment and materials in such fields and necessary technical assistance,

(3) special projects for historically underrepresented and underserved populations and for gifted and talented students, and

(4) the dissemination of information to all local educational agencies within the State relating to the exemplary programs in the fields of mathematics, science, foreign languages, and computer learning.

In providing financial assistance for such demonstration and exemplary programs, the State educational agency shall reserve not less than 20 per centum of the amount available under this subsection for special projects in mathematics and science, foreign languages, and computer education to historically underrepresented and underserved populations of students, including females, minorities, handicapped individuals, individuals with limited-English proficiency, and migrant students, and to programs for gifted and talented students. The programs for gifted and talented students may include assistance to magnet schools for such students.

(e) State educational agency minimum percentage for technical assistance for subsection (b) programs

Not less than 5 per centum of the amount available under this section may be used by the State educational agency to provide technical assistance to local educational agencies, institutions of higher education, and nonprofit organizations, including museums, libraries, and educational television stations, in the conduct of programs specified under subsection (b) of this section.

(f) State educational agency maximum percentage for assessment of special programs and administration and evaluation of programs for economic security

Not to exceed 5 per centum of the amount available under this section may be used by the State educational agency for—

(1) the State assessment required by section 3968 of this title; and

(2) the costs of administration and evaluation of the program assisted under this subchapter.

(Pub. L. 98-377, title II, § 206, Aug. 11, 1984, 98 Stat. 1275.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3965, 3969, 3970 of this title.

§ 3967. Higher education programs

(a) Statement of purpose

The amount apportioned under section 3965(b) of this title from each State's allotment under this subchapter shall be used by the State agency for higher education for higher education programs in accordance with the provisions of this section.

(b) State agency for higher education minimum percentage of funds for grants to institutions of higher education; competitive basis; equitable participation of private and public institutions; specified uses; underrepresented and underserved factor; agreement for training of elementary and secondary teachers in public and private schools

(1)(A) Not less than 75 per centum of the amount available for this section shall be used by the State agency for higher education for grants to institutions of higher education in accordance with the provisions of this subsection.

(B) The State agency for higher education shall make funds available on a competitive basis to institutions of higher education in the State which apply for payments under this section. The State agency for higher education shall make every effort to ensure equitable participation of private and public institutions of higher education.

(2) The amount available under this subsection shall be used for—

(A) establishing traineeship programs for new teachers who will specialize in teaching mathematics and science at the secondary school level;

(B) retraining of secondary school teachers who specialize in disciplines other than the teaching of mathematics and science to specialize in the teaching of mathematics, science, or computer learning, including provision of stipends for participation in institutes authorized under subchapter I of this chapter; and

(C) inservice training for elementary, secondary, and vocational school teachers and training for other appropriate school personnel to improve their teaching skills in the fields of mathematics and science, and computer learning, including stipends for participation in institutes authorized under subchapter I of this chapter.

Each institution of higher education receiving a grant under this subsection shall assure that programs of training, retraining, and inservice training will take into account the need for greater access to and participation in mathematics, science, and computer learning and careers of students from historically underrepresented and underserved groups, including females, minorities, individuals with limited-English proficiency, the handicapped, migrants, and the gifted and talented.

(3) No institution of higher education may receive assistance under paragraphs (2)(B) and (C) of this subsection unless the institution enters into an agreement with a local educational agency, or consortium of such agencies, to provide inservice training and retraining for the elementary and secondary school teachers in the public and private schools of the school district of each such agency.

(c) State agency for higher education minimum percentage of funds for cooperative programs for development and dissemination of special projects; consortial arrangements factor

(1) Not less than 20 per centum of the amount available under this section shall be used by the State agency for higher education for cooperative programs among institutions of higher education, local educational agencies, State educational agencies, private industry, and private nonprofit organizations, including museums, libraries, educational television stations, and professional mathematics, science, and engineering societies and associations for the development and dissemination of projects designed to improve student understanding and performance in science, mathematics, and critical foreign languages. In carrying out this subsection, the State agency for higher education shall give special consideration to programs involving consortial arrangements which include local educational agencies.

(2) For the purpose of paragraph (1) of this subsection, critical foreign languages include foreign languages designated by the Secretary pursuant to section 3972(d) [1] of this title.

(d) State agency for higher education maximum percentage for assessment of special programs and administration and evaluation of programs for economic security

Not to exceed 5 per centum of the amount available under this section may be used by the State agency for higher education for—

(1) the State assessment required by section 3968 of this title; and

(2) the costs of administration and evaluation of the program assisted under this subchapter incurred by the State higher education agency.

(Pub. L. 98-377, title II, § 207, Aug. 11, 1984, 98 Stat. 1277.)

CODIFICATION

Section 3972(d) of this title, referred to in subsec. (c)(2), was in the original "section 211(d)" and has been translated as if the reference were to section 212(d) to reflect the probable intent of Congress in view of the subject matter of section 212(d) and as Pub. L. 98-377 did not contain a section 211(d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3965, 3969 of this title.

§ 3968. State assessment of mathematics, science, foreign languages, and computer learning

(a) Preliminary and final assessments; contents

Each State which desires to receive grants under this subchapter shall prepare not later than nine months following the date for which funds under this subchapter become available, a preliminary assessment of the status of mathematics, science, foreign language, and computer learning within the State. Such preliminary assessment shall be made available to all local educational agencies within the State to assist the local educational agencies to carry out the requirements of section 3970 of this title. A final version of such assessment shall be submitted to the Secretary not later than the end of the first year for which funds under this subchapter are made available. Each first assessment shall be prepared after an examination of the local assessments submitted under section 3970 of this title. Each such assessment shall include a description and a five-year projection of—

(1) the availability of qualified mathematics, science, foreign language, and computer learning teachers at the secondary and postsecondary education levels within the State;

(2) the qualifications of teachers in mathematics, science, foreign languages, and computer learning at the secondary and postsecondary education levels, and the qualifications of teachers at the elementary level to teach mathematics, science, foreign languages, and computer learning;

(3) the State standards for teacher certification, including any special exceptions currently made, for teachers of mathematics, science, foreign languages, and computer learning;

(4) the availability of adequate curricula, instructional materials and equipment, in mathematics, science, foreign languages, and computer learning; and

(5) the degree of access to instruction in mathematics, science, foreign languages, and computer learning of historically underrepresented and underserved individuals and of the gifted and talented.

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[1] See Codification note below.

(b) Description of programs, initiatives, and resources for improvement of specified objectives

Each such assessment shall also describe the programs, initiatives, and resources committed or projected to be undertaken within the State to—

(1) improve teacher recruitment and retention;

(2) improve teacher qualifications and skills in the fields of mathematics, science, foreign languages, and computer and computer learning;

(3) improve curricula in mathematics, science, foreign languages, and computer learning including instructional materials and equipment; and

(4) improve access for historically underrepresented and underserved populations, and for the gifted and talented, to instruction in mathematics, science, foreign languages, and computer learning.

(c) Consultations in making State assessments; joint submission by State educational agency and State agency for higher education

(1) Each State assessment shall be developed in consultation with the Governor, the State legislature, State Board of Education, local educational agencies within the State, and representatives of—

(A) vocational secondary schools and area vocational education schools,

(B) public and private institutions of higher education,

(C) teacher organizations,

(D) private industry,

(E) other public organizations, including libraries, museums, and educational television stations, and professional scientific and mathematics associations, and

(F) private elementary and secondary schools,

within the State.

(2) Each State assessment shall be submitted jointly by the State educational agency and the State agency for higher education.

(Pub. L. 98-377, title II, § 208, Aug. 11, 1984, 98 Stat. 1278.)

Section Referred to in Other Sections

This section is referred to in sections 3966, 3967, 3969, 3970 of this title.

§ 3969. State application

(a) Requirements

Each State which desires to receive grants under this subchapter shall file an application with the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

(b) Contents, procedures and assurances

Each such application shall—

(1) designate the State educational agency for the purpose of programs described in section 3968 of this title, and the State agency for higher education for programs described in section 3967 of this title as the agency or agencies responsible for the administration and supervision of the programs described in sections 3967 and 3968 of this title, as the case may be;

(2) describe the programs for which assistance is sought under the application;

(3) provide assurances that payments will be distributed by the State in accordance with the provisions of sections 3967 and 3968 of this title, as the case may be;

(4) provide procedures—

(A) for submitting applications by local educational agencies, institutions of higher education, junior or community colleges, and other organizations for programs described in section 3966 of this title for distribution of payments under this subchapter within the State, and

(B) for approval of applications by the appropriate State agency, including appropriate procedures to assure that the appropriate State agency will not disapprove an application without notice and opportunity for a hearing;

(5) provide assurances that—

(A) the State will prepare and submit the assessment required under section 3968 of this title;

(B) in the second year for which funds are available under this subchapter, the State will use funds for purposes consistent with the findings of the State assessment under section 3968 of this title;

(C) for programs described in section 3966 of this title, the provisions of sections 3970 and 3971 of this title will be carried out; and

(D) to the extent feasible, evaluations of the program assisted under this subchapter will be performed;

(6) provide assurances that Federal funds made available under this subchapter for any fiscal year will be so used as to supplement, and to the extent practicable, to increase the level of funds that would, in the absence of such funds, be available for the purposes described in sections 3967 and 3968 of this title, and in no case supplant such funds; and

(7) provide such fiscal control and accounting procedures as may be necessary (A) to ensure proper accounting of Federal funds paid to the applicant under this subchapter, and (B) to ensure the verification of the programs assisted under the application.

(c) Waiver of training requirements in favor of expenditures for special projects

The Secretary shall expeditiously approve any State plan that meets the requirements of this section.

(Pub. L. 98-377, title II, § 209, Aug. 11, 1984, 98 Stat. 1279.)

Section Referred to in Other Sections

This section is referred to in section 3973 of this title.

§ 3970. Local educational agency assessment

(a) Specific needs for assistance

Each local educational agency which desires to receive a payment from the State educational agency pursuant to section 3966 of this title shall provide to the State educational agency an assessment of the local educational agency's need for assistance in—

(1) teacher training, retraining, and inservice training and the training of appropriate school personnel in the areas of mathematics, science, foreign languages, and computer learning, including a description of the availability and qualifications of teachers in the areas of mathematics, science, foreign language, and computer learning, including the qualifications of teachers at the elementary level to teach in such areas;

(2) improving instructional materials and equipment related to mathematics and science education; and

(3) improving the access to instruction in mathemactics,[2] science, foreign languages, and computer learning of historically underserved and underrepresented individuals and of the gifted and talented, and an assessment of the current degree of access to such instruction of such individuals.

(b) Description of elementary and secondary education services provided and how assistance achieves special project objectives

Such assessment shall also describe the types of services to be provided pursuant to the program assisted under section 3966 of this title, a description of how the services assisted will meet the program needs of the local educational agency, and in the second year for which funds under this subchapter are made available, a description of how the services assisted will address unmet needs described under section 3968 of this title.

(c) Waiver of training requirements in favor of expenditures for special projects

If a local educational agency determines, pursuant to section 3966(b)(1) of this title, that the agency has met its teacher retraining and inservice training needs in mathematics and science and desires to expend its funds on other activities prescribed in section 3966(b)(1)(B) of this title, the local educational agency may request the State educational agency to waive such training requirements. If the State educational agency determines that the local educational agency has met such teacher training needs, the State educational agency shall grant the waiver.

(Pub. L. 98-377, title II, § 210, Aug. 11, 1984, 98 Stat. 1280.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3966, 3968, 3969 of this title.

§ 3971. Participation of children and teachers from private schools

(a) Services and arrangements for children from private elementary and secondary schools

To the extent consistent with the number of children in the State or in the school district of each local educational agency who are enrolled in private elementary and secondary schools, such State or agency shall, after consultation with appropriate private school representatives, make provision for including services and arrangements for the benefit of such children as will assure the equitable participation of such children in the purposes and benefits of this subchapter.

(b) Training for teachers from private elementary and secondary schools

To the extent consistent with the number of children in the State or in the school district of a local educational agency who are enrolled in private elementary and secondary schools, such State, State educational agency, or State agency for higher education shall, after consultation with appropriate private school representatives, make provision, for the benefit of such teachers in such schools, for such inservice and teacher training and retraining as will assure equitable participation of such teachers in the purposes and benefits of this subchapter.

(c) Waiver of requirements by Secretary; arrangements for services to private school children and teachers; application of requirements of section 3806(b)(3) and (4) of this title

If by reason of any provision of law a State or local educational agency is prohibited from providing for the participation of children or teachers from private schools as required by subsections (a) and (b) of this section, or if the Secretary determines that a State or local educational agency has substantially failed or is unwilling to provide for such participation on an equitable basis, the Secretary shall waive such requirements and shall arrange for the provision of services to such children or teachers which shall be subject to the requirements of this section. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with sections [3] 3806(b)(3) and (4) of this title.

(Pub. L. 98-377, title II, § 211, Aug. 11, 1984, 98 Stat. 1281.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3969 of this title.

§ 3972. Secretary's discretionary fund for programs of national significance

(a) Funds for grants

From 10 per centum of amounts appropriated under section 3963(b) of this title, the Secretary shall make grants in accordance with this section.

(b) Percentage of available monies to various entities; magnet schools for superior students; underserved and underrepresented population factor; limitation of monies available for evaluation and research activities of Director of National Institute of Education

(1) From 75 per centum of the amount available under this section in each fiscal year, the Secretary shall make grants to State and local

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[2] So in original. Probably should be "mathematics,".

[3] So in original. Probably should be "section".

educational agencies, institutions of higher education, and private nonprofit organizations, including museums, libraries, educational television stations, and professional science, mathematics, and engineering societies and associations for programs of national significance in mathematics and science instruction, computer learning, and foreign language instruction in critical languages. The Secretary shall give special consideration to provide assistance to local educational agencies, or consortia thereof, to establish or improve magnet schools for gifted and talented students. In awarding of grants the Secretary shall give special consideration to local educational agencies, institutions of higher education, and private nonprofit organizations, including museums, libraries, educational television stations, and professional science, mathematics, and engineering societies and associations providing special services to historically underserved and underrepresented populations in the fields of mathematics and science.

(2) The Secretary, from the amount available under paragraph (1) for each fiscal year, shall reserve not to exceed $3,000,000 in each such year for the Director of the National Institute of Education for the purpose of conducting evaluation and research activities. Such evaluation and research activities shall include—

(A) a policy analysis of alternative methods to improve instruction in mathematics and science;

(B) an annual evaluation of the programs assisted under this subchapter; and

(C) research on improving teacher training, retraining, inservice training, and retention, as well as the development of curriculum and materials in the fields of mathematics and science.

One-half of the funds reserved under this paragraph shall be used for the research activities described in clause (C).

(c) Percentage of available monies for critical foreign language instruction in institutions of higher education

From 25 per centum of the amount available in each fiscal year, the Secretary shall make grants to institutions of higher education for the improvement and expansion of instruction in critical foreign languages.

(d) Critical foreign languages; consultations with executive agencies; publication in Federal Register

In determining which languages are critical to national security, economic, and scientific needs, the Secretary shall consult with the Secretary of State, the Secretary of Defense, the Secretary of Health and Human Services, and the Director of the National Science Foundation. The Secretary shall publish in the Federal Register a list of critical foreign languages.

(Pub. L. 98-377, title II, § 212, Aug. 11, 1984, 98 Stat. 1281.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3964, 3967, 3973 of this title.

§ 3973. Payments

(a) Costs of section 3969 programs and activities and programs of national significance

From the amounts appropriated under section 3963(b) of this title, the Secretary shall pay, in accordance with the provisions of this subchapter, the costs of the programs and activities described in the application approved under section 3969 of this title, and the costs of programs of national significance under section 3972 [1] of this title.

(b) Time of payments

Payments under this subchapter shall be made as soon after approval of the application as practicable.

(Pub. L. 98-377, title II, § 213, Aug. 11, 1984, 98 Stat. 1282.)

CODIFICATION

Section 3972 of this title, referred to in text, was in the original "section 211" and has been translated as if the reference were to section 212 to reflect the probable intent of Congress in view of subject matter "programs of national significance" appearing in section 212 rather than in section 211.

SUBCHAPTER III—NATIONAL SCIENCE FOUNDATION PROGRAM FOR PARTNERSHIPS IN EDUCATION FOR MATHEMATICS, SCIENCE, AND ENGINEERING

§ 3981. Statement of purpose

It is the purpose of this subchapter to supplement State and local resources to—

(1) improve the quality of instruction in the fields of mathematics, science, and engineering in the State;

(2) furnish additional resources and support for research, student scholarships, and faculty exchange programs in the fields of mathematics, science, and engineering; and

(3) encourage partnerships in education between the business community, institutions of higher education, and elementary and secondary schools in the community.

(Pub. L. 98-377, title III, § 302, Aug. 11, 1984, 98 Stat. 1283.)

SHORT TITLE

Section 301 of title III of Pub. L. 98-377 provided that: "This title [enacting this subchapter] may be cited as the 'Partnerships in Education for Mathematics, Science, and Engineering Act'."

§ 3982. Definitions

As used in this subchapter—

(1) the term "applicant" means with respect to activities described in section 3984(a) of this title an institution of higher education and the other participants described in paragraph (3) of section 3984(a) of this title, and with respect to activities described in section 3984(b) of this title a local educational agency and the other participants described in paragraph (3) of section 3984(b) of this title;

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[1] See Codification note below.

(2) the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them, and includes all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture, printed, published, and audio-visual instructional materials, and books, periodicals, documents, and other related materials;

(3) the term "Foundation" means the National Science Foundation;

(4) the term "institution of higher education" has the same meaning given that term by section 1141(a) of this title;

(5) the term "States" includes the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands; and

(6) the term "State agency for higher education" means the State board of higher education or other agency or officer primarily responsible for the State supervision of higher education, or if there is no such officer or agency, an officer or agency designated by the Governor or by State law.

(Pub. L. 98-377, title III, § 303, Aug. 11, 1984, 98 Stat. 1283.)

§ 3983. Program authorized

(a) Authority of Foundation

The Foundation is authorized, in accordance with the provisions of this subchapter, to make grants to applicants to pay the Federal share of the costs of the activities described in section 3984 of this title.

(b) Authorization of appropriations

There are authorized to be appropriated $30,000,000 for the fiscal year 1984, and $60,000,000 for the fiscal year 1985, to carry out the provisions of this subchapter.

(Pub. L. 98-377, title III, § 304, Aug. 11, 1984, 98 Stat. 1284.)

§ 3984. Authorized activities

(a) Higher education partnership in education programs and activities; eligible applicants

(1) An applicant may use payments received under this subchapter in any fiscal year for higher education programs and activities described in this subsection.

(2) Grants under this subsection may be used for partnership in education programs—

(A) for the improvement of instruction in mathematics, science, computer science, and engineering education at the postsecondary level;

(B) for awarding scholarships to students at institutions of higher education in the fields of mathematics, science, computer science, and engineering;

(C) for the operation of faculty exchange programs by the institutions of higher education and business concerns within the State;

(D) for research in the fields of mathematics, science, computer science, and engineering;

(E) for the acquisition, rehabilitation, and renovation of equipment and instrumentation for use in instruction in the fields of mathematics, science, computer science, and engineering; and

(F) to promote public understanding of science, mathematics, and computer science.

(3) Education partnerships under this subsection may include institutions of higher education, business concerns, nonprofit private organizations, local educational agencies, professional mathematic and scientific associations, museums, libraries, educational television stations, and if the State so desires, appropriate State agencies.

(b) Elementary and secondary partnership in education programs and activities; eligible applicants

(1) An applicant may use payments received under this subchapter in any fiscal year for programs and activities described in this subsection.

(2) A local educational agency may carry out an elementary and secondary school partnership in education program under which—

(A) elementary and secondary school teachers in the schools of local educational agencies who teach mathematics, science, or computer science are made available to local business concerns and business concerns with establishments located in the community to serve in such concerns or establishments;

(B) personnel of local business concerns and business concerns with establishments located in the community serve as consultants, lecturers, teaching assistants, or teachers of mathematics, science, or computer science in the elementary and secondary schools within the State;

(C) training and retraining is furnished to elementary and secondary school teachers of mathematics, science, and computer science under a cooperative arrangement between the State or local educational agency and appropriate business concerns;

(D) secondary school students observe, participate, and work in local business concerns and business concerns with establishments located in the community; and

(E) computer clubs and extracurricular activities involving modern technologies are established in elementary and secondary schools.

(3) Partnerships under this subsection may include local educational agencies, business concerns, nonprofit private organizations, institutions of higher education, professional mathematic and scientific associations, museums, libraries, educational television stations, and, if the State so desires, appropriate State agencies.

(Pub. L. 98-377, title III, § 305, Aug. 11, 1984, 98 Stat. 1284.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3982, 3983, 3986 of this title.

§ 3985. Application

(a) Requirements; terms, assurances, and conditions

Any applicant which desires to receive a grant under this subchapter shall submit an application approved under section 3986 of this title to the Foundation, at such time, in such manner, and accompanied by such additional information as the Foundation may reasonably require. Each such application shall—

(1) describe the activities for which assistance under this subchapter is sought;

(2) provide assurances that not more than 5 per centum of the amount received by the applicant in any fiscal year may be expended on administrative expenses;

(3) with respect to each program for which assistance is sought, provide assurances that—

(A) 30 per centum of the funds for each such project will be furnished by business concerns within the community;

(B) 20 per centum of the funds will be supplied by—

(i) the State,

(ii) the institution of higher education or the local educational agency, as the case may be, participating in the program; and

(iii) the other parties participating in the program;

(C) no stipend will be paid directly to employees of a profitmaking business concern; and

(D) teachers participating in the exchange program may not be employed by the participating business concern with which the teacher served within three years after the end of the exchange program unless the teacher repays the full cost of the exchange program to the State and local educational agency, as the case may be; and

(4) provide assurances that whenever the program for which assistance is sought includes scholarships, the scholarships be awarded to undergraduate students at institutions of higher education within the State who wish to pursue a course of study in mathematics or science, engineering or computer science, and that each student awarded a scholarship under this subchapter will receive a stipend which shall not exceed the cost of tuition at the institution of higher education plus a stipend of not to exceed $750 for each academic year of study for which the scholarship is awarded;

(5) set forth policies and procedures to assure that whenever the application includes a local educational agency, to the extent consistent with the number and location of children in the school district of such agency who are enrolled in private elementary and secondary schools, provision is made for the participation of such children in the program assisted under this subchapter;

(6) provide assurances that consideration is given to programs and activities designed to meet the needs of underrepresented and underserved populations;

(7) provide assurances that in the consideration of applications submitted under section 3986(a) of this title that equitable consideration is given to applications submitted by private and public institutions of higher education; and

(8) provide such additional assurances as the Foundation determines essential to ensure compliance with the requirements of this subchapter.

(b) Regional joint application

A regional consortium of applicants in two or more States may file a joint application under the provisions of subsection (a) of this section.

(Pub. L. 98–377, title III, § 306, Aug. 11, 1984, 98 Stat. 1285.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3986 of this title.

§ 3986. Submission of applications

Each applicant within a State which desires to receive a grant under this subchapter shall submit the application prepared in accordance with section 3985 of this title to the State agency on[1] higher education or the State educational agency, as the case may be, for approval and shall submit the approved application to the Foundation under section 3985 of this title. Each such application shall be submitted jointly by the local educational agency in the case of activities described in section 3984(a) of this title, or an institution of higher education in the case of activities described in section 3984(b) of this title, and each business concern or other party that is to participate in the program for which assistance is sought.

(Pub. L. 98–377, title III, § 307, Aug. 11, 1984, 98 Stat. 1286.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3985 of this title.

§ 3987. Approval of applications

(a) Criteria; consistency of applications with State plans

(1) The Foundation shall establish criteria for approval of applications under this subchapter.

(2) No application may be approved by the Foundation unless the State educational agency or the State agency for higher education, as the case may be, determines that the application is consistent with State plans for elementary and secondary education or State plans for higher education, as the case may be, in the State.

(b) Procedures for equitable distribution of grants among States

The Foundation shall adopt approval procedures designed to assure that there is equitable distribution of grants among the States.

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[1] So in original. Probably should be "for".

(Pub. L. 98-377, title III, § 308, Aug. 11, 1984, 98 Stat. 1286.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3988 of this title.

§ 3988. Payments; Federal share; limitation

(a) Federal and non-Federal shares

(1) The Foundation shall pay, to each applicant having an application approved under section 3987 of this title, the Federal share of the cost of the program described in the application.

(2) The Federal share for each fiscal year shall be 50 per centum.

(3) The non-Federal share of payments under this subchapter may be in cash or in kind, fairly evaluated, including plant, equipment, or services.

(b) Fiscal year State limitation

Not more than 15 per centum of the funds appropriated under this subchapter in any fiscal year may be paid to applicants in any single State.

(Pub. L. 98-377, title III, § 309, Aug. 11, 1984, 98 Stat. 1286.)

SUBCHAPTER IV—PRESIDENTIAL AWARDS FOR TEACHING EXCELLENCE IN MATHEMATICS AND SCIENCE

§ 4001. Presidential awards

(a) Authority of President

The President is authorized to make Presidential Awards for Teaching Excellence in Mathematics and Science to elementary and secondary school teachers of mathematics or science who have demonstrated outstanding teaching qualifications in the field of teaching mathematics or science.

(b) Number of awards; distribution requirement

Each year the President is authorized to make one hundred awards under subsection (a) of this section. In selecting elementary and secondary school teachers for the award authorized by this section, the President shall select at least one elementary school teacher and one secondary school teacher from each of the several States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Pub. L. 98-377, title IV, § 401, Aug. 11, 1984, 98 Stat. 1287.)

§ 4002. Administrative provisions

The President shall carry out the provisions of this subchapter, including the establishment of the selection procedures, after consultation with the Secretary of Education, the Director of the National Science Foundation, and other appropriate officials of Federal agencies.

(Pub. L. 98-377, title IV, § 402, Aug. 11, 1984, 98 Stat. 1287.)

§ 4003. Authorization of appropriations

(a) Amount of funds

There are authorized to be appropriated $1,000,000 for the fiscal year 1985 to carry out the provisions of this subchapter.

(b) Use of funds

Amounts appropriated pursuant to subsection (a) of this section shall be available for making awards under this subchapter, for administrative expenses, for necessary travel by teachers selected under this subchapter, and for special activities related to carrying out the provisions of this subchapter.

(Pub. L. 98-377, title IV, § 403, Aug. 11, 1984, 98 Stat. 1287.)

SUBCHAPTER V—ASBESTOS SCHOOL HAZARD ABATEMENT

CROSS REFERENCES

Detection and control of asbestos hazards in schools, see section 3601 et seq. of this title.

§ 4011. Findings and purposes

(a) The Congress finds that—

(1) exposure to asbestos fibers has been identified over a long period of time and by reputable medical and scientific evidence as significantly increasing the incidence of cancer and other severe or fatal diseases, such as asbestosis;

(2) medical evidence has suggested that children may be particularly vulnerable to environmentally induced cancers;

(3) medical science has not established any minimum level of exposure to asbestos fibers which is considered to be safe to individuals exposed to the fibers;

(4) substantial amounts of asbestos, particularly in sprayed form, have been used in school buildings, especially during the period 1946 through 1972;

(5) partial surveys in some States have indicated that (A) in a number of school buildings materials containing asbestos fibers have become damaged or friable, causing asbestos fibers to be dislodged into the air, and (B) asbestos concentration far exceeding normal ambient air levels have been found in school buildings containing such damaged materials;

(6) the presence in school buildings of friable or easily damaged asbestos creates an unwarranted hazard to the health of the school children and school employees who are exposed to such materials;

(7) the Department of Health and Human Services and the Environmental Protection Agency, as well as several States, have attempted to publicize the potential hazards to school children and employees from exposure to asbestos fibers, but there is no systematic program for remedying hazardous conditions in schools;

(8) because there is no Federal health standard regulating the concentration of asbestos fibers in noncommercial workplace environments such as schools, school employees and students may be exposed to hazardous

concentrations of asbestos fibers in the school buildings which they use each day;

(9) without a program of information distribution, technical and scientific assistance, and financial support, many local educational agencies and States will not be able to mitigate the potential asbestos hazards in their schools; and

(10) the effective regulation of interstate commerce for the protection of the public health requires the establishment of programs under this subchapter to mitigate hazards from exposure to asbestos fibers and materials emitting such fibers.

(b) It is the purpose of this subchapter to—

(1) direct the Administrator of the Environmental Protection Agency to establish a program to assist States and local educational agencies to ascertain the extent of the danger to the health of school children and employees from asbestos materials in schools;

(2) provide continuing scientific and technical assistance to State and local agencies to enable them to identify and abate asbestos hazards in schools;

(3) provide financial assistance for the abatement of asbestos threats to the health and safety of school children or employees; and

(4) assure that no employee of any local educational agency suffers any disciplinary action as a result of calling attention to potential asbestos hazards which may exist in schools.

(Pub. L. 98-377, title V, § 502, Aug. 11, 1984, 98 Stat. 1237.)

SHORT TITLE

Section 501 of title V of Pub. L. 98-377 provided that: "This title [enacting this subchapter] may be cited as the 'Asbestos School Hazard Abatement Act of 1984'."

§ 4012. Asbestos hazard abatement program

(a) Establishment

(1)[1] There is hereby established a program within the Environmental Protection Agency to be known as the Asbestos Hazards Abatement Program (hereinafter in this subchapter referred to as "Program").

(b) Duties of Administrator

The duties of the Administrator in implementing and effectuating the Program shall include—

(1) the compilation of medical, scientific, and technical information including, but not limited to—

(A) the health and safety hazards associated with asbestos materials;

(B) the means of identifying, sampling, and testing materials suspected of emitting asbestos fibers; and

(C) the means of abating the threat posed by asbestos and asbestos containing materials;

(2) the distribution of the information described in paragraph (1) (in any appropriate form such as pamphlets, reports, or instructions) to State and local agencies and to other institutions for the purpose of carrying out activities described in this subchapter;

(3) the development within forty-five days of August 11, 1984, of an interim or final application form, which shall be distributed promptly to local educational agencies; and

(4) the review of applications for financial assistance, and the approval or disapproval of such applications, in accordance with the provisions of section 4014 of this title.

(Pub. L. 98-377, title V, § 503, Aug. 11, 1984, 98 Stat. 1288.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4013 of this title.

§ 4013. State plans

(a) Submission of maintenance of records plan by Governor to Administrator

Not later than three months after August 11, 1984, the Governor of each State shall submit to the Administrator a plan which describes the procedures to be used by the State for maintaining records on—

(1) the presence of asbestos materials in school buildings of local educational agencies;

(2) the asbestos detection and abatement activities conducted by local educational agencies (including activities relating to the replacement of the asbestos materials removed from school buildings with other appropriate building materials);

(3) repairs made to restore school buildings to conditions comparable to those which existed before the abatement activities referred to in subparagraph (B)[2] were undertaken.

(b) Priority list for abatement action; criteria; certification of need; financial resources factors

(1) Not later than six months after August 11, 1984, and annually thereafter, the Governor of each State shall:

(A) submit to the Administrator and the Secretary of the Department of Education a priority list of all schools under the authority of a local educational agency within the State, without regard to the public or private nature of the school involved, that are candidates for abatement;

(B) forward to the Administrator and the Secretary of the Department of Education for each candidate for abatement all applications for financial assistance prepared by the local educational agencies in accordance with the provisions of section 4012(b)(3) of this title and section 4014 of this title; and

(C) forward to the Secretary of the Department of Education a copy of all information submitted to the Administrator in accordance with subsection (b)(3) of this section.

(2) The priority list shall rank the potential candidates for abatement action based on the nature and magnitude of the existing and potential exposure presented by the asbestos materials.

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[1] So in original. Subsection enacted without a par. (2).

[2] So in original. Probably should be "paragraph (2)".

(3) For each school listed, the Governor shall certify that the statement of need contained in the application for assistance accurately reflects the financial resources available to the local educational agency for the asbestos abatement program.

(4) For the purpose of determining the adequacy of the financial resources available to a local educational agency for the abatement of asbestos threats the Governor shall, to the extent practicable, consider the following:

(A) A measure of financial need used by the State in which the local educational agency is located.

(B) The estimated per capita income of the locality of such agency or of those directly or indirectly providing financial support for such agency.

(C) The extent to which the local school millage rate falls above or below (i) the millage rate average of the State and (ii) the millage rate of other local educational agencies with comparable enrollment, per capita income and resource base.

(D) The ratio, expressed as a percentage, of the estimated cost of the project to the total budget of the local educational agency.

(E) The borrowing capacity of the local educational agency.

(F) Any other factor that demonstrates that the local educational agency has limited financial resources.

(c) Report of State action

Not later than nine months after the submission of the plan described in subsection (a) of this section, and each twelve months thereafter, the Governor shall submit to the Administrator a report which describes the actions taken by the State in accordance with its plan under such subsection.

(Pub. L. 98-377, title V, § 504, Aug. 11, 1984, 98 Stat. 1289.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4014 of this title.

§ 4014. Financial assistance

(a) Assistance Program; establishment

There is hereby established within the Environmental Protection Agency an Asbestos Hazards Abatement Assistance Program (hereinafter in this chapter referred to as the "Assistance Program"), which shall be administered in accordance with this section.

(b) Applications for assistance; review by Administrator; report and recommendations of Secretary of Education; determination of Administrator

(1) Applications for financial assistance shall be submitted by a local educational agency, to the Governor, or the Governor's designee, who shall establish a priority list based on the criteria of section 4013(b)(2) of this title.

(2) Pursuant to section 4013 of this title, applications shall be submitted, together with the Governor's report and priority list, to the Administrator who shall review and rank such applications pursuant to subsection (c)(2) of this section and propose financing pursuant to the criteria of section 4013(b)(4) of this title.

(3) Within sixty days of receipt of the information described in section 4013(b)(1) of this title, the Secretary of the Department of Education shall review such information and, in the Secretary's discretion, provide to the Administrator comments and recommendations based upon the needs of local educational agencies for financial assistance. Within sixty days of receipt of the Secretary's report, or expiration of the time allowed for such report, the Administrator shall approve or disapprove applications for financial assistance.

(c) Project descriptions; considerations for ranking applications and determining eligibility for and amount of assistance

(1) The Administrator shall provide financial assistance on a school-by-school basis to local educational agencies in accordance with other provisions of this section to carry out projects for—

(A) abating the threat posed by materials containing asbestos to the health and safety of children or employees;

(B) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(C) restoring school buildings to conditions comparable to those existing before abatement activities were undertaken pursuant to this section.

(2) The Administrator shall review and list in priority order applications for financial assistance. In ranking applications, the Administrator shall consider—

(A) the priority assigned to the abatement program by the Governor pursuant to section 4013(b)(2) of this title;

(B)(i) the likelihood of release of asbestos fibers into a school environment;

(ii) any other evidence of the risk caused by the presence of asbestos including, but not limited to, situations in which there is a substantial quantity of dry loose asbestos-containing material on horizontal surfaces or asbestos-containing material is substantially deteriorated or damaged, and there is asbestos-containing material in an air plenum or in a high traffic area, confined space or within easy reach of a passerby;

(iii) the extent to which the corrective action proposed by the applicant will reduce the exposure of school children and school employees; and

(iv) the extent to which the corrective action proposed by the applicant is cost-effective compared to other techniques including management of material containing asbestos.

(3) In determining whether an applicant is eligible for assistance, and the nature and amount of financial assistance, the Administrator shall consider—

(A) the financial resources available to the applicant as certified by the Governor pursuant to section 4013(b)(4) of this title; and

(B) the report, if any, of the Secretary of Education pursuant to section 4013(b)(5) of this title.

(d) Prohibition of assistance to applicant with adequate resources for appropriate asbestos materials abatement program

In no event shall financial assistance be provided under this subchapter to an applicant if the Administrator determines that such applicant has resources adequate to support an appropriate asbestos materials abatement program. In making such a determination, the Administrator may consult with the Secretary of Education.

(e) Loans and grants; limitation of amount; statement of reasons

(1) An applicant for financial assistance may be granted a loan of up to 100 per centum of the costs of an abatement program or, if the Administrator determines the applicant is unable to undertake and complete an asbestos materials abatement program with a loan, such applicant may also receive a grant (alone or in combination with a loan) not to exceed 50 per centum of the total costs of abatement, in the amount which the Administrator deems necessary.

(2) In approving any grant, the Administrator shall state with particularity the reasons why the applicant is unable to undertake and complete the abatement program with loan funds.

(f) Loan agreements

Loans under this section shall be made pursuant to agreements which shall provide for the following:

(1) the loan shall not bear interest;

(2) the loan shall have a maturity period of not more than twenty years (as determined by the Administrator) and shall be repayable during such period at such times and in such amounts as the Administrator may specify in the loan agreement;

(3) repayment shall be made to the Secretary of the Treasury for deposit in the general fund; and

(4) such other terms and conditions that the Administrator determines necessary to protect the financial interest of the United States.

(g) Timely applications; certain completed abatement actions barred; information, certification, and assurances requirement; assistance provided highest ranking priority applicants until funds expended

(1) No financial assistance may be provided under this section unless an application has been submitted to the Administrator within the five-year period beginning on August 11, 1984.

(2) The Administrator shall not approve an application unless—

(A) the application contains such information as the Administrator may require, including but not limited to information describing—

(i) the nature and extent of the asbestos problem for which the assistance is sought;

(ii) the asbestos content of the material to be abated;

(iii) the methods which will be used to abate the asbestos materials;

(iv) the amount and type of financial assistance requested;

(v) a description of the financial resources of the local educational agency; and

(vi) a justification for the type and amount of the financial assistance requested.

(B) the application contains a certification that—

(i) any employee engaged in an asbestos material abatement program will be trained and equipped pursuant to section 4015(b)(2)(B) of this title; and

(ii) no child or inadequately informed or protected school employee will be permitted in the vicinity of any asbestos abatement activity;

(C) the application contains assurances that the local educational agency will furnish such information as is necessary for the Administrator to make the report required by section 4016 of this title.

(3) No financial assistance may be provided by the Administrator under this section for projects described in subsection (a)(2) of this section on which abatement action was completed prior to January 1, 1984.

(B)[3] Except as provided in section 4021(b)(1) of this title in approving applications the Administrator shall provide assistance to the local educational agencies having the highest priority among applications being considered in order of ranking until the appropriated funds are expended.

(Pub. L. 98-377, title V, § 505, Aug. 11, 1984, 98 Stat. 1290.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4012, 4013, 4015, 4016, 4017 of this title.

§ 4015. Rules and regulations; procedures; standards; other worker protection laws

(a) Promulgation of rules and regulations

The Administrator shall promulgate rules and regulations as necessary to implement the authorities and requirements of this subchapter.

(b) Procedures, standards, and other worker protection laws

The Administrator shall also establish—

(1) procedures to be used by local educational agencies, in programs for which financial assistance is made available under section 4014 of this title for—

(A) abating asbestos materials in school buildings;

(B) replacing the asbestos materials removed from school buildings with other appropriate building materials; and

(C) restoring such school buildings to conditions comparable to those existing before asbestos containment or removal activities were undertaken; and

(2) within ninety days, standards for determining—

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[3] So in original. Par. (3) enacted without a subpar. (A).

(A) which contractors are qualified to carry out the activities referred to in paragraph (1), and

(B) what training, equipment, protective clothing and other information and material must be supplied to adequately advise and protect school employees utilized to carry out the activities in paragraph (1).

(3) nothing [4] contained in this subchapter shall be construed, interpreted or applied to diminish in any way the level of protection required under State or Federal worker protection laws.

(c) Testing procedures; leakage standards; periodic reports

In order to effectuate the purposes of this subchapter, the Administrator may also adopt such other procedures, standards and regulations as the Administrator deems necessary, including—

(1) procedures for testing the level of asbestos fibers in schools, including safety measures to be followed in conducting such tests;

(2) standards for evaluating (on the basis of such tests) the likelihood of the leakage of asbestos fibers into the school environment; and

(3) periodic reporting with respect to the activities that have taken place using funds loaned or granted under this subchapter.

(Pub. L. 98-377, title V, § 506, Aug. 11, 1984, 98 Stat. 1292.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4014 of this title.

§ 4016. Annual report

During each of the ten calendar years after 1984, the Administrator shall prepare and submit not later than February 1 of each year a report to the Committee on Environment and Public Works of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives on the loan and grant program authorized by section 4014 of this title. The report shall—

(1) describe the number of applications received;

(2) describe the number of loans and grants made in the preceding calendar year and specify each applicant for and recipient of a loan or grant;

(3) specify the number of loan or grant applications which were disapproved during the preceding calendar year and describe the reasons for such disapprovals;

(4) describe the types of programs for which loans or grants were made;

(5) specify the estimated total costs of such programs to the recipients of loans or grants and specify the amount of loans or grants made under the program authorized by this section; and

(6) estimate the number of schools still in need of assistance.

(Pub. L. 98-377, title V, § 507, Aug. 11, 1984, 98 Stat. 1293.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4014 of this title.

§ 4017. Liability for abatement activities and costs

(a) Authorization of Federal actions against identified defendants; use of proceeds for repayment of loan, grant, and interest

(1) As a condition of the award of any financial assistance under section 4014 of this title, the recipient of any such loan or grant shall permit the United States to sue on behalf of such recipient any person determined by the Attorney General to be liable to the recipient for the costs of any activities undertaken by the recipient under such sections.[5]

(2) The proceeds from any judgment recovered in any suit brought by the United States under paragraph (1) (or, if the recipient files a similar suit on its own behalf, the proceeds from a judgment recovered by the recipient in such suit) shall be used to repay to the United States, to the extent that the proceeds are sufficient to provide for such repayment, an amount equal to the sum of—

(A) the amount (i) outstanding on any loan and (ii) of any grant made to the recipient; and

(B) an amount equal to the interest which would have been charged on such loan were the loan made by a commercial lender at prevailing interest rates (as determined by the Administrator).

(b) Expeditious Federal recovery proceedings

The Attorney General shall, where appropriate, proceed in an expeditious manner to recover the amounts expended by the United States to carry out this subchapter from the persons identified by the Attorney General as being liable for such costs.

(Pub. L. 98-377, title V, § 508, Aug. 11, 1984, 98 Stat. 1293.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4019 of this title.

§ 4018. Disciplinary action against public employees for disclosure of asbestos problems in public buildings prohibited

No State or local educational agency receiving assistance under this subchapter may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee has brought to the attention of the public information concerning any asbestos problem in the school buildings within the jurisdiction of such agency.

(Pub. L. 98-377, title V, § 509, Aug. 11, 1984, 98 Stat. 1294.)

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[4] So in original. Probably should be an undesignated flush sentence commencing "Nothing".

[5] So in original. Probably should be "section".

§ 4019. Legal remedies and rights under other laws unaffected

Except as otherwise provided in section 4017 of this title, nothing in this subchapter shall—

(1) affect the right of any party to seek legal redress in connection with the purchase or installation of asbestos materials in schools or any claim of disability or death related to exposure to asbestos in a school setting; or

(2) affect the rights of any party under any other law.

(Pub. L. 98-377, title V, § 510, Aug. 11, 1984, 98 Stat. 1294.)

§ 4020. Definitions

For purposes of this subchapter—

(1) the term "asbestos" means—

(A) chrysotile, amosite, or crocidolite; or

(B) in fibrous form, tremolite, anthophyllite, or actinolite;

(2) the term "Attorney General" means the Attorney General of the United States;

(3) the term "threat" or "hazard" means that an asbestos material is friable or easily damaged, or within each [6] reach of students or employees or otherwise susceptible to damage (including damage from water or air circulation) which could result in the dispersal of asbestos fibers into the school environment;

(4) the term "local educational agency" means—

(A) any local educational agency as defined in section 2854(a)(10) of this title; and

(B) the governing authority of any nonprofit elementary or secondary school;

(5) the term "nonprofit elementary or [7] school" means—

(A) any elementary or secondary school as defined in section 2854(a)(7) of this title owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and

(B) any school of any agency of the United States;

(6) the term "school buildings" means—

(A) structures suitable for use as classrooms, laboratories, libraries, school eating facilities, or facilities used for the preparation of food;

(B) any gymnasium or other facility which is specially designed for athletic or recreational activities for an academic course in physical education;

(C) other facilities used for the instruction of students, for research, or for the administration of educational or research programs; and

(D) maintenance, storage, or utility facilities essential to the operation of the facilities described in subparagraphs (A) through (C) of this paragraph;

(7) the term "Administrator" means the Administrator of the Environmental Protection Agency, or the Administrator's designee;

(8) the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Bureau of Indian Affairs.

(Pub. L. 98-377, title V, § 511, Aug. 11, 1984, 98 Stat. 1294.)

§ 4021. Authorization of appropriations

(a) Amount; availability until expended

(1) There are hereby authorized to be appropriated for the asbestos abatement program not more than $50,000,000 for the fiscal year ending on September 30, 1984, $50,000,000 for the fiscal year ending on September 30, 1985, and $100,000,000 for each of the five succeeding fiscal years.

(2) The sums appropriated under this subchapter shall remain available until expended.

(b) Minimum State amount; fiscal year obligation requirement; reserved funds for administration and asbestos abatement oriented program expenditures

(1) A State with qualified applicants shall receive no less than one-half of 1 per centum of the sums appropriated under this subchapter or the total of the amounts requested by such applicants, whichever is less. Those amounts available in each fiscal year under this paragraph shall be obligated before the end of that fiscal year. For the purposes of this paragraph the term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Bureau of Indian Affairs and, taken together, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(2) Of those sums appropriated for the implementation of this subchapter, up to 10 per centum shall be reserved during the fiscal year ending September 30, 1984, and up to 5 per centum for the fiscal year ending September 30, 1985, for the administration of this subchapter and for programs including, but not limited to, the following:

(A) the establishment of a training center for contractors, engineers, school employees, parents and other personnel to provide instruction on asbestos assessment and abatement;

(B) the development and dissemination of abatement guidance documents to assist in evaluation of potential hazards, and the determination of proper abatement programs;

(C) the development of rules and regulations regarding inspection, reporting and record-keeping; and

(D) the development of a comprehensive testing and technical assistance program.

(Pub. L. 98-377, title V, § 512, Aug. 11, 1984, 98 Stat. 1295.)

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[6] So in original. Probably should be "easy".

[7] So in original. Probably should be followed by "secondary".

Section Referred to in Other Sections

This section is referred to in section 4014 of this title.

SUBCHAPTER VI—EXCELLENCE IN EDUCATION PROGRAM

§ 4031. Statement of purpose

It is the purpose of this subchapter to make awards to local educational agencies, after a competitive selection process, in order to carry out programs of excellence in individual schools of such agencies designed to achieve excellence in education, which—

(1) demonstrate successful techniques for improving the quality of education,

(2) can be disseminated and replicated, and

(3) are conducted with the participation of school principals, schoolteachers, parents, and business concerns in the locality.

(Pub. L. 98-377, title VI, § 602, Aug. 11, 1984, 98 Stat. 1295.)

Short Title

Section 601 of title VI of Pub. L. 98-377 provided that: "This title [enacting this subchapter] may be cited as the 'Excellence in Education Act'."

§ 4032. Definitions

For the purpose of this subchapter—

(1) The term "elementary school" has the same meaning given that term under section 2854(a)(7) of this title.

(2) The term "local educational agency" has the same meaning given that term under section 2854(a)(10) of this title.

(3) The term "secondary school" has the same meaning given that term under section 2854 (a)(7) of this title.

(4) The term "Secretary" means the Secretary of Education.

(5) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(6) The term "State educational agency" has the same meaning given that term under section 2854(a)(17) of this title.

(Pub. L. 98-377, title VI, § 603, Aug. 11, 1984, 98 Stat. 1296.)

§ 4033. School excellence awards authorized

(a) Awards to local educational agencies

The Secretary is authorized, in accordance with the provisions of this subchapter, to make awards to local educational agencies for school excellence programs which are consistent with the purpose of this subchapter.

(b) Authorization of appropriations

(1) There are authorized to be appropriated $16,000,000 for each of the fiscal years 1984 and 1985 to carry out the provisions of this subchapter.

(2) From the amount appropriated in each fiscal year, the Secretary shall reserve $3,000,000 in each fiscal year to carry out the provisions of section 4036 of this title.

(3) From the amount appropriated in each fiscal year, the Secretary shall reserve $1,000,000 in each fiscal year to carry out the provisions of section 4037 of this title.

(Pub. L. 98-377, title VI, § 604, Aug. 11, 1984, 98 Stat. 1296.)

Section Referred to in Other Sections

This section is referred to in sections 4036, 4037 of this title.

§ 4034. Selection of schools for awards

(a) Criteria; submission of proposals; standards; contents

(1) The Secretary is authorized to establish, in accordance with the provisions of this section, criteria for the selection of schools to receive awards under this subchapter. Each local educational agency desiring to participate in the awards program authorized by this subchapter shall submit a proposal nominating each specific school of that agency for school improvement activities designed to carry out the purpose of this subchapter. Each such submission shall be made to the chief State school officer of the State in which the local educational agency is located.

(2) The criteria required by paragraph (1) of this subsection shall include standards for each local educational agency to nominate schools of that agency—

(A) which have the potential to experiment with standards of quality; and

(B) which show promise of demonstrating that the school will carry out well-planned, creative, or innovative activities designed to carry out the purposes of this subchapter in a successful manner.

(3) Each proposal submitted under this subsection shall contain—

(A) a description of the activities which will be conducted in the school nominated,

(B) assurances that the school to be nominated will carry out the activities so described, and

(C) such other information as may be necessary to carry out paragraph (2) of this subsection.

(b) Nomination of schools; number; considerations; submission to Secretary; additional information

(1)(A) The chief State school officer of each State shall in each fiscal year from the proposed nominations made pursuant to subsection (a) of this section select twenty-five schools for submission to the Secretary.

(B) In the case of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, the chief educational officer of such jurisdiction shall nominate five schools in accordance with this subsection.

(2) In selecting schools from proposed nominations submitted under subsection (a) of this section, the chief State school officer shall assure a fair and equitable distribution of schools within the State, after considering—

(A) all categories of elementary and secondary schools within the State, including elementary schools, junior high schools, secondary schools, vocational-technical schools, or any combination of two or more of the schools;

(B) socioeconomic conditions in the State;

(C) geographic distribution within the State;

(D) school size;

(E) the size and location of the community in which the school is located;

(F) the local governmental arrangements between the government and the local educational agency making the nomination;

(G) the potential for the proposed project to successfully demonstrate techniques for improving the quality of education which can be disseminated and replicated; and

(H) such other relevant factors as the Secretary may prescribe.

(3) Each State shall submit to the Secretary the school nominations made in accordance with this subsection. Each such submission may include such additional information as the chief State school officer (the chief educational officer as prescribed in paragraph (1)(B)), and the local educational agency concerned deem appropriate.

(c) Review and selection by review panel and Secretary; factors and criteria; number of schools selected; priority for certain proposals

(1) The Secretary shall select not more than five hundred schools from among the nominations submitted pursuant to subsection (b) of this section. The selection under this subsection shall be made by the Secretary after an impartial review panel has considered each submission. The review and selection shall be based upon the factors described in subsection (b)(2) of this section and in accordance with uniform criteria developed by the Secretary.

(2) In making the selections under paragraph (1), the Secretary shall give priority to proposals which have the highest potential for successfully demonstrating techniques to improve the quality of education and which can be disseminated and replicated. In addition the Secretary shall give priority to proposals which have as their purposes—

(A) modernization and improvement of secondary school curricula to improve student achievement in academic or vocational subjects, or both, and competency in basic functional skills;

(B) the elimination of excessive electives and the establishment of increased graduation requirements in basic subjects;

(C) improvement in student attendance and discipline through the demonstration of innovative student motivation techniques and attendance policies with clear sanctions to reduce student absenteeism and tardiness;

(D) demonstrations designed to increase learning time for students;

(E) experimentation providing incentives to teachers, and teams of teachers for outstanding performance, including financial awards, administrative relief such as the removal of paperwork and extra duties, and professional development;

(F) demonstrations to increase student motivation and achievement through creative combinations of independent study, team teaching, laboratory experience, technology utilization, and improved career guidance and counseling; or

(G) new and promising models of school-community and school-to-school relationships including the use of nonschool personnel to alleviate shortages in areas such as math, science, and foreign language instruction, as well as other partnerships between business and education, including the use of equipment.

(Pub. L. 98-377, title VI, § 605, Aug. 11, 1984, 98 Stat. 1296.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4036 of this title.

§ 4035. Amount and conditions of awards

(a) Limitations; factors

(1) A school award made to a local educational agency pursuant to this subchapter may not exceed $25,000 in any fiscal year or a total of $40,000.

(2) The amount of each individual school award made pursuant to this subchapter shall be determined by the Secretary based upon the size of the school, the number of students enrolled in the school, and the number of teachers teaching in the school.

(b) Duration of awards; prohibition of additional awards

Awards made under this subchapter may not be made for more than two school years. No individual school may be eligible for any additional award under this subchapter.

(Pub. L. 98-377, title VI, § 606, Aug. 11, 1984, 98 Stat. 1298.)

§ 4036. Special school awards

(a) Federal share contingent upon private sector contributions

From the amount reserved under section 4033(b)(2) of this title in any fiscal year, the Secretary is authorized to make awards to schools nominated in accordance with the provisions of section 4034 of this title to pay the Federal share of the activities described in the proposal if the local educational agency provides further assurances that funds from the private sector will be contributed for carrying out the activities for which assistance is sought.

(b) Amount of Federal share; criteria

For purposes of this section, the Federal share for each fiscal year shall be not less than 67⅓ per centum nor more than 90 per centum. The Secretary shall set the Federal share for categories of school awards based upon uniform criteria established by the Secretary.

(Pub. L. 98-377, title VI, § 607, Aug. 11, 1984, 98 Stat. 1298.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4033 of this title.

§ 4037. Research, evaluation, dissemination, and monitoring activities

(a) Statement of purpose

From the amount set aside under section 4033(b)(3) of this title, the Secretary shall conduct research, evaluation, and dissemination activities to assure that exemplary projects and practices which are developed with assistance provided under this subchapter are made available to local educational agencies throughout the United States.

(b) Use of funds; establishment of monitoring panel

The Secretary shall use such amount of the funds reserved pursuant to section 4033(b)(3) of this title as is necessary to carry out the provisions of this subsection. The Secretary shall establish an independent panel to monitor the success of the programs assisted by this subchapter in achieving the national objectives in improving instruction and the achievement of the students.

(Pub. L. 98-377, title VI, § 608, Aug. 11, 1984, 98 Stat. 1298.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4033 of this title.

SUBCHAPTER VII—MAGNET SCHOOLS ASSISTANCE

§ 4051. Authorization of appropriations

There are authorized to be appropriated $75,000,000 for each of the fiscal years 1984, 1985, and 1986 to carry out the provisions of this subchapter.

(Pub. L. 98-377, title VII, § 701, Aug. 11, 1984, 98 Stat. 1299.)

§ 4052. Eligibility

A local educational agency is eligible to receive assistance under this subchapter if the local educational agency—

(1) has received $1,000,000 less in the first fiscal year after the repeal of the Emergency School Assistance Act by section 5 of the Omnibus Budget Reconciliation Act of 1981 as a result of the repeal of that Act; or

(2) is implementing a plan undertaken pursuant to a final order issued by a court of the United States, or a court of any State, or any other State agency or official of competent jurisdiction, and which requires the desegregation of minority group segregated children or faculty in the elementary and secondary schools of such agency; or

(3) without having been required to do so, has adopted and is implementing, or will, if assistance is made available to it under this subchapter, adopt and implement, a plan which has been approved by the Secretary as adequate under title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] for the desegregation of minority group segregated children or faculty in such schools.

(Pub. L. 98-377, title VII, § 702, Aug. 11, 1984, 98 Stat. 1299.)

REFERENCES IN TEXT

Repeal of the Emergency School Assistance Act by section 5 of the Omnibus Reconciliation Act of 1981, referred to in par. (1), probably means the Emergency School Aid Act, Pub. L. 89-10, title VI, as added by Pub. L. 95-561, title VI, § 601(a), Nov. 1, 1978, 92 Stat. 2252, and amended, which was classified generally to subchapter VI (§ 3191 et seq.) of chapter 47 of this title prior to its repeal by section 587(a)(1) of the Omnibus Reconciliation Act of 1981, Pub. L. 97-35, title V, Aug. 13, 1981, 95 Stat. 480. For complete classification of this Act to the Code, see Tables.

The Civil Rights Act of 1964, referred to in par. (3), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of Title 42 and Tables.

§ 4053. Statement of purpose

It is the purpose of this subchapter—

(1) to provide financial assistance to eligible local educational agencies to enable such agencies to establish and operate magnet schools;

(2) to meet the special needs incident to the elimination of minority group segregation and discrimination among students and faculty in elementary and secondary schools;

(3) to encourage the voluntary elimination, reduction, or prevention of minority group isolation in elementary and secondary schools with substantial proportions of minority group students; and

(4) to encourage the development of courses of instruction within magnet schools that will substantially strengthen the knowledge of academic subjects and the grasp of tangible and marketable vocational skills of students attending such schools.

(Pub. L. 98-377, title VII, § 703, Aug. 11, 1984, 98 Stat. 1299.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4057 of this title.

§ 4054. Program authorized

The Secretary is authorized, in accordance with the provisions of this subchapter, to make grants to eligible local educational agencies for use in magnet schools which are part of an approved desegregation plan and which are designed to bring students from different social, economic, ethnic, and racial backgrounds together.

(Pub. L. 98-377, title VII, § 704, Aug. 11, 1984, 98 Stat. 1299.)

§ 4055. "Magnet school" defined

For the purpose of this subchapter the term "magnet school" means a school or education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

(Pub. L. 98-377, title VII, § 705, Aug. 11, 1984, 98 Stat. 1300.)

§ 4056. Uses of funds

(a)[1] Grants made under this subchapter may be used by eligible local educational agencies for the planning for, and conduct of, programs in magnet schools, including—

(1) courses of academic instruction offered at magnet schools;

(2) courses of instruction in magnet schools offering secondary education or vocational education which is designed to increase the tangible and marketable skills of secondary school students and vocational school students;

(3) the purchase of books, materials, and equipment including computers, which directly contribute to academic excellence and the purposes of this subchapter; and

(4) the payment of or subsidization of the compensation of elementary and secondary school teachers in magnet schools who are certified or licensed by the State and who are necessary to carry out the courses of instruction for which assistance is sought.

(Pub. L. 98-377, title VII, § 706, Aug. 11, 1984, 98 Stat. 1300.)

§ 4057. Applications and requirements

(a) Submission by local educational agencies; form and contents

Each eligible local educational agency which desires to receive assistance under this subchapter shall submit an application to the Secretary. Each such application shall be in such form as the Secretary may reasonably require. Each such application shall contain assurances that the local educational agency will meet the conditions enumerated in subsection (b) of this section.

(b) Certification by local educational agency

As part of the annual application required by subsection (a) of this section, each eligible local educational agency shall certify that the agency agrees—

(1) to use funds made available under this subchapter for the purposes specified in section 4053 of this title;

(2) to employ teachers in the courses of instruction assisted under this subchapter who are certified or licensed by the State to teach the subject matter of the courses of instruction;

(3) to provide assurances that the local educational agency will not engage in discrimination based upon race, religion, color, or national origin in the hiring, promotion, or assignment of employees of the agency or other personnel for whom the agency has any administrative responsibility;

(4) to provide assurances that the local educational agency will not engage in discrimination based upon race, religion, color, or national origin in the mandatory assignment of students to schools or to courses of instruction within schools of such agency except to carry out the approved plan;

(5) to provide assurances that the local educational agency will not engage in discrimination based upon race, religion, color, or national origin in designing or operating extracurricular activities for students; and

(6) to provide such other assurances as the Secretary determines necessary to carry out the provisions of this subchapter.

(c) Nondiscrimination determination

No application may be approved under this section unless the Assistant Secretary of Education for Civil Rights determines that the assurances contained in clauses (3), (4), and (5)[2] will be met.

(Pub. L. 98-377, title VII, § 707, Aug. 11, 1984, 98 Stat. 1300.)

§ 4058. Special consideration

In approving applications under this subchapter the Secretary shall give special consideration to—

(1) the recentness of the implementation of the approved plan or modification thereof;

(2) the proportion of minority group children involved in the approved plan;

(3) the need for assistance based on the expense or difficulty of effectively carrying out an approved plan and the program or projects for which assistance is sought; and

(4) the degree to which the program or project for which assistance is sought affords promise of achieving the purposes of this subchapter.

(Pub. L. 98-377, title VII, § 708, Aug. 11, 1984, 98 Stat. 1301.)

§ 4059. Prohibition

Grants under this subchapter may not be used for consultants, for transportation, or for any activity which does not augment academic improvement, or for the courses of instruction the substance of which is secular humanism.

(Pub. L. 98-377, title VII, § 709, Aug. 11, 1984, 98 Stat. 1301.)

§ 4060. Limitation on payments

(a) Condition for subsequent fiscal year grant

No local educational agency may receive a grant under this subchapter for more than one fiscal year unless the Secretary determines that the program for which assistance was provided in the first fiscal year is making satisfactory progress in achieving the purposes of this subchapter.

(b) Planning limitation

No local educational agency may expend more than 10 percent of the amount that the agency receives in any fiscal year for planning.

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[1] So in original. Section enacted without a subsec. (b).

[2] So in original. Probably refers to clauses (3), (4), and (5) of subsec. (b) of this section.

(c) Prohibition of reduction of State aid

No State shall reduce the amount of State aid with respect to the provision of free public education or the amount of assistance received under chapter 2 of the Education Consolidation and Improvement Act of 1981 [20 U.S.C. 3811 et seq.] in any school district of any local educational agency within such State because of assistance made or to be made available to such agency under this subchapter, except that a State may reduce the amount of assistance received under such chapter 2 if the amount is attributable to clause (3) of section 577 [20 U.S.C. 3832] (as in effect prior to August 11, 1984) but only to the extent the amount is so attributable. The Secretary may waive the prohibition against the reduction of assistance received under chapter 2 and permit such a reduction if the State demonstrates that the assistance under such chapter 2 is not necessary to the local education [3] agency concerned.

(Pub. L. 98-377, title VII, § 710, Aug. 11, 1984, 98 Stat. 1301.)

REFERENCES IN TEXT

The Education Consolidation and Improvement Act of 1981, referred to in subsec. (c), is subtitle D (§§ 551 to 596) of title V of Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 463, as amended. Chapter 2 (§ 561 et seq.) of the Act is classified generally to subchapter II (§ 3811 et seq.) of chapter 51 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of this title and Tables.

§ 4061. Payments

The Secretary shall pay to each local educational agency having an application under this subchapter the amount set forth in the application. Payments under this subchapter for a fiscal year shall remain available for obligation and expenditure by the recipient until the end of the succeeding fiscal year.

(Pub. L. 98-377, title VII, § 711, Aug. 11, 1984, 98 Stat. 1301; Pub. L. 98-558, title VII, § 702, Oct. 30, 1984, 98 Stat. 2900.)

AMENDMENTS

1984—Pub. L. 98-558 struck out subsec. (a) designation and subsec. (b) which related to Federal arrangement of magnet school services for private nonprofit elementary and secondary schools excluded from State programs.

§ 4062. Withholding

The provisions of sections 1234b and 1234c of this title, relating to withholding and cease and desist orders, shall apply to the program authorized by this subchapter.

(Pub. L. 98-377, title VII, § 712, Aug. 11, 1984, 98 Stat. 1302.)

SUBCHAPTER VIII—EQUAL ACCESS

§ 4071. Denial of equal access prohibited

(a) Restriction of limited open forum on basis of religious, political, philosphical, or other speech content prohibited

It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal access or a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings.

(b) "Limited open forum" defined

A public secondary school has a limited open forum whenever such school grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional time.

(c) Fair opportunity criteria

Schools shall be deemed to offer a fair opportunity to students who wish to conduct a meeting within its limited open forum if such school uniformly provides that—

(1) the meeting is voluntary and student-initiated;

(2) there is no sponsorship of the meeting by the school, the government, or its agents or employees;

(3) employees or agents of the school or government are present at religious meetings only in a nonparticipatory capacity;

(4) the meeting does not materially and substantially interfere with the orderly conduct of educational activities within the school; and

(5) nonschool persons may not direct, conduct, control, or regularly attend activities of student groups.

(d) Construction of subchapter with respect to certain rights

Nothing in this subchapter shall be construed to authorize the United States or any State or political subdivision thereof—

(1) to influence the form or content of any prayer or other religious activity;

(2) to require any person to participate in prayer or other religious activity;

(3) to expend public funds beyond the incidental cost of providing the space for student-initiated meetings;

(4) to compel any school agent or employee to attend a school meeting if the content of the speech at the meeting is contrary to the beliefs of the agent or employee;

(5) to sanction meetings that are otherwise unlawful;

(6) to limit the rights of groups of students which are not of a specified numerical size; or

(7) to abridge the constitutional rights of any person.

(e) Federal financial assistance to schools unaffected

Notwithstanding the availability of any other remedy under the Constitution or the laws of the United States, nothing in this subchapter shall be construed to authorize the United States to deny or withhold Federal financial assistance to any school.

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[3] So in original. Probably should be "educational".

(f) Authority of schools with respect to order, discipline, well-being, and attendance concerns

Nothing in this subchapter shall be construed to limit the authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well-being of students and faculty, and to assure that attendance of students at meetings is voluntary.

(Pub. L. 98-377, title VIII, § 802, Aug. 11, 1984, 98 Stat. 1302.)

SHORT TITLE

Section 801 of title VIII of Pub. L. 98-377 provided that: "This title [enacting this subchapter] may be cited as 'The Equal Access Act'."

§ 4072. Definitions

As used in this subchapter—

(1) The term "secondary school" means a public school which provides secondary education as determined by State law.

(2) The term "sponsorship" includes the act of promoting, leading, or participating in a meeting. The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting.

(3) The term "meeting" includes those activities of student groups which are permitted under a school's limited open forum and are not directly related to the school curriculum.

(4) The term "noninstructional time" means time set aside by the school before actual classroom instruction begins or after actual classroom instruction ends.

(Pub. L. 98-377, title VIII, § 803, Aug. 11, 1984, 98 Stat. 1303.)

§ 4073. Severability

If any provision of this subchapter or the application thereof to any person or circumstances is judicially determined to be invalid, the provisions of the remainder of the subchapter and the application to other persons or circumstances shall not be affected thereby.

(Pub. L. 98-377, title VIII, § 804, Aug. 11, 1984, 98 Stat. 1304.)

§ 4074. Construction

The provisions of this subchapter shall supersede all other provisions of Federal law that are inconsistent with the provisions of this subchapter.

(Pub. L. 98-377, title VIII, § 805, Aug. 11, 1984, 98 Stat. 1304.)

CHAPTER 53—EMERGENCY IMMIGRANT EDUCATION ASSISTANCE

Sec.
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  (b) Amount of grant; formula; qualified local educational agencies; reduction of payments.
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4107. Applications.
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4108. Payments.
  (a) Amount of entitlement.
  (b) Arrangements for educational services for children in nonpublic schools; waiver of restrictions: procedure.

§ 4101. Definitions

As used in this chapter—

(1) The term "immigrant children" means children who were not born in any State and who have been attending schools in any one or more States for less than three complete academic years.

(2) The terms "elementary school", "local educational agency", "secondary school", "State", and "State educational agency" have the meanings given such terms under section 2854(a) of this title.

(3) The term "elementary or secondary nonpublic schools" means schools which comply with the applicable compulsory attendance laws of the State and which are exempt from taxation under section 501(c)(3) of title 26.

(4) The term "Secretary" means the Secretary of Education.

(Pub. L. 98-511, title VI, § 602, Oct. 19, 1984, 98 Stat. 2401.)

EFFECTIVE DATE

Chapter effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of this title.

SHORT TITLE

Section 601 of title VI of Pub. L. 98-511 provided that: "This title [enacting this chapter] may be cited as the 'Emergency Immigrant Education Act of 1984'."

§ 4102. Authorization and allocation of appropriations

(a) There are authorized to be appropriated to make payments to which State educational agencies are entitled under this chapter and payments for administration under section 4103 of this title $30,000,000 for fiscal year 1985, and $40,000,000 for fiscal year 1986 and for each of the three succeeding fiscal years.

(b)(1) If the sums appropriated for any fiscal year to make payments to States under this chapter are not sufficient to pay in full the sum of the amounts which State educational agencies are entitled to receive under this chapter for such year, the allocations to State educational agencies shall be ratably reduced to the extent necessary to bring the aggregate of such allocations within the limits of the amounts so appropriated.

(2) In the event that funds become available for making payments under this chapter for any period after allocations have been made under paragraph (1) of this subsection for such period, the amounts reduced under such paragraph shall be increased on the same basis as they were reduced.

(Pub. L. 98-511, title VI, § 603, Oct. 19, 1984, 98 Stat. 2401.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4108 of this title.

§ 4103. State administrative costs

The Secretary is authorized to pay to each State educational agency amounts equal to the amounts expended by it for the proper and efficient administration of its functions under this chapter, except that the total of such payments for any period shall not exceed 1.5 per centum of the amounts which that State educational agency is entitled to receive for that period under this chapter.

(Pub. L. 98-511, title VI, § 604, Oct. 19, 1984, 98 Stat. 2402.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4102 of this title.

§ 4104. Withholding

Whenever the Secretary, after reasonable notice and opportunity for a hearing to any State educational agency, finds that there is a failure to meet the requirements of any provision of this chapter, the Secretary shall notify that agency that further payments will not be made to the agency under this chapter, or in the discretion of the Secretary, that the State educational agency shall not make further payments under this chapter to specified local educational agencies whose actions cause or are involved in such failure until the Secretary is satisfied that there is no longer any such failure to comply. Until the Secretary is so satisfied, no further payments shall be made to the State educational agency under this chapter, or payments by the State educational agency under this chapter shall be limited to local educational agencies whose actions did not cause or were not involved in the failure, as the case may be.

(Pub. L. 98-511, title VI, § 605, Oct. 19, 1984, 98 Stat. 2402.)

§ 4105. State entitlements

(a) Fiscal year payments

The Secretary shall, in accordance with the provisions of this section, make payments to State educational agencies for each of the fiscal years 1985, 1986, 1987, 1988, and 1989 for the purpose set forth in section 4106 of this title.

(b) Amount of grant; formula; qualified local educational agencies; reduction of payments

(1) Except as provided in paragraph (3) and in subsections (c) and (d) of this section, the amount of the grant to which a State educational agency is entitled under this chapter shall be equal to the product of (A) the number of immigrant children enrolled during such fiscal year in elementary and secondary public schools under the jurisdiction of each local educational agency described under paragraph (2) within that State, and in any elementary or secondary nonpublic school within the district served by each such local educational agency, multiplied by (B) $500.

(2) The local educational agencies referred to in paragraph (1) are those local educational agencies in which the sum of the number of immigrant children who are enrolled in elementary or secondary public schools under the jurisdiction of such agencies, and in elementary or secondary nonpublic schools within the districts served by such agencies, during the fiscal year for which the payments are to be made under this chapter, is equal to—

(A) at least five hundred; or

(B) at least 3 per centum of the total number of students enrolled in such public or nonpublic schools during such fiscal year;

whichever number is less.

(3)(A) The amount of the grant of any State educational agency for any fiscal year as determined under paragraph (1) shall be reduced by the amounts made available for such fiscal year under any other Federal law for expenditure within the State for the same purpose as those for which funds are available under this chapter, but such reduction shall be made only to the extent that (i) such amounts are made available for such purpose specifically because of the refugee, parollee, asylee, or other immigrant status of the individuals served by such funds, and (ii) such amounts are made available to provide assistance to individuals eligible for services under this chapter.

(B) No reduction of a grant under this chapter shall be made under subparagraph (A) for any fiscal year if a reduction is made, pursuant to a comparable provision in any such other Federal law, in the amount made available for expenditure in the State for such fiscal year under such other Federal law, based on the amount assumed to be available under this chapter.

(c) Data or estimates respecting number of immigrant children; clearly erroneous basis without effect on actual entitlement

(1) Determinations by the Secretary under this section for any period with respect to the number of immigrant children shall be made on the basis of data or estimates provided to the Secretary by each State educational agency in accordance with criteria established by the Secretary, unless the Secretary determines, after notice and opportunity for a hearing to the af-

fected State educational agency, that such data or estimates are clearly erroneous.

(2) No such determination with respect to the number of immigrant children shall operate because of an underestimate or overestimate to deprive any State educational agency of its entitlement to any payment (or the amount thereof) under this section to which such agency would be entitled had such determination been made on the basis of accurate data.

(d) Availability of unused funds to other States until end of succeeding fiscal year

Whenever the Secretary determines that any amount of a payment made to a State under this chapter for a fiscal year will not be used by such State for carrying out the purpose for which the payment was made, the Secretary shall make such amount available for carrying out such purpose to one or more other States to the extent the Secretary determines that such other States will be able to use such additional amount for carrying out such purpose. Any amount made available to a State from an appropriation for a fiscal year in accordance with the preceding sentence shall, for purposes of this chapter, be regarded as part of such State's payment (as determined under subsection (b) of this section) for such year, but shall remain available until the end of the succeeding fiscal year.

(Pub. L. 98-511, title VI, § 606, Oct. 19, 1984, 98 Stat. 2402.)

Section Referred to in Other Sections

This section is referred to in sections 4106, 4107 of this title.

§ 4106. Uses of funds

(a) Immigrant children enrolled in public and nonpublic elementary and secondary schools

Payments made under this chapter to any State may be used in accordance with applications approved under section 4107 of this title for supplementary educational services and costs, as described under subsection (b) of this section, for immigrant children enrolled in the elementary and secondary public schools under the jurisdiction of the local educational agencies of the State described in section 4105(b)(2) of this title and in elementary and secondary nonpublic schools of that State within the districts served by such agencies.

(b) Supplementary educational services and costs

Financial assistance provided under this chapter shall be available to meet the costs of providing immigrant children supplementary educational services, including but not limited to—

(1) supplementary educational services necessary to enable those children to achieve a satisfactory level of performance, including—

(A) English language instruction;

(B) other bilingual educational services; and

(C) special materials and supplies;

(2) additional basic instructional services which are directly attributable to the presence in the school district of immigrant children, including the costs of providing additional classroom supplies, overhead costs, costs of construction, acquisition or rental of space, costs of transportation, or such other costs as are directly attributable to such additional basic instructional services; and

(3) essential inservice training for personnel who will be providing instruction described in either paragraph (1) or (2) of this subsection.

(Pub. L. 98-511, title VI, § 607, Oct. 19, 1984, 98 Stat. 2403.)

Section Referred to in Other Sections

This section is referred to in sections 4105, 4107 of this title.

§ 4107. Applications

(a) Requirements: time and manner of submission; contents; assurances

No State educational agency shall be entitled to any payment under this chapter for any period unless that agency submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

(1) provide that the educational programs, services, and activities for which payments under this chapter are made will be administered by or under the supervision of the agency;

(2) provide assurances that payments under this chapter will be used for purposes set forth in section 4106 of this title;

(3) provide assurances that such payments will be distributed among local educational agencies within that State on the basis of the number of children counted with respect to such local educational agency under section 4105(b)(1) of this title, adjusted to reflect any reductions imposed pursuant to section 4105(b)(3) of this title which are attributable to such local educational agency;

(4) provide assurances that the State educational agency will not finally disapprove in whole or in part any application for funds received under this chapter without first affording the local educational agency submitting an application for such funds reasonable notice and opportunity for a hearing;

(5) provide for making such reports as the Secretary may reasonably require to perform the functions under this chapter; and

(6) provide assurances—

(A) that to the extent consistent with the number of immigrant children enrolled in the elementary or secondary nonpublic schools within the district served by a local educational agency, such agency, after consultation with appropriate officials of such schools, shall provide for the benefit of these children secular, neutral, and nonideological services, materials, and equipment necessary for the education of such children;

(B) that the control of funds provided under this chapter and the title to any materials, equipment, and property repaired, remodeled, or constructed with those funds shall be in a public agency for the uses and purposes provided in this chapter, and a public agency shall administer such funds and property; and

(C) that the provision of services pursuant to this paragraph shall be provided by employees of a public agency or through contract by such public agency with a person, association, agency, or corporation who or which, in the provision of such services, is independent of such elementary or secondary nonpublic school and of any religious organization; and such employment or contract shall be under the control and supervision of such public agency, and the funds provided under this paragraph shall not be commingled with State or local funds.

(b) Approval by Secretary; disapproval notice and hearing

The Secretary shall approve an application which meets the requirements of subsection (a) of this section. The Secretary shall not finally disapprove an application of a State educational agency except after reasonable notice and opportunity for a hearing on the record to such agency.

(Pub. L. 98-511, title VI, § 608, Oct. 19, 1984, 98 Stat. 2404.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4106, 4108 of this title.

§ 4108. Payments

(a) Amount of entitlement

Except as provided in section 4102(b) of this title, the Secretary shall pay to each State educational agency having an application approved under section 4107 of this title the amount which that State is entitled to receive under this chapter.

(b) Arrangements for educational services for children in nonpublic schools; waiver of restrictions: procedure

If by reason of any provision of law a local educational agency is prohibited from providing educational services for children enrolled in elementary and secondary nonpublic schools, as required by section 4107(a)(6) of this title, or if the Secretary determines that a local educational agency has substantially failed or is unwilling to provide for the participation on an equitable basis of children enrolled in such schools, the Secretary may waive such requirement and shall arrange for the provision of services to such children through arrangements which shall be subject to the requirements of this chapter. Such waivers shall be subject to consultation, withholding, notice, and judicial review requirements in accordance with section 3806(b)(3) and (4) of this title.

(Pub. L. 98-511, title VI, § 609, Oct. 19, 1984, 98 Stat. 2405.)

CHAPTER 54—LEADERSHIP IN EDUCATIONAL ADMINISTRATION

Sec.
4201. Short title; statement of purpose.
  (a) Short title.
  (b) Statement of purpose.
  (c) Congressional intent; technical assistance and training centers.
4202. Authorization of appropriations.
  (a) Fiscal years 1985 to 1990.
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4203. Technical assistance centers.
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4204. General criteria for contracts.
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§ 4201. Short title; statement of purpose

(a) Short title

This chapter may be cited as the "Leadership in Educational Administration Development Act of 1984".

(b) Statement of purpose

It is the purpose of this chapter to improve the level of student achievement in elementary and secondary schools through the enhancement of the leadership skills of school administrators by establishing technical assistance centers for each State to promote the development of the leadership skills of elementary and secondary school administrators with particular emphasis upon increasing access for minorities and women to administrative positions.

(c) Congressional intent; technical assistance and training centers

It is the intention of Congress that contractors seeking to establish technical assistance and training centers should design programs which upgrade the skills of elementary and secondary school administrators in—

(1) enhancing the schoolwide learning environment by assessing the school climate, setting clear goals for improvement, and devising strategies for completing manageable projects with measurable objectives;

(2) evaluating the school curriculum in order to assess its effectiveness in meeting academic goals;

(3) developing skills in instructional analysis to improve the quality of teaching through classroom observation and supervision;

(4) mastering and implementing objective techniques for evaluating teacher performance; and

(5) improving communication, problem-solving, student discipline, time-management, and budgetary skills.

(Pub. L. 98-558, title IX, § 901, Oct. 30, 1984, 98 Stat. 2902.)

§ 4202. Authorization of appropriations

(a) Fiscal years 1985 to 1990

There are authorized to be appropriated to carry out this chapter for fiscal year 1985 and each succeeding fiscal year ending prior to October 1, 1990, such sums as may be necessary but not to exceed $20,000,000 in any fiscal year.

(b) Establishment and operation of technical assistance centers

Of the amount appropriated pursuant to subsection (a) of this section for any fiscal year, the Secretary shall make available such amount, not less than $150,000 for each State, as may be necessary for establishing and operating a technical assistance center in each State.

(Pub. L. 98-558, title IX, § 902, Oct. 30, 1984, 98 Stat. 2903.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4203 of this title.

§ 4203. Technical assistance centers

(a) Contracts; establishment and operation

The Secretary shall, subject to the availability of funds pursuant to section 4202 of this title, enter into contracts with local educational agencies, intermediate school districts, State educational agencies, institutions of higher education, private management organizations, or nonprofit organizations (or consortium of such entities) for the establishment and operation of training centers in each State in accordance with the requirements of this section and section 4204 of this title.

(b) Contractual requirements

Each contract entered into under subsection (a) of this section shall require the contractor—

(1) to make the services of the technical assistance center available to school administrators from any of the local educational agencies located within the State served by that contractor;

(2) to collect information on school leadership skills;

(3) to assess the leadership skills of individual participants based on established effective leadership criteria;

(4) to conduct training programs on leadership skills for new school administrators and to conduct training seminars on leadership skills for practicing school administrators, with particular emphasis on women and minority administrators;

(5) to operate consulting programs to provide within school districts advice and guidance on leadership skills;

(6) to maintain training curricula and materials on leadership skills drawing on expertise in business, academia, civilian and military governmental agencies, and existing effective schools;

(7) to conduct programs which—

(A) make available executives from business, scholars from various institutions of higher education, and practicing school administrators; and

(B) offer internships in business, industry, and effective school districts to school administrators,

for the purpose of promoting improved leadership skills of such administrators;

(8) to disseminate information on leadership skills associated with effective schools; and

(9) to establish model administrator projects.

(c) Development of language skills

In making a selection among applicants for any contract under this section, the Secretary shall take into account whether the applicant, if selected, would be able to operate its programs in a manner which would emphasize development of leadership skills identified by graduate schools of management and graduate schools of education.

(Pub. L. 98-558, title IX, § 903, Oct. 30, 1984, 98 Stat. 2903.)

§ 4204. General criteria for contracts

(a) Application to each contract

The following criteria shall apply to each contract:

(1) The contract shall assure the involvement of private sector managers and executives in the conduct of such programs.

(2) The contract shall contain assurances of an ongoing organizational commitment to carrying out the purposes of this chapter through (A) obtaining matching funds for such programs in cash or in kind at least equal in amount to the amount of funds provided under this chapter, (B) making inkind contributions to such programs, (C) demonstrating a commitment to continue to operate such programs after expiration of funding under this chapter, and (D) organizing a policy advisory committee including (but not limited to) representatives from business, private foundations, and local and State educational agencies.

(3) The contract shall demonstrate the level of development of human relations skills which its programs will instill by (A) identifying the credentials of the staff responsible for such development; (B) describing the manner in which such skills will be developed; and (C) describing the manner in which the program deals with human relations issues facing education administrators.

(4) The contract shall establish a system for the evaluation of the programs conducted.

(b) Contractual term; renewability

Each contract shall be for a term of three years. Such contract shall not be renewable, except that a single three-year extension may be granted if the contractor agrees to maintain the programs with assistance under this chapter reduced by one-half.

(Pub. L. 98-558, title IX, § 904, Oct. 30, 1984, 98 Stat. 2904.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4203 of this title.

§ 4205. Regulations

The Secretary is authorized to prescribe such regulations as may be necessary to carry out this chapter.

(Pub. L. 98-558, title IX, § 905, Oct. 30, 1984, 98 Stat. 2904.)

§ 4206. Definitions

For the purposes of this chapter—

(1) the term "Secretary" means the Secretary of Education;

(2) the term "institution of higher education" has the meaning provided by section 1141 of this title;

(3) the term "school administrator" means a principal, assistant principal, district superintendent, and other local school administrators;

(4) the term "local educational agency" has the meaning provided by section 3875 of this title; and

(5) the term "leadership skills" includes, but is not limited to, managerial, administrative, evaluative, communication and disciplinary skills and related techniques.

(Pub. L. 98-558, title IX, § 906, Oct. 30, 1984, 98 Stat. 2904.)

TITLE 21—FOOD AND DRUGS

Chap.		Sec.
17.	**National Drug Enforcement Policy**.......	1201

CHAPTER 9—FEDERAL FOOD, DRUG, AND COSMETIC ACT

SUBCHAPTER I—SHORT TITLE

§ 301. Short title

Short Title of 1984 Amendment

Pub. L. 98-417, § 1, Sept. 24, 1984, 98 Stat. 1585, provided: "That this Act [enacting section 156 of Title 35, Patents, amending sections 355 and 360cc of this title, sections 68b, 68c, and 70b of Title 15, Commerce and Trade, section 2201 of Title 28, Judiciary and Judicial Procedure, and sections 271 and 282 of Title 35, and enacting provisions set out as notes under section 355 of this title and section 68b of Title 15] may be cited as the 'Drug Price Competition and Patent Term Restoration Act of 1984'."

Short Title of 1983 Amendments

Pub. L. 98-22, § 1, Apr. 22, 1983, 97 Stat. 173, provided: "That this Act [amending provisions set out as a note under section 348 of this title] may be cited as the 'Saccharin Study and Labeling Act Amendment of 1983'."

SUBCHAPTER II—DEFINITIONS

§ 321. Definitions; generally

Section Referred to in Other Sections

This section is referred to in sections 346b, 350, 352, 355, 376, 802, 825 of this title; title 7 section 136; title 15 sections 1454, 1456, 1471, 2052, 2602; title 18 sections 842, 922, 1365; title 35 section 156; title 42 section 274e.

SUBCHAPTER III—PROHIBITED ACTS AND PENALTIES

§ 331. Prohibited acts

References in Text

Section 355(j) of this title, referred to in subsec. (e), was redesignated section 355(k) of this title by Pub. L. 98-417, title I, § 101, Sept. 24, 1984, 98 Stat. 1585.

SUBCHAPTER IV—FOOD

§ 346a. Tolerances for pesticide chemicals in or on raw agricultural commodities

[*See main edition for text of* (*a*) *to* (*h*)]

(i) Judicial review

[*See main edition for text of* (*1*) *to* (*4*)]

(5) The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order.

[*See main edition for text of* (*j*) *to* (*o*)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(25)(A), 98 Stat. 3359.)

Amendments

1984—Subsec. (i)(5). Pub. L. 98-620 struck out provision that required the court to advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 348. Food additives

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Judicial review

[*See main edition for text of* (*1*)]

(2) A copy of such petition shall be forthwith transmitted by the clerk of the court to the Secretary, or any officer designated by him for that purpose, and thereupon the Secretary shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of title 28. Upon the filing of such petition the court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm or set aside the order complained of in whole or in part. Until the filing of the record the Secretary may modify or set aside his order. The findings of the Secretary with respect to questions of fact shall be sustained if based upon a fair evaluation of the entire record at such hearing.

[*See main edition for text of* (*3*) *to* (*5*); (*h*) *and* (*i*)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(25)(B), 98 Stat. 3359.)

Amendments

1984—Subsec. (g)(2). Pub. L. 98-620 struck out provision that required the court to advance on the docket and expedite the disposition of all causes filed therein pursuant to this section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

MORATORIUM ON AUTHORITY OF SECRETARY WITH RESPECT TO SACCHARIN

Pub. L. 95-203, § 3, Nov. 23, 1977, 91 Stat. 1452, as amended by Pub. L. 96-88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695; Pub. L. 96-273, June 17, 1980, 94 Stat. 536; Pub. L. 97-42, § 2, Aug. 14, 1981, 95 Stat. 946; Pub. L. 98-22, § 2, Apr. 22, 1983, 97 Stat. 173, provided that: "During the period beginning on the date of the enactment of this Act [Nov. 23, 1977] and ending twenty-four months after the date of enactment of the Saccharin Study and Labeling Act Amendment of 1983 [Apr. 22, 1983], the Secretary—

[See main edition for text of (1) and (2)]

solely on the basis of the carcinogenic or other toxic effect of saccharin as determined by any study made available to the Secretary before the date of the enactment of this Act [Nov. 23, 1977] which involved human studies or animal testing, or both."

For definition of "saccharin" as used in this note, see section 2(d) of Pub. L. 95-203.

SUBCHAPTER V—DRUGS AND DEVICES

PART A—DRUGS AND DEVICES

§ 355. New drugs

(a) Necessity of effective approval of application

No person shall introduce or deliver for introduction into interstate commerce any new drug, unless an approval of an application filed pursuant to subsection (b) or (j) of this section is effective with respect to such drug.

(b) Filing application; contents

(1) Any person may file with the Secretary an application with respect to any drug subject to the provisions of subsection (a) of this section. Such person shall submit to the Secretary as a part of the application (A) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use; (B) a full list of the articles used as components of such drug; (C) a full statement of the composition of such drug; (D) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (E) such samples of such drug and of the articles used as components thereof as the Secretary may require; and (F) specimens of the labeling proposed to be used for such drug. The applicant shall file with the application the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. If an application is filed under this subsection for a drug and a patent which claims such drug or a method of using such drug is issued after the filing date but before approval of the application, the applicant shall amend the application to include the information required by the preceding sentence. Upon approval of the application, the Secretary shall publish information submitted under the two preceding sentences.

(2) An application submitted under paragraph (1) for a drug for which the investigations described in clause (A) of such paragraph and relied upon by the applicant for approval of the application were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted shall also include—

(A) a certification, in the opinion of the applicant and to the best of his knowledge, with respect to each patent which claims the drug for which such investigations were conducted or which claims a use for such drug for which the applicant is seeking approval under this subsection and for which information is required to be filed under paragraph (1) or subsection (c) of this section—

(i) that such patent information has not been filed,

(ii) that such patent has expired,

(iii) of the date on which such patent will expire, or

(iv) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the new drug for which the application is submitted; and

(B) if with respect to the drug for which investigations described in paragraph (1)(A) were conducted information was filed under paragraph (1) or subsection (c) of this section for a method of use patent which does not claim a use for which the applicant is seeking approval under this subsection, a statement that the method of use patent does not claim such a use.

(3)(A) An applicant who makes a certification described in paragraph (2)(A)(iv) shall include in the application a statement that the applicant will give the notice required by subparagraph (B) to—

(i) each owner of the patent which is the subject of the certification or the representative of such owner designated to receive such notice, and

(ii) the holder of the approved application under subsection (b) of this section for the drug which is claimed by the patent or a use of which is claimed by the patent or the representative of such holder designated to receive such notice.

(B) The notice referred to in subparagraph (A) shall state that an application has been submitted under this subsection for the drug with respect to which the certification is made to obtain approval to engage in the commercial manufacture, use, or sale of the drug before the expiration of the patent referred to in the certification. Such notice shall include a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed.

(C) If an application is amended to include a certification described in paragraph (2)(A)(iv), the notice required by subparagraph (B) shall be given when the amended application is submitted.

(c) Period for approval of application; period for, notice, and expedition of hearing; period for issuance of order

(1) Within one hundred and eighty days after the filing of an application under subsection (b) of this section, or such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall either—

(A) approve the application if he then finds that none of the grounds for denying approval specified in subsection (d) of this section applies, or

(B) give the applicant notice of an opportunity for a hearing before the Secretary under subsection (d) of this section on the question whether such application is approvable. If the applicant elects to accept the opportunity for hearing by written request within thirty days after such notice, such hearing shall commence not more than ninety days after the expiration of such thirty days unless the Secretary and the applicant otherwise agree. Any such hearing shall thereafter be conducted on an expedited basis and the Secretary's order thereon shall be issued within ninety days after the date fixed by the Secretary for filing final briefs.

(2) If the patent information described in subsection (b) of this section could not be filed with the submission of an application under subsection (b) of this section because the application was filed before the patent information was required under subsection (b) of this section or a patent was issued after the application was approved under such subsection, the holder of an approved application shall file with the Secretary the patent number and the expiration date of any patent which claims the drug for which the application was submitted or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably be asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug. If the holder of an approved application could not file patent information under subsection (b) of this section because it was not required at the time the application was approved, the holder shall file such information under this subsection not later than thirty days after September 24, 1984, and if the holder of an approved application could not file patent information under subsection (b) of this section because no patent had been issued when an application was filed or approved, the holder shall file such information under this subsection not later than thirty days after the date the patent involved is issued. Upon the submission of patent information under this subsection, the Secretary shall publish it.

(3) The approval of an application filed under subsection (b) of this section which contains a certification required by paragraph (2) of such subsection shall be made effective on the last applicable date determined under the following:

(A) If the applicant only made a certification described in clause (i) or (ii) of subsection (b)(2)(A) of this section or in both such clauses, the approval may be made effective immediately.

(B) If the applicant made a certification described in clause (iii) of subsection (b)(2)(A) of this section, the approval may be made effective on the date certified under clause (iii).

(C) If the applicant made a certification described in clause (iv) of subsection (b)(2)(A) of this section, the approval shall be made effective immediately unless an action is brought for infringement of a patent which is the subject of the certification before the expiration of forty-five days from the date the notice provided under paragraph (3)(B) is received. If such an action is brought before the expiration of such days, the approval may be made effective upon the expiration of the thirty-month period beginning on the date of the receipt of the notice provided under paragraph (3)(B) or such shorter or longer period as the court may order because either party to the action failed to reasonably cooperate in expediting the action, except that—

(i) if before the expiration of such period the court decides that such patent is invalid or not infringed, the approval may be made effective on the date of the court decision,

(ii) if before the expiration of such period the court decides that such patent has been infringed, the approval may be made effective on such date as the court orders under section 271(e)(4)(A) of title 35, or

(iii) if before the expiration of such period the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug until the court decides the issues of patent validity and infringement and if the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of such court decision.

In such an action, each of the parties shall reasonably cooperate in expediting the action. Until the expiration of forty-five days from the date the notice made under paragraph (3)(B) is received, no action may be brought under section 2201 of title 28 for a declaratory judgment with respect to the patent. Any action brought under such section 2201 shall be brought in the judicial district where the defendant has its principal place of business or a regular and established place of business.

(D)(i) If an application (other than an abbreviated new drug application) submitted under subsection (b) of this section for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b) of this section, was approved during the period beginning January 1, 1982, and ending on September 24, 1984, the Secretary may not make the approval of another application for a drug for which the investigations described in clause (A) of subsection (b)(1) of this section and relied upon by the applicant for approval of the application were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted effective before the expiration of ten years from the date of the approval of the application previously approved under subsection (b) of this section.

(ii) If an application submitted under subsection (b) of this section for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b) of this section, is approved after September 24, 1984, no application which refers to the drug for which the subsection (b) application was submitted and for which the investigations described in clause (A) of subsection (b)(1) of this section and relied upon by the applicant for approval of the application were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted may be submitted under subsection (b) of this section before the expiration of five years from the date of the approval of the application under subsection (b) of this section, except that such an application may be submitted under subsection (b) of this section after the expiration of four years from the date of the approval of the subsection (b) application if it contains a certification of patent invalidity or noninfringement described in clause (iv) of subsection (b)(2)(A) of this section. The approval of such an application shall be made effective in accordance with this paragraph except that, if an action for patent infringement is commenced during the one-year period beginning forty-eight months after the date of the approval of the subsection (b) application, the thirty-month period referred to in subparagraph (C) shall be extended by such amount of time (if any) which is required for seven and one-half years to have elapsed from the date of approval of the subsection (b) application.

(iii) If an application submitted under subsection (b) of this section for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application approved under subsection (b) of this section, is approved after September 24, 1984, and if such application contains reports of new clinical investigations (other than bioavailability studies) essential to the approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application submitted under subsection (b) of this section for the conditions of approval of such drug in the approved subsection (b) application effective before the expiration of three years from the date of the approval of the application under subsection (b) of this section if the investigations described in clause (A) of subsection (b)(1) of this section and relied upon by the applicant for approval of the application were not conducted by or for the applicant and if the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted.

(iv) If a supplement to an application approved under subsection (b) of this section is approved after September 24, 1984, and the supplement contains reports of new clinical investigations (other than bioavailabilty studies) essential to the approval of the supplement and conducted or sponsored by the person submitting the supplement, the Secretary may not make the approval of an application submitted under subsection (b) of this section for a change approved in the supplement effective before the expiration of three years from the date of the approval of the supplement under subsection (b) of this section if the investigations described in clause (A) of subsection (b)(1) of this section and relied upon by the applicant for approval of the application were not conducted by or for the applicant and if the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted.

(v) If an application (or supplement to an application) submitted under subsection (b) of this section for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application under subsection (b) of this section, was approved during the period beginning January 1, 1982, and ending on September 24, 1984, the Secretary may not make the approval of an application submitted under this subsection and for which the investigations described in clause (A) of subsection (b)(1) of this section and relied upon by the applicant for approval of the application were not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use from the person by or for whom the investigations were conducted and which refers to the drug for which the subsection (b) application was submitted effective before the expiration of two years from September 24, 1984.

(d) Grounds for refusing application; approval of application; "substantial evidence" defined

If the Secretary finds, after due notice to the applicant in accordance with subsection (c) of this section and giving him an opportunity for a hearing, in accordance with said subsection, that (1) the investigations, reports of which are required to be submitted to the Secretary pursuant to subsection (b) of this section, do not include adequate tests by all methods reasonably applicable to show whether or not such drug is safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof; (2) the results of such tests show that such drug is unsafe for use under such conditions or do not show that such drug is safe for use under such conditions; (3) the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to preserve its identity, strength, quality, and purity; (4) upon the basis of the information submitted to him as part of the application, or upon the basis of any other information before him with respect to such drug, he has insufficient information to determine whether such drug is safe for use under such conditions; or (5) evaluated on the basis of the information submitted to him as part of the application and any other information before him with respect to such drug, there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof; or (6) the application failed to contain the patent information prescribed by subsection (b) of this section; or (7) based on a fair evaluation of all material facts, such labeling is false or misleading in any particular; he shall issue an order refusing to approve the application. If, after such notice and opportunity for hearing, the Secretary finds that clauses (1) through (6) do not apply, he shall issue an order approving the application. As used in this subsection and subsection (e) of this section, the term "substantial evidence" means evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling or proposed labeling thereof.

(e) Withdrawal of approval; grounds; immediate suspension upon finding imminent hazard to public health

The Secretary shall, after due notice and opportunity for hearing to the applicant, withdraw approval of an application with respect to any drug under this section if the Secretary finds (1) that clinical or other experience, tests, or other scientific data show that such drug is unsafe for use under the conditions of use upon the basis of which the application was approved; (2) that new evidence of clinical experience, not contained in such application or not available to the Secretary until after such application was approved, or tests by new methods, or tests by methods not deemed reasonably applicable when such application was approved, evaluated together with the evidence available to the Secretary when the application was approved, shows that such drug is not shown to be safe for use under the conditions of use upon the basis of which the application was approved; or (3) on the basis of new information before him with respect to such drug, evaluated together with the evidence available to him when the application was approved, that there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof; or (4) the patent information prescribed by subsection (c) of this section was not filed within thirty days after the receipt of written notice from the Secretary specifying the failure to file such information; or (5) that the application contains any untrue statement of a material fact: *Provided*, That if the Secretary (or in his absence the officer acting as Secretary) finds that there is an imminent hazard to the public health, he may suspend the approval of such application immediately, and give the applicant prompt notice of his action and afford the applicant the opportunity for an expedited hearing under this subsection; but the authority conferred by this proviso to suspend the approval of an application shall not be delegated. The Secretary may also, after due notice and opportunity for hearing to the applicant, withdraw the approval of an application submitted under subsection (b) or (j) of this section with respect to any drug under this section if the Secretary finds (1) that the applicant has failed to establish a system for maintaining required records, or has repeatedly or deliberately failed to maintain such records or to make required reports, in accordance with a regulation or order under subsection (k) of this section or to comply with the notice requirements of section 360(k)(2) of this title, or the applicant has refused to permit access to, or copying or verification of, such records as required by paragraph (2) of such subsection; or (2) that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of such drug are inadequate to assure and preserve its identity, strength, quality, and purity and were not made adequate within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of; or (3) that on the basis of new information before him, evaluated together with the evidence before him when the application was approved, the labeling of such drug, based on a fair evaluation of all material facts, is false or misleading in any particular and was not corrected within a reasonable time after receipt of written notice from the Secretary specifying the matter complained of. Any order under this subsection shall state the findings upon which it is based.

[*See main edition for text of* (*f*) *to* (*i*)]

(j) Abbreviated new drug applications

(1) Any person may file with the Secretary an abbreviated application for the approval of a new drug.

(2)(A) An abbreviated application for a new drug shall contain—

(i) information to show that the conditions of use prescribed, recommended, or suggested in the labeling proposed for the new drug have been previously approved for a drug listed under paragraph (6) (hereinafter in this subsection referred to as a "listed drug");

(ii)(I) if the listed drug referred to in clause (i) has only one active ingredient, information to show that the active ingredient of the new drug is the same as that of the listed drug;

(II) if the listed drug referred to in clause (i) has more than one active ingredient, information to show that the active ingredients of the new drug are the same as those of the listed drug, or

(III) if the listed drug referred to in clause (i) has more than one active ingredient and if one of the active ingredients of the new drug is different and the application is filed pursuant to the approval of a petition filed under subparagraph (C), information to show that the other active ingredients of the new drug are the same as the active ingredients of the listed drug, information to show that the different active ingredient is an active ingredient of a listed drug or of a drug which does not meet the requirements of section 321(p) of this title, and such other information respecting the different active ingredient with respect to which the petition was filed as the Secretary may require;

(iii) information to show that the route of administration, the dosage form, and the strength of the new drug are the same as those of the listed drug referred to in clause (i) or, if the route of administration, the dosage form, or the strength of the new drug is different and the application is filed pursuant to the approval of a petition filed under subparagraph (C), such information respecting the route of administration, dosage form, or strength with respect to which the petition was filed as the Secretary may require;

(iv) information to show that the new drug is bioequivalent to the listed drug referred to in clause (i), except that if the application is filed pursuant to the approval of a petition filed under subparagraph (C), information to show that the active ingredients of the new drug are of the same pharmacological or therapeutic class as those of the listed drug referred to in clause (i) and the new drug can be expected to have the same therapeutic effect as the listed drug when administered to patients for a condition of use referred to in clause (i);

(v) information to show that the labeling proposed for the new drug is the same as the labeling approved for the listed drug referred to in clause (i) except for changes required because of differences approved under a petition filed under subparagraph (C) or because the new drug and the listed drug are produced or distributed by different manufacturers;

(vi) the items specified in clauses (B) through (F) of subsection (b)(1) of this section;

(vii) a certification, in the opinion of the applicant and to the best of his knowledge, with respect to each patent which claims the listed drug referred to in clause (i) or which claims a use for such listed drug for which the applicant is seeking approval under this subsection and for which information is required to be filed under subsection (b) or (c) of this section—

(I) that such patent information has not been filed,

(II) that such patent has expired,

(III) of the date on which such patent will expire, or

(IV) that such patent is invalid or will not be infringed by the manufacture, use, or sale of the new drug for which the application is submitted; and

(viii) if with respect to the listed drug referred to in clause (i) information was filed under subsection (b) or (c) of this section for a method of use patent which does not claim a use for which the applicant is seeking approval under this subsection, a statement that the method of use patent does not claim such a use.

The Secretary may not require that an abbreviated application contain information in addition to that required by clauses (i) through (viii).

(B)(i) An applicant who makes a certification described in subparagraph (A)(vii)(IV) shall include in the application a statement that the applicant will give the notice required by clause (ii) to—

(I) each owner of the patent which is the subject of the certification or the representative of such owner designated to receive such notice, and

(II) the holder of the approved application under subsection (b) of this section for the drug which is claimed by the patent or a use of which is claimed by the patent or the representative of such holder designated to receive such notice.

(ii) The notice referred to in clause (i) shall state that an application, which contains data from bioavailability or bioequivalence studies, has been submitted under this subsection for the drug with respect to which the certification is made to obtain approval to engage in the commercial manufacture, use, or sale of such drug before the expiration of the patent referred to in the certification. Such notice shall include a detailed statement of the factual and legal basis of the applicant's opinion that the patent is not valid or will not be infringed.

(iii) If an application is amended to include a certification described in subparagraph (A)(vii)(IV), the notice required by clause (ii) shall be given when the amended application is submitted.

(C) If a person wants to submit an abbreviated application for a new drug which has a different active ingredient or whose route of administration, dosage form, or strength differ from that of a listed drug, such person shall submit a petition to the Secretary seeking permission to file such an application. The Secretary shall approve or disapprove a petition submitted under this subparagraph within ninety days of the date the petition is submitted. The Secretary shall approve such a petition unless the Secretary finds—

(i) that investigations must be conducted to show the safety and effectiveness of the drug or of any of its active ingredients, the route of administration, the dosage form, or strength which differ from the listed drug; or

(ii) that any drug with a different active ingredient may not be adequately evaluated for approval as safe and effective on the basis of the information required to be submitted in an abbreviated application.

(3) Subject to paragraph (4), the Secretary shall approve an application for a drug unless the Secretary finds—

(A) the methods used in, or the facilities and controls used for, the manufacture, processing, and packing of the drug are inadequate to assure and preserve its identity, strength, quality, and purity;

(B) information submitted with the application is insufficient to show that each of the proposed conditions of use have been previously approved for the listed drug referred to in the application;

(C)(i) if the listed drug has only one active ingredient, information submitted with the application is insufficient to show that the active ingredient is the same as that of the listed drug;

(ii) if the listed drug has more than one active ingredient, information submitted with the application is insufficient to show that the active ingredients are the same as the active ingredients of the listed drug, or

(iii) if the listed drug has more than one active ingredient and if the application is for a drug which has an active ingredient different from the listed drug, information submitted with the application is insufficient to show—

(I) that the other active ingredients are the same as the active ingredients of the listed drug, or

(II) that the different active ingredient is an active ingredient of a listed drug or a drug which does not meet the requirements of section 321(p) of this title,

or no petition to file an application for the drug with the different ingredient was approved under paragraph (2)(C);

(D)(i) if the application is for a drug whose route of administration, dosage form, or strength of the drug is the same as the route of administration, dosage form, or strength of the listed drug referred to in the application, information submitted in the application is insufficient to show that the route of administration, dosage form, or strength is the same as that of the listed drug, or

(ii) if the application is for a drug whose route of administration, dosage form, or strength of the drug is different from that of the listed drug referred to in the application, no petition to file an application for the drug with the different route of administration, dosage form, or strength was approved under paragraph (2)(C);

(E) if the application was filed pursuant to the approval of a petition under paragraph (2)(C), the application did not contain the information required by the Secretary respecting the active ingredient, route of administration, dosage form, or strength which is not the same;

(F) information submitted in the application is insufficient to show that the drug is bioequivalent to the listed drug referred to in the application or, if the application was filed pursuant to a petition approved under paragraph (2)(C), information submitted in the application is insufficient to show that the active ingredients of the new drug are of the same pharmacological or therapeutic class as those of the listed drug referred to in paragraph (2)(A)(i) and that the new drug can be expected to have the same therapeutic effect as the listed drug when administered to patients for a condition of use referred to in such paragraph;

(G) information submitted in the application is insufficient to show that the labeling proposed for the drug is the same as the labeling approved for the listed drug referred to in the application except for changes required because of differences approved under a petition filed under paragraph (2)(C) or because the drug and the listed drug are produced or distributed by different manufacturers;

(H) information submitted in the application or any other information available to the Secretary shows that (i) the inactive ingredients of the drug are unsafe for use under the conditions prescribed, recommended, or suggested in the labeling proposed for the drug, or (ii) the composition of the drug is unsafe under such conditions because of the type or quantity of inactive ingredients included or the manner in which the inactive ingredients are included;

(I) the approval under subsection (c) of this section of the listed drug referred to in the application under this subsection has been withdrawn or suspended for grounds described in the first sentence of subsection (e) of this section, the Secretary has published a notice of opportunity for hearing to withdraw approval of the listed drug under subsection (c) of this section for grounds described in the first sentence of subsection (e) of this section, the approval under this subsection of the listed drug referred to in the application under this subsection has been withdrawn or suspended under paragraph (5), or the Secretary has determined that the listed drug has been withdrawn from sale for safety or effectiveness reasons;

(J) the application does not meet any other requirement of paragraph (2)(A); or

(K) the application contains an untrue statement of material fact.

(4)(A) Within one hundred and eighty days of the initial receipt of an application under paragraph (2) or within such additional period as may be agreed upon by the Secretary and the applicant, the Secretary shall approve or disapprove the application.

(B) The approval of an application submitted under paragraph (2) shall be made effective on the last applicable date determined under the following:

(i) If the applicant only made a certification described in subclause (I) or (II) of paragraph (2)(A)(vii) or in both such subclauses, the approval may be made effective immediately.

(ii) If the applicant made a certification described in subclause (III) of paragraph (2)(A)(vii), the approval may be made effective on the date certified under subclause (III).

(iii) If the applicant made a certification described in subclause (IV) of paragraph (2)(A)(vii), the approval shall be made effective immediately unless an action is brought for infringement of a patent which is the subject of the certification before the expiration of forty-five days from the date the notice provided under paragraph (2)(B)(i) is received. If such an action is brought before the expiration of such days, the approval shall be made effective upon the expiration of the thirty-month period beginning on the date of the receipt of the notice provided under paragraph (2)(B)(i) or such shorter or longer period as the court may order because either party to the action failed to reasonably cooperate in expediting the action, except that—

(I) if before the expiration of such period the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of the court decision,

(II) if before the expiration of such period the court decides that such patent has been infringed, the approval shall be made effective on such date as the court orders under section 271(e)(4)(A) of title 35, or

(III) if before the expiration of such period the court grants a preliminary injunction prohibiting the applicant from engaging in the commercial manufacture or sale of the drug until the court decides the issues of patent validity and infringement and if the court decides that such patent is invalid or not infringed, the approval shall be made effective on the date of such court decision.

In such an action, each of the parties shall reasonably cooperate in expediting the action. Until the expiration of forty-five days from the date the notice made under paragraph (2)(B)(i) is received, no action may be brought under section 2201 of title 28, for a declaratory judgment with respect to the patent. Any action brought under section 2201 shall be brought in the judicial district where the defendant has its principal place of business or a regular and established place of business.

(iv) If the application contains a certification described in subclause (IV) of paragraph (2)(A)(vii) and is for a drug for which a previous application has been submitted under this subsection continuing such a certification, the application shall be made effective not earlier than one hundred and eighty days after—

(I) the date the Secretary receives notice from the applicant under the previous application of the first commercial marketing of the drug under the previous application, or

(II) the date of a decision of a court in an action described in clause (iii) holding the patent which is the subject of the certification to be invalid or not infringed,

whichever is earlier.

(C) If the Secretary decides to disapprove an application, the Secretary shall give the applicant notice of an opportunity for a hearing before the Secretary on the question of whether such application is approvable. If the applicant elects to accept the opportunity for hearing by written request within thirty days after such notice, such hearing shall commence not more than ninety days after the expiration of such thirty days unless the Secretary and the applicant otherwise agree. Any such hearing shall thereafter be conducted on an expedited basis and the Secretary's order thereon shall be issued within ninety days after the date fixed by the Secretary for filing final briefs.

(D)(i) If an application (other than an abbreviated new drug application) submitted under subsection (b) of this section for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b) of this section, was approved during the period beginning January 1, 1982, and ending on September 24, 1984, the Secretary may not make the approval of an application submitted under this subsection which refers to the drug for which the subsection (b) application was submitted effective before the expiration of ten years from the date of the approval of the application under subsection (b) of this section.

(ii) If an application submitted under subsection (b) of this section for a drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under subsection (b) of this section, is approved after September 24, 1984, no application may be submitted under this subsection which refers to the drug for which the subsection (b) application was submitted before the expiration of five years from the date of the approval of the application under subsection (b) of this section, except that such an application may be submitted under this subsection after the expiration of four years from the date of the approval of the subsection (b) application if it contains a certification of patent invalidity or noninfringement described in subclause (IV) of paragraph (2)(A)(vii). The approval of such an application shall be made effective in accordance with subparagraph (B) except that, if an action for patent infringement is commenced during the one-year period beginning forty-eight months after the date of the approval of the subsection (b) application, the thirty-month period referred to in subparagraph (B)(iii) shall be extended by such amount of time (if any) which is required for seven and one-half years to have elapsed from the date of approval of the subsection (b) application.

(iii) If an application submitted under subsection (b) of this section for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application approved under subsection (b) of this section, is approved after September 24, 1984, and if such application contains reports of new clinical investigations (other than bioavailability studies) essential to the approval of the application and conducted or sponsored by the applicant, the Secretary may not make the approval of an application submitted under this subsection for the conditions of approval of such drug in the subsection (b) application effective before the expiration of three years from the date of the approval of the application under subsection (b) of this section for such drug.

(iv) If a supplement to an application approved under subsection (b) of this section is approved after September 24, 1984, and the supplement contains reports of new clinical investigations (other than bioavailability studies) essential to the approval of the supplement and conducted or sponsored by the person submitting the supplement, the Secretary may not make the approval of an application submitted under this subsection for a change approved in the supplement effective before the expiration of three years from the date of the approval of the supplement under subsection (b) of this section.

(v) If an application (or supplement to an application) submitted under subsection (b) of this section for a drug, which includes an active ingredient (including any ester or salt of the active ingredient) that has been approved in another application under subsection (b) of this section, was approved during the period beginning January 1, 1982, and ending on September 24, 1984, the Secretary may not make the approval of an application submitted under this subsection which refers to the drug for which the subsection (b) application was submitted or which refers to a change approved in a supplement to the subsection (b) application effective before the expiration of two years from September 24, 1984.

(5) If a drug approved under this subsection refers in its approved application to a drug the approval of which was withdrawn or suspended for grounds described in the first sentence of subsection (e) of this section or was withdrawn or suspended under this paragraph or which, as determined by the Secretary, has been withdrawn from sale for safety or effectiveness reasons, the approval of the drug under this subsection shall be withdrawn or suspended—

(A) for the same period as the withdrawal or suspension under subsection (e) of this section or this paragraph, or

(B) if the listed drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

(6)(A)(i) Within sixty days of September 24, 1984, the Secretary shall publish and make available to the public—

(I) a list in alphabetical order of the official and proprietary name of each drug which has been approved for safety and effectiveness under subsection (c) of this section before September 24, 1984;

(II) the date of approval if the drug is approved after 1981 and the number of the application which was approved; and

(III) whether in vitro or in vivo bioequivalence studies, or both such studies, are required for applications filed under this subsection which will refer to the drug published.

(ii) Every thirty days after the publication of the first list under clause (i) the Secretry[1] shall revise the list to include each drug which has been approved for safety and effectiveness under subsection (c) of this section or approved under this subsection during the thirty-day period.

(iii) When patent information submitted under subsection (b) or (c) of this section respecting a drug included on the list is to be published by the Secretary[2] the Secretary shall, in revisions made under clause (ii), include such information for such drug.

(B) A drug approved for safety and effectiveness under subsection (c) of this section or approved under this subsection shall, for purposes of this subsection, be considered to have been published under subparagraph (A) on the date of its approval or September 24, 1984, whichever is later.

(C) If the approval of a drug was withdrawn or suspended for grounds described in the first sentence of subsection (e) of this section or was withdrawn or suspended under paragraph (5) or if the Secretary determines that a drug has been withdrawn from sale for safety or effectiveness reasons, it may not be published in the list under subparagraph (A) or, if the withdrawal or suspension occurred after its publication in such list, it shall be immediately removed from such list—

(i) for the same period as the withdrawal or suspension under subsection (e) of this section or paragraph (5), or

(ii) if the listed drug has been withdrawn from sale, for the period of withdrawal from sale or, if earlier, the period ending on the date the Secretary determines that the withdrawal from sale is not for safety or effectiveness reasons.

A notice of the removal shall be published in the Federal Register.

(7) For purposes of this subsection:

(A) The term "bioavailability" means the rate and extent to which the active ingredient or therapeutic ingredient is absorbed from a drug and becomes available at the site of drug action.

(B) A drug shall be considered to be bioequivalent to a listed drug if—

(i) the rate and extent of absorption of the drug do not show a significant difference from the rate and extent of absorption of the listed drug when administered at the same molar dose of the therapeutic ingredient under similar experimental conditions in either a single dose or multiple doses; or

(ii) the extent of absorption of the drug does not show a significant difference from the extent of absorption of the listed drug when administered at the same molar dose of the therapeutic ingredient under similar experimental conditions in either a single dose or multiple doses and the difference from the listed drug in the rate of absorption of the drug is intentional, is reflected in its proposed labeling, is not essential to the attainment of effective body drug concentrations on chronic use, and is considered medically insignificant for the drug.

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[1] So in original. Probably should be "Secretary".

[2] So in original. Probably should be followed by a comma.

(k) Records and reports; required information; regulations and orders; access to records

(1) In the case of any drug for which an approval of an application filed under subsection (b) or (j) of this section is in effect, the applicant shall establish and maintain such records, and make such reports to the Secretary, of data relating to clinical experience and other data or information, received or otherwise obtained by such applicant with respect to such drug, as the Secretary may by general regulation, or by order with respect to such application, prescribe on the basis of a finding that such records and reports are necessary in order to enable the Secretary to determine, or facilitate a determination, whether there is or may be ground for invoking subsection (e) of this section: *Provided, however,* That regulations and orders issued under this subsection and under subsection (i) of this section shall have due regard for the professional ethics of the medical profession and the interests of patients and shall provide, where the Secretary deems it to be appropriate, for the examination, upon request, by the persons to whom such regulations or orders are applicable, of similar information received or otherwise obtained by the Secretary.

(2) Every person required under this section to maintain records, and every person in charge or custody thereof, shall upon request of an officer or employee designated by the Secretary, permit such officer or employee at all reasonable times to have access to and copy and verify such records.

(*l*) Public disclosure of safety and effectiveness data

Safety and effectiveness data and information which has been submitted in an application under subsection (b) of this section for a drug and which has not previously been disclosed to the public shall be made available to the public, upon request, unless extraordinary circumstances are shown—

(1) if no work is being or will be undertaken to have the application approved,

(2) if the Secretary has determined that the application is not approvable and all legal appeals have been exhausted,

(3) if approval of the application under subsection (c) of this section is withdrawn and all legal appeals have been exhausted,

(4) if the Secretary has determined that such drug is not a new drug, or

(5) upon the effective date of the approval of the first application under subsection (j) of this section which refers to such drug or upon the date upon which the approval of an application under subsection (j) of this section which refers to such drug could be made effective if such an application had been submitted.

(m) "Patent" defined

For purposes of this section, the term "patent" means a patent issued by the Patent and Trademark Office of the Department of Commerce.

(As amended Sept. 24, 1984, Pub. L. 98-417, title I, §§ 101, 102(a)-(b)(5), 103, 104, 98 Stat. 1585, 1592, 1593, 1597.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-417, § 102(b)(1), added "or (j)" after "subsection (b)".

Subsec. (b). Pub. L. 98-417, §§ 102(a)(1), 103(a), designated existing provisions of subsec. (b) as par. (1) thereof and redesignated existing cls. (1) through (6) of such par. (1) as cls. (A) through (F) thereof, respectively, added requirement that the applicant file with the application the patent number and the expiration date of any patent which claims the drug for which the applicant submitted the application or which claims a method of using such drug and with respect to which a claim of patent infringement could reasonably by asserted if a person not licensed by the owner engaged in the manufacture, use, or sale of the drug, that the applicant amend the application to include such information if an application is filed under this subsection for a drug and a patent which claims such drug or a method of using such drug is issued after the filing date but before approval of the application, and that upon approval of the application, the Secretary publish the information submitted, and added pars. (2) and (3).

Subsec. (c). Pub. L. 98-417, §§ 102(a)(2), (b)(2), 103(b), designated existing provisions of subsec. (c) as par. (1) thereof and in par. (1) as so designated substituted "subsection (b) of this section" for "this subsection" and redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added pars. (2) and (3).

Subsec. (d)(6), (7). Pub. L. 98-417, § 102(a)(3)(A), added cl. (6) relating to the failure of the application to contain the patent information prescribed by subsec. (b) of this section, and redesignated former cl. (6) as (7).

Subsec. (e). Pub. L. 98-417, § 102(a)(3)(B), in the first sentence, added a new cl. (4) relating to the failure to file the patent information prescribed by subsec. (c) of this section within 30 days after the receipt of written notice from the Secretary specifying the failure to file such information, and redesignated former cl. (4) as (5).

Pub. L. 98-417, § 102(b)(3), (4), in the second sentence, inserted in the provisions preceding cl. (1) "submitted under subsection (b) or (j) of this section" and in cl. (1) substituted "under subsection (k) of this section or to comply with the notice requirements of section 360(k)(2) of this title" for "under subsection (j) of this section or to comply with the notice requirements of section 360(j)(2) of this title".

Subsec. (j). Pub. L. 98-417, § 101, added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 98-417, § 101, redesignated former subsec. (j) as (k).

Subsec. (k)(1). Pub. L. 98-417, § 102(b)(5), substituted "under subsection (b) or (j) of this section" for "pursuant to this section".

Subsecs. (*l*), (m). Pub. L. 98-417, § 104, added subsecs. (*l*) and (m).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 105 of Pub. L. 98-417 provided that:

"(a) The Secretary of Health and Human Services shall promulgate, in accordance with the notice and comment requirements of section 553 of title 5, United States Code, such regulations as may be necessary for the administration of section 505 of the Federal Food, Drug, and Cosmetic Act [this section], as amended by sections 101, 102, and 103 of this Act, within one year of the date of enactment of this Act [Sept. 24, 1984].

"(b) During the period beginning sixty days after the date of the enactment of this Act [Sept. 24, 1984], and ending on the date regulations promulgated under subsection (a) take effect, abbreviated new drug applications may be submitted in accordance with the provisions of section 314.2 of title 21 of the Code of Federal Regulations and shall be considered as suitable for any drug which has been approved for safety and effectiveness under section 505(c) of the Federal Food, Drug, and Cosmetic Act [subsec. (c) of this section] before the date of the enactment of this Act. If any such provision is inconsistent with the requirements of section 505(j) of the Federal Food, Drug, and Cosmetic Act, the Secretary shall consider the application under the applicable requirements of such section. The Secretary of Health and Human Services may not approve such an abbreviated new drug application which is filed for a drug which is described in sections 505(c)(3)(D) and 505(j)(4)(D) of the Federal Food, Drug, and Cosmetic Act, except in accordance with such section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 331, 333, 334, 353, 357, 360, 360b, 360j, 360aa to 360ee, 374, 381, 811, 827 of this title; title 26 section 28; title 28 section 2201; title 35 sections 155A, 156, 271; title 42 sections 236, 1395y.

PART B—DRUGS FOR RARE DISEASES OR CONDITIONS

§ 360bb. Designation of drugs for rare diseases or conditions

(a) Request by sponsor; preconditions; "rare disease or condition" defined

[See main edition for text of (1)]

(2) For purposes of paragraph (1), the term "rare disease or condition" means any disease or condition which (A) affects less than 200,000 persons in the United States, or (B) affects more than 200,000 in the United States and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date the request for designation of the drug under this subsection is made.

[See main edition for text of (b) and (c)]

(As amended Oct. 30, 1984, Pub. L. 98-551, § 4(a), 98 Stat. 2817.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-551 substituted "which (A) affects less than 200,000 persons in the United States, or (B) affects more than 200,000 in the United States and for which" for "which occurs so infrequently in the United States that".

§ 360cc. Protection for unpatented drugs for rare diseases or conditions

(a) Exclusive approval or license

Except as provided in subsection (b) of this section, if the Secretary—

(1) approves an application filed pursuant to section 355 of this title, or

(2) issues a license under section 262 of title 42,

for a drug designated under section 360bb of this title for a rare disease or condition and for which a United States Letter of Patent may not be issued, the Secretary may not approve another application under section 355 of this title or issue another license under section 262 of title 42 for such drug for such disease or condition for a person who is not the holder of such approved application or of such license until the expiration of seven years from the date of the approval of the approved application or the issuance of the license. Section 355(c)(2) of this title does not apply to the refusal to approve an application under the preceding sentence.

(b) Exception for unpatentable drugs

If an application filed pursuant to section 355 of this title is approved for a drug designated under section 360bb of this title for a rare disease or condition or a license is issued under section 262 of title 42 for such a drug and if a United States Letter of Patent may not be issued for the drug, the Secretary may, during the seven-year period beginning on the date of the application approval or of the issuance of the license, approve another application under section 355 of this title, or, if the drug is a biological product, issue a license under section 262 of title 42, for such drug for such disease or condition for a person who is not the holder of such approved application or of such license if—

[See main edition for text of (1) and (2)]

(As amended Sept. 24, 1984, Pub. L. 98-417, title I, § 102(b)(6), 98 Stat. 1593.)

AMENDMENTS

1984—Subsecs. (a), (b). Pub. L. 98-417 substituted "section 355" for "section 355(b)" wherever appearing.

§ 360ee. Grants and contracts for development of drugs for rare diseases and conditions

[See main edition for text of (a)]

(b) Definitions

For purposes of subsection (a) of this section:

[See main edition for text of (1)]

(2) The term "rare disease or condition" means any disease or condition which (A) affects less than 200,000 persons in the United States, or (B) affects more than 200,000 in the United States and for which there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date the request for designation of the drug under this subsection is made.

[See main edition for text of (c)]

(As amended Pub. L. 98-551, § 4(b), Oct. 30, 1984, 98 Stat. 2817.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-551 substituted "which (A) affects less than 200,000 persons in the United States, or (B) affects more than 200,000 in the

United States and for which" for "which occurs so infrequently in the United States that".

SUBCHAPTER VII—GENERAL ADMINISTRATIVE PROVISIONS

§ 374. Inspection

REFERENCES IN TEXT

Section 355(j) of this title, referred to in subsec. (a)(1), was redesignated section 355(k) of this title by Pub. L. 98-417, title I, § 101, Sept. 24, 1984, 98 Stat. 1585.

CHAPTER 10—POULTRY AND POULTRY PRODUCTS INSPECTION

§ 454. Federal and State cooperation in development and administration of State poultry product inspection programs

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Intrastate activities; designation of State for regulation; publication of designation; exempted operations; termination of designation; review of operations in nondesignated States; annual report

[*See main edition for text of* (*1*)]

(2) The provisions of this chapter requiring inspection of the slaughter of poultry and the processing of poultry products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments if such establishment are subject to such inspection provisions only under this paragraph (c). For the purposes of this subparagraph, operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares poultry products that are ready to eat when they leave such facility and are served in meals or as entrees only to customers at restaurants owned or operated by the same person owning or operating such facility: *Provided*, That such facility shall be subject to the provisions of section 460(b) of this title: *Provided further*, That the facility may be subject to the inspection requirements of this chapter for as long as the Secretary deems necessary, if the Secretary determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any of its poultry products are rendered adulterated.

[*See main edition for text of* (*3*) *and* (*4*); (*d*)]

(As amended Pub. L. 98-487, § 2, Oct. 17, 1984, 98 Stat. 2264.)

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-487 added provisions relating to operations conducted at a restaurant central kitchen facility.

CHAPTER 12—MEAT INSPECTION

SUBCHAPTER II—MEAT PROCESSORS AND RELATED INDUSTRIES

§ 642. Recordkeeping requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 645, 661, 678 of this title.

SUBCHAPTER III—FEDERAL AND STATE COOPERATION

§ 661. Federal and State cooperation

[*See main edition for text of* (*a*) *and* (*b*)]

(c) State meat inspection requirements

[*See main edition for text of* (*1*)]

(2) Exemptions of retail stores, restaurants, and similar retail-type establishments; operations conducted at a restaurant central kitchen facility

The provisions of this chapter requiring inspection of the slaughter of animals and the preparation of carcasses, parts thereof, meat and meat food products shall not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments if such establishments are subject to such inspection provisions only under this paragraph (c). For the purposes of this subparagraph, operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares meat or meat food products that are ready to eat when they leave such facility and are served in meals or as entrees only to customers at restaurants owned or operated by the same person, firm, or corporation owning or operating such facility: *Provided*, That such facility shall be subject to the provisions of section 642 of this title: *Provided further*, That the facility may be subject to the inspection requirements under subchapter I of this chapter for as long as the Secretary deems necessary, if the Secretary determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any of its meat or meat food products are rendered adulterated.

[*See main edition for text of* (*3*) *and* (*4*); (*d*)]

(As amended Oct. 17, 1984, Pub. L. 98-487, § 1, 98 Stat. 2264.)

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-487 added provisions relating to operations conducted at a restaurant central kitchen facility.

CHAPTER 13—DRUG ABUSE PREVENTION AND CONTROL

SUBCHAPTER I—CONTROL AND ENFORCEMENT

PART D—OFFENSES AND PENALTIES

Sec.
845a. Distribution in or near schools.
  (a) Penalty.
  (b) Second offenders.
  (c) Suspension of sentence; probation; parole.
853. Criminal forfeitures.
  (a) Property subject to criminal forfeiture.
  (b) Meaning of term "property".
  (c) Third party transfers.
  (d) Rebuttable presumption.
  (e) Protective orders.
  (f) Warrant of seizure.
  (g) Execution.
  (h) Disposition of property.
  (i) Authority of the Attorney General.
  (j) Applicability of civil forfeiture provisions.
  (k) Bar on intervention.
  (*l*) Jurisdiction to enter orders.
  (m) Depositions.
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  (*o*) Construction.
854. Investment of illicit drug profits.
  (a) Prohibition.
  (b) Penalty.
  (c) "Enterprise" defined.
  (d) Construction.
855. Alternative fine.

SUBCHAPTER II—IMPORT AND EXPORT

970. Criminal forfeitures.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 801a, 955b of this title; title 10 section 374; title 18 section 3582; title 22 sections 283s, 284k, 285p; title 28 section 524.

SUBCHAPTER I—CONTROL AND ENFORCEMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 951, 952, 958, 962, 965 of this title; title 18 sections 3142, 3554; title 28 section 524; title 40 section 304m; title 42 sections 242, 261.

PART A—INTRODUCTORY PROVISIONS

§ 801. Congressional findings and declarations: controlled substances

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-473, title II, § 501, Oct. 12, 1984, 98 Stat. 2068, provided that: "This chapter [chapter V, §§ 501 to 525 of Pub. L. 98-473, enacting section 845a of this title, amending sections 802, 811, 812, 822-824, 827, 841, 843, 845, 873, 881, 952, 953, 957, 958, 960, and 962 of this title, and enacting provisions set out as a note under this section] may be cited as the 'Controlled Substances Penalties Amendments Act of 1984'."

Pub. L. 98-473, title II, § 506(a), Oct. 12, 1984, 98 Stat. 2070, provided that: "This part [Part B of Chapter V, §§ 506 to 525, of Pub. L. 98-473, amending sections 802, 811, 812, 822-824, 827, 843, 873, 881, 952, 953, 957, and 958 of this title] may be cited as the 'Dangerous Drug Diversion Control Act of 1984'."

§ 802. Definitions

As used in this subchapter:

[*See main edition for text of* (*1*) *to* (*13*)]

(14) The term "isomer" means the optical isomer, except as used in schedule I(c) and schedule II(a)(4). As used in schedule I(c), the term "isomer" means the optical, positional, or geometric isomer. As used in schedule II(a)(4), the term "isomer" means the optical or geometric isomer.

(15) The term "manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of such substance or labeling or relabeling of its container; except that such term does not include the preparation, compounding, packaging, or labeling of a drug or other substance in conformity with applicable State or local law by a practitioner as an incident to his administration or dispensing of such drug or substance in the course of his professional practice. The term "manufacturer" means a person who manufactures a drug or other substance.

(16) The term "marihuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.

(17) The term "narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(A) Opium, opiates, derivatives of opium and opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation. Such term does not include the isoquinoline alkaloids of opium.

(B) Poppy straw and concentrate of poppy straw.

(C) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed.

(D) Cocaine, its salts, optical and geometric isomers, and salts of isomers.

(E) Ecgonine, its derivatives, their salts, isomers, and salts of isomers.

(F) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in subparagraphs (A) through (E).

(18) The term "opiate" means any drug or other substance having an addiction-forming or addiction-sustaining liability similar to mor-

phine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability.

(19) The term "opium poppy" means the plant of the species Papaver somniferum L., except the seed thereof.

(20) The term "poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(21) The term "practitioner" means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research.

(22) The term "production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(23) The term "immediate precursor" means a substance—

(A) which the Attorney General has found to be and by regulation designated as being the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;

(B) which is an immediate chemical intermediary used or likely to be used in the manufacture of such controlled substance; and

(C) the control of which is necessary to prevent, curtail, or limit the manufacture of such controlled substance.

(24) The term "Secretary", unless the context otherwise indicates, means the Secretary of Health and Human Services.

(25) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the Canal Zone.

(26) The term "ultimate user" means a person who has lawfully obtained, and who possesses, a controlled substance for his own use or for the use of a member of his household or for an animal owned by him or by a member of his household.

(27) The term "United States", when used in a geographic sense, means all places and waters, continental or insular, subject to the jurisdiction of the United States.

(28) The term "maintenance treatment" means the dispensing, for a period in excess of twenty-one days, of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drugs.

(29) The term "detoxification treatment" means the dispensing, for a period not in excess of one hundred and eighty days, of a narcotic drug in decreasing doses to an individual in order to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period.

(30) The term "Convention on Psychotropic Substances" means the Convention on Psychotropic Substances signed at Vienna, Austria, on February 21, 1971; and the term "Single Convention on Narcotic Drugs" means the Single Convention on Narcotic Drugs signed at New York, New York, on March 30, 1961.

(As amended Pub. L. 98-473, title II, § 507(a), (b), Oct. 12, 1984, 98 Stat. 2071; Pub. L. 98-509, title III, § 301(a), Oct. 19, 1984, 98 Stat. 2364.)

REFERENCES IN TEXT

Schedules I, II, III, IV, and V, referred to in pars. (6) and (14), are set out in section 812(c) of this title.

AMENDMENTS

1984—Pars. (14) to (16). Pub. L. 98-473, § 507(a), added par. (14) and redesignated former pars. (14) to (16) as (15) to (17), respectively.

Par. (17). Pub. L. 98-473, § 507, redesignated former par. (16) as (17), and in par. (17) as so redesignated, expanded and revised definition of "narcotic drug", including within term poppy straw, cocaine, and ecgonine. Former par. (17) redesignated (18).

Pars. (18) to (28). Pub. L. 98-473, § 507(a), redesignated former pars. (17) to (27) as (18) to (28), respectively.

Par. (29). Pub. L. 98-509 which directed the substitution of "one hundred and eighty" for "twenty-one" in par. (28), was executed to par. (29) in view of the redesignation of par. (28) as par. (29) by Pub. L. 98-473.

Pub. L. 98-473, § 507(a), redesignated former par. (28) as (29). Former par. (29) redesignated (30).

Par. (30). Pub. L. 98-473, § 507(a), redesignated former par. (29) as (30).

REGULATIONS

Section 301(b) of Pub. L. 98-509 provided that: "The Secretary of Health and Human Services shall, within ninety days of the date of the enactment of this Act [Oct. 19, 1984], promulgate regulations for the administration of section 102(28) of the Controlled Substances Act [21 U.S.C. 802(29)] as amended by subsection (a) and shall include in the first report submitted under section 505(b) of the Public Health Service Act [42 U.S.C. 290aa-4(b)] after the expiration of such ninety days the findings of the Secretary with respect to the effect of the amendment made by subsection (a)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 822, 951, 957, 967, 1115 of this title; title 18 sections 1791, 1952, 2118, 3142, 3563, 4251; title 19 sections 1584, 1607; title 28 section 2901; title 29 section 1111; title 42 sections 201, 3411; title 46 sections 7503, 7704; title 49 App. sections 787, 1401, 1429, 1472.

PART B—AUTHORITY TO CONTROL; STANDARDS AND SCHEDULES

§ 811. Authority and criteria for classification of substances

[See main edition for text of (a) *to* (*f*)*]*

(g) Exclusion of non-narcotic substances sold over the counter without a prescription; dextromethorphan; exemption of substances lacking abuse potential

[See main edition for text of (*1*) *and* (*2*)*]*

(3) The Attorney General may, by regulation, exempt any compound, mixture, or preparation containing a controlled substance from the application of all or any part of this subchapter if he finds such compound, mixture, or preparation meets the requirements of one of the following categories:

(A) A mixture, or preparation containing a nonnarcotic controlled substance, which mixture or preparation is approved for prescription use, and which contains one or more other active ingredients which are not listed in any schedule and which are included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse.

(B) A compound, mixture, or preparation which contains any controlled substance, which is not for administration to a human being or animal, and which is packaged in such form or concentration, or with adulterants or denaturants, so that as packaged it does not present any significant potential for abuse.

(h) Temporary scheduling to avoid imminent hazards to public safety

(1) If the Attorney General finds that the scheduling of a substance in schedule I on a temporary basis is necessary to avoid an imminent hazard to the public safety, he may, by order and without regard to the requirements of subsection (b) of this section relating to the Secretary of Health and Human Services, schedule such substance in schedule I if the substance is not listed in any other schedule in section 812 of this title or if no exemption or approval is in effect for the substance under section 505 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 355]. Such an order may not be issued before the expiration of thirty days from—

(A) the date of the publication by the Attorney General of a notice in the Federal Register of the intention to issue such order and the grounds upon which such order is to be issued, and

(B) the date the Attorney General has transmitted the notice required by paragraph (4).

(2) The scheduling of a substance under this subsection shall expire at the end of one year from the date of the issuance of the order scheduling such substance, except that the Attorney General may, during the pendency of proceedings under subsection (a)(1) of this section with respect to the substance, extend the temporary scheduling for up to six months.

(3) When issuing an order under paragraph (1), the Attorney General shall be required to consider, with respect to the finding of an imminent hazard to the public safety, only those factors set forth in paragraphs (4), (5), and (6) of subsection (c) of this section, including actual abuse, diversion from legitimate channels, and clandestine importation, manufacture, or distribution.

(4) The Attorney General shall transmit notice of an order proposed to be issued under paragraph (1) to the Secretary of Health and Human Services. In issuing an order under paragraph (1), the Attorney General shall take into consideration any comments submitted by the Secretary in response to a notice transmitted pursuant to this paragraph.

(5) An order issued under paragraph (1) with respect to a substance shall be vacated upon the conclusion of a subsequent rulemaking proceeding initiated under subsection (a) of this section with respect to such substance.

(6) An order issued under paragraph (1) is not subject to judicial review.

(As amended Pub. L. 98-473, title II, §§ 508, 509(a), Oct. 12, 1984, 98 Stat. 2071, 2072.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (c)(8), (d)(3), (4)(A), (B), and (g)(2), (3), was in the original "this title", meaning title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, and is popularly known as the "Controlled Substances Act". For complete classification of title II to the Code, see second paragraph of Short Title note set out under section 801 of this title and Tables.

Schedules I, IV, and V, referred to in subsecs. (d)(4)(A), (B), and (h)(1), are set out in section 812(c) of this title.

AMENDMENTS

1984—Subsec. (g)(3). Pub. L. 98-473, § 509(a), added par. (3).

Subsec. (h). Pub. L. 98-473, § 508, added subsec. (h).

§ 812. Schedules of controlled substances

[See main edition for text of (a) and (b)]

(c) Initial schedules of controlled substances

Schedules I, II, III, IV, and V shall, unless and until amended pursuant to section 811 of this title, consist of the following drugs or other substances, by whatever official name, common or usual name, chemical name, or brand name designated:

[See main edition for text of Schedule I]

SCHEDULE II

(a) Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

[See main edition for text of (1) to (3)]

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves (including cocaine and ecgonine and their salts, isomers, derivatives, and salts of isomers and derivatives), and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

[See main edition for text of (b) and (c); Schedules III to V]

(d) Repealed. Pub. L. 98-473, title II, § 509(b), Oct. 12, 1984, 98 Stat. 2072

(As amended Pub. L. 98-473, title II, §§ 507(c), 509(b), Oct. 12, 1984, 98 Stat. 2071, 2072.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-473, § 507(c), in schedule II(a)(4) added applicability to cocaine and ecgonine and their salts, isomers, etc.

Subsec. (d). Pub. L. 98-473, § 509(b), struck out subsec. (d), which related to authority of Attorney General to except stimulants or depressants containing active medicinal ingredients.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 811, 1115 of this title; title 10 section 912a; title 19 sections 2462, 2484, 2702.

PART C—REGISTRATION OF MANUFACTURERS, DISTRIBUTORS, AND DISPENSERS OF CONTROLLED SUBSTANCES

§ 822. Persons required to register

(a) Period of registration

(1) Every person who manufactures or distributes any controlled substance, or who proposes to engage in the manufacture or distribution of any controlled substance, shall obtain annually a registration issued by the Attorney General in accordance with the rules and regulations promulgated by him.

(2) Every person who dispenses, or who proposes to dispense, any controlled substance, shall obtain from the Attorney General a registration issued in accordance with the rules and regulations promulgated by him. The Attorney General shall, by regulation, determine the period of such registrations. In no event, however, shall such registrations be issued for less than one year nor for more than three years.

[*See main edition for text of* (*b*) *to* (*f*)]

(As amended Pub. L. 98-473, title II, § 510, Oct. 12, 1984, 98 Stat. 2072.)

REFERENCES IN TEXT

Section 802(25) of this title, referred to in subsec. (c)(3), was redesignated section 802(26) of this title by Pub. L. 98-473, title II, § 507(a), Oct. 12, 1984, 98 Stat. 2071.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473 designated existing provisions as par. (1) and, as so designated, struck out provisions relating to dispensing controlled substances, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 827, 828, 880, 958, 965 of this title; title 18 section 2118.

§ 823. Registration requirements

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Research by practitioners; pharmacies; research applications; construction of Article 7 of the Convention on Psychotropic Substances

The Attorney General shall register practitioners (including pharmacies, as distinguished from pharmacists) to dispense, or conduct research with, controlled substances in schedule II, III, IV, or V, if the applicant is authorized to dispense, or conduct research with respect to, controlled substances under the laws of the State in which he practices. The Attorney General may deny an application for such registration if he determines that the issuance of such registration would be inconsistent with the public interest. In determining the public interest, the following factors shall be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

Separate registration under this part for practitioners engaging in research with controlled substances in schedule II, III, IV, or V, who are already registered under this part in another capacity, shall not be required. Registration applications by practitioners wishing to conduct research with controlled substances in schedule I shall be referred to the Secretary, who shall determine the qualifications and competency of each practitioner requesting registration, as well as the merits of the research protocol. The Secretary, in determining the merits of each research protocol, shall consult with the Attorney General as to effective procedures to adequately safeguard against diversion of such controlled substances from legitimate medical or scientific use. Registration for the purpose of bona fide research with controlled substances in schedule I by a practitioner deemed qualified by the Secretary may be denied by the Attorney General only on a ground specified in section 824(a) of this title. Article 7 of the Convention on Psychotropic Substances shall not be construed to prohibit, or impose additional restrictions upon, research involving drugs or other substances scheduled under the convention which is conducted in conformity with this subsection and other applicable provisions of this subchapter.

[*See main edition for text of* (*g*)]

(As amended Pub. L. 98-473, title II, § 511, Oct. 12, 1984, 98 Stat. 2073.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-473 amended subsec. generally, substituting provisions relating to registration authority of Attorney General respecting dispensation or conduct of research with controlled research, and separate authority of Secretary respecting registration, for provisions relating to general registration requirements respecting dispensation or conduct of research with controlled or nonnarcotic controlled substances.

§ 824. Denial, revocation, or suspension of registration

(a) Grounds

A registration pursuant to section 823 of this title to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the Attorney General upon a finding that the registrant—

(1) has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance;

(3) has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation, or denial of his registration recommended by competent State authority; or

(4) has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section.

A registration pursuant to section 823(g) of this title to dispense a narcotic drug for maintenance treatment or detoxification treatment may be suspended or revoked by the Attorney General upon a finding that the registrant has failed to comply with any standard referred to in section 823(g) of this title.

[*See main edition for text of* (*b*) *to* (*e*)]

(f) Disposition of controlled substances

In the event the Attorney General suspends or revokes a registration granted under section 823 of this title, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may, in the discretion of the Attorney General, be placed under seal. No disposition may be made of any controlled substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded except that a court, upon application therefor, may at any time order the sale of perishable controlled substances. Any such order shall require the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances (or proceeds of sale deposited in court) shall be forfeited to the United States; and the Attorney General shall dispose of such controlled substances in accordance with section 881(e) of this title. All right, title, and interest in such controlled substances shall vest in the United States upon a revocation order becoming final.

(g) Seizure or placement under seal of controlled substances

The Attorney General may, in his discretion, seize or place under seal any controlled substances owned or possessed by a registrant whose registration has expired or who has ceased to practice or do business in the manner contemplated by his registration. Such controlled substances shall be held for the benefit of the registrant, or his successor in interest. The Attorney General shall notify a registrant, or his successor in interest, who has any controlled substance seized or placed under seal of the procedures to be followed to secure the return of the controlled substance and the conditions under which it will be returned. The Attorney General may not dispose of any controlled substance seized or placed under seal under this subsection until the expiration of one hundred and eighty days from the date such substance was seized or placed under seal.

(As amended Pub. L. 98-473, title II, §§ 304, 512, 513, Oct. 12, 1984, 98 Stat. 2050, 2073.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-473, § 512(1), added provisions relating to suspension, etc., recommended by competent State authority.

Subsec. (a)(4). Pub. L. 98-473, § 512(2), added par. (4).

Subsec. (f). Pub. L. 98-473, § 304, added provisions relating to vesting of right, title, and interest in the United States.

Subsec. (g). Pub. L. 98-473, § 513, added subsec. (g).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 823, 842 of this title.

§ 827. Records and reports of registrants

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Nonapplicability

The foregoing provisions of this section shall not apply—

(1)(A) to the prescribing of controlled substances in schedule II, III, IV, or V by practitioners acting in the lawful course of their professional practice unless such substance is prescribed in the course of maintenance or detoxification treatment of an individual; or

(B) to the administering of a controlled substance in schedule II, III, IV, or V unless the practitioner regularly engages in the dispensing or administering of controlled substances and charges his patients, either separately or together with charges for other professional services, for substances so dispensed or administered or unless such substance is administered in the course of maintenance treatment or detoxification treatment of an individual;

[*See main edition for text of* (*2*) *and* (*3*)]

Nothing in the Convention on Psychotropic Substances shall be construed as superseding or otherwise affecting the provisions of paragraph (1)(B), (2), or (3) of this subsection.

[*See main edition for text of* (*d*) *to* (*f*)]

(g) Change of address

Every registrant under this subchapter shall be required to report any change of professional or business address in such manner as the Attorney General shall by regulation require.

(As amended Pub. L. 98-473, title II, §§ 514, 515, Oct. 12, 1984, 98 Stat. 2074.)

AMENDMENTS

1984—Subsec. (c)(1)(A). Pub. L. 98-473, § 514(a), substituted "to the prescribing of controlled substances in schedule II, III, IV, or V by practitioners acting in the lawful course of their professional practice unless such substance is prescribed in the course of maintenance or detoxification treatment of an individual" for "with respect to any narcotic controlled substance in schedule II, III, IV, or V, to the prescribing or administering of such substance by a practitioner in the lawful course of his professional practice unless such substance was prescribed or administered in the course of maintenance treatment or detoxification treatment of an individual".

Subsec. (c)(1)(B). Pub. L. 98-473, § 514(b), substituted "to the administering of a controlled substance in schedule II, III, IV, or V unless the practitioner regularly engages in the dispensing or administering of controlled substances and charges his patients, either separately or together with charges for other professional services, for substances so dispensed or administered or unless such substance is administered in the course of maintenance treatment or detoxification treatment of an individual" for "with respect to nonnarcotic controlled substances in schedule II, III, IV, or V, to any practitioner who dispenses such substances to his patients, unless the practitioner is regularly engaged in charging his patients, either separately or together with charges for other professional services, for substances so dispensed".

Subsec. (g). Pub. L. 98-473, § 515, added subsec. (g).

§ 830. Piperidine reporting

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 842, 843 of this title.

PART D—OFFENSES AND PENALTIES

§ 841. Prohibited acts A

[*See main edition for text of* (*a*)]

(b) Penalties

Except as otherwise provided in section 845 or 845a of this title, any person who violates subsection (a) of this section shall be sentenced as follows:

(1)(A) In the case of a violation of subsection (a) of this section involving—

(i) 100 grams or more of a controlled substance in schedule I or II which is a mixture or substance containing a detectable amount of a narcotic drug other than a narcotic drug consisting of—

(I) coca leaves;

(II) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

(III) a substance chemically identical thereto;

(ii) a kilogram or more of any other controlled substance in schedule I or II which is a narcotic drug;

(iii) 500 grams or more of phencyclidine (PCP); or

(iv) 5 grams or more of lysergic acid diethylamide (LSD);

such person shall be sentenced to a term of imprisonment of not more than 20 years, a fine of not more than $250,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 40 years, a fine of not more than $500,000, or both [1]

(B) In the case of a controlled substance in schedule I or II except as provided in subparagraphs (A) and (C),,[2] such person shall be sentenced to a term of imprisonment of not more than 15 years, a fine of not more than $125,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 30 years, a fine of not more than $250,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 3 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 6 years in addition to such term of imprisonment.

(C) In the case of less than 50 kilograms of marihuana, 10 kilograms of hashish, or one kilogram of hashish oil or in the case of any controlled substance in schedule III, such person shall, except as provided in paragraphs (4) and (5) of this subsection, be sentenced to a term of imprisonment of not more than 5 years, a fine of not more than $50,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 10 years, a fine of not more than $100,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 4 years in addition to such term of imprisonment.

(2) In the case of a controlled substance in schedule IV, such person shall be sentenced to a term of imprisonment of not more than 3 years, a fine of not more than $25,000, or both. If any person commits such a violation after one or more prior convictions of him for an offense punishable under this paragraph, or for a felony under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, mari-

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[1] So in original. Probably should be followed by a period.

[2] So in original.

huana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 6 years, a fine of not more than $50,000, or both. Any sentence imposing a term of imprisonment under this paragraph shall, in the absence of such a prior conviction, impose a special parole term of at least one year in addition to such term of imprisonment and shall, if there was such a prior conviction, impose a special parole term of at least 2 years in addition to such term of imprisonment.

(3) In the case of a controlled substance in schedule V, such person shall be sentenced to a term of imprisonment of not more than one year, a fine of not more than $10,000, or both. If any person commits such a violation after one or more convictions of him for an offense punishable under this paragraph, or for a crime under any other provision of this subchapter or subchapter II of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant substances, have become final, such person shall be sentenced to a term of imprisonment of not more than 2 years, a fine of not more than $20,000, or both.

(4) Notwithstanding paragraph (1)(C) of this subsection, any person who violates subsection (a) of this section by distributing a small amount of marihuana for no remuneration shall be treated as provided in subsections (a) and (b) of section 844 of this title.

(5) Notwithstanding paragraph (1), any person who violates subsection (a) of this section by cultivating a controlled substance on Federal property shall be fined not more than—

(A) $500,000 if such person is an individual; and

(B) $1,000,000 if such person is not an individual.

(c) Special parole term

A special parole term imposed under this section or section 845 845a [3] of this title may be revoked if its terms and conditions are violated. In such circumstances the original term of imprisonment shall be increased by the period of the special parole term and the resulting new term of imprisonment shall not be diminished by the time which was spent on special parole. A person whose special parole term has been revoked may be required to serve all or part of the remainder of the new term of imprisonment. A special parole term provided for in this section or section 845 845a [3] of this title shall be in addition to, and not in lieu of, any other parole provided for by law.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-473, title II, §§ 502, 503(b)(1), (2), Oct. 12, 1984, 98 Stat. 2068, 2070.)

AMENDMENT OF SUBSECTION (b) AND REPEAL OF SUBSECTION (c)

Pub. L. 98-473, title II, §§ 224(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2030, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended as follows:

(1) in subsection (b)(1)(A), by deleting the last sentence;

(2) in subsection (b)(1)(B), by deleting the last sentence;

(3) in subsection (b)(2), by deleting the last sentence;

(4) in subsection (b)(4), by deleting "subsections (a) and (b) of", and by adding "and section 3607 of title 18" after "844 of this title";

(5) in subsection (b)(5), by deleting the last sentence; and

(6) by repealing subsection (c).

[*These prospective amendments apparently do not reflect the amendment of this section by section 502(1)(A), (5), (6) of Pub. L. 98-473, which redesignated subsection (b)(1)(A) and (B) as (b)(1)(B) and (C), respectively, added a new subsection (b)(1)(A), repealed subsection (b)(5), and added a new subsection (b)(5).*]

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (b)(1) to (3), and (d), was in the original "this title", meaning title II of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1242, as amended, and is popularly known as the "Controlled Substances Act". For complete classification of title II to the Code, see second paragraph of Short Title note set out under section 801 of this title and Tables.

Schedules I, II, III, and IV, referred to in subsec. (b), are set out in section 812(c) of this title.

Subchapter II of this chapter, referred to in subsec. (b)(1) to (3), was in the original "title III", meaning title III of Pub. L. 91-513, Oct. 27, 1970, 84 Stat. 1285. Part A of title III comprises subchapter II of this chapter. For classification of Part B, consisting of sections 1101 to 1105 of title III, see Tables.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-473, § 503(b)(1), added reference to section 845a of this title in provisions preceding par. (1)(A).

Subsec. (b)(1)(A). Pub. L. 98-473, § 502(1)(A), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (b)(1)(B). Pub. L. 98-473, § 502(1)(A), (B), redesignated former subpar. (A) as (B), and in subpar. (B) as so redesignated, substituted "except as provided in subparagraphs (A) and (C)," for "which is a narcotic drug", "$125,000" for "$25,000", and "$250,000" for "$50,000", and added references to laws of a State and a foreign country. Former subpar. (B) redesignated (C).

Subsec. (b)(1)(C). Pub. L. 98-473, § 502(1)(A), (C), redesignated former subpar. (B) as (C), and in subpar. (C) as so redesignated, substituted "less than 50 kilograms of marihuana, 10 kilograms of hashish, or one kilogram of hashish oil" for "a controlled substance in schedule I or II which is not a narcotic drug", "and (5)" for ", (5), and (6)", "$50,000" for "$15,000", and "$100,000" for "$30,000", and added references to laws of a State and a foreign country.

Subsec. (b)(2). Pub. L. 98-473, § 502(2), substituted "$25,000" for "$10,000" and "$50,000" for "$20,000", and added references to laws of a State or of a foreign country.

Subsec. (b)(3). Pub. L. 98-473, § 502(3), substituted "$10,000" for "$5,000" and "$20,000" for "$10,000", and added references to laws of a State or of a foreign country.

Subsec. (b)(4). Pub. L. 98-473, § 502(4), substituted "(1)(C)" for "(1)(B)".

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[3] So in original. Probably should be "or 845a".

Subsec. (b)(5). Pub. L. 98-473, § 502(5), (6), added par. (5), and struck out former par. (5) which related to penalties for manufacturing, etc., phencyclidine.

Subsec. (b)(6). Pub. L. 98-473, § 502(5), struck out par. (6) which related to penalties for violations involving a quantity of marihuana exceeding 1,000 pounds.

Subsec. (c). Pub. L. 98-473, § 503(b)(2), added reference to section 845a of this title in two places.

Section Referred to in Other Sections

This section is referred to in sections 830, 845, 845a of this title; title 18 sections 5032, 5038; title 28 section 994.

§ 843. Prohibited acts C

(a) Unlawful acts

It shall be unlawful for any person knowingly or intentionally—

[*See main edition for text of* (*1*)]

(2) to use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, expired, or issued to another person.[4]

[*See main edition for text of* (*3*) *to* (*5*); (*b*) *and* (*c*)]

(As amended Pub. L. 98-473, title II, § 516, Oct. 12, 1984, 98 Stat. 2074.)

Amendments

1984—Subsec. (a)(2). Pub. L. 98-473 added applicability to dispensing, acquiring, or obtaining a controlled substance, and applicability to an expired number.

§ 844. Simple possession

Amendment of Section

Pub. L. 98-473, title II, §§ 219, 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended by striking out the subsection "(a)" designation, and by striking out subsection (b).

Section Referred to in Other Sections

This section is referred to in sections 841, 885 of this title; title 18 section 3607.

§ 845. Distribution to persons under age twenty-one

(a) First offense

Except as provided in section 845a of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age is (except as provided in subsection (b) of this section) punishable by (1) a term of imprisonment, or a fine, or both, up to twice that authorized by section 841(b) of this title, and (2) at least twice any special parole term authorized by section 841(b) of this title, for a first offense involving the same controlled substance and schedule.

(b) Second or subsequent offense

Except as provided in section 845a of this title, any person at least eighteen years of age who violates section 841(a)(1) of this title by distributing a controlled substance to a person under twenty-one years of age after a prior conviction or convictions under subsection (a) of this section (or under section 333(b) of this title as in effect prior to May 1, 1971) have become final, is punishable by (1) a term of imprisonment, or a fine, or both, up to three times that authorized by section 841(b) of this title, and (2) at least three times any special parole term authorized by section 841(b) of this title, for a second or subsequent offense involving the same controlled substance and schedule.

(As amended Pub. L. 98-473, title II, § 503(b)(3), Oct. 12, 1984, 98 Stat. 2070.)

Amendment of Section

Pub. L. 98-473, title II, §§ 224(b), 235(a)(1), Oct. 12, 1984, 98 Stat. 2030, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended as follows:

(1) in subsection (a), by deleting "(1)" the second place it appears, and by deleting ", and (2) at least twice any special parole term authorized by section 841(b) of this title, for a first offense involving the same controlled substance and schedule"; and

(2) in subsection (b), by deleting "(1)" the second place it appears, and by deleting ", and (2) at least three times any special parole term authorized by section 841(b) of this title, for a second or subsequent offense involving the same controlled substance and schedule".

Amendments

1984—Subsecs. (a), (b). Pub. L. 98-473 substituted "Except as provided in section 845a of this title, any" for "Any".

§ 845a. Distribution in or near schools

(a) Penalty

Any person who violates section 841(a)(1) of this title by distributing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school is (except as provided in subsection (b) of this section) punishable (1) by a term of imprisonment, or fine, or both up to twice that authorized by section 841(b) of this title; and (2) at least twice any special parole term authorized by section 841(b) of this title for a first offense involving the same controlled substance and schedule.

(b) Second offenders

Any person who violates section 841(a)(1) of this title by distributing a controlled substance in or on, or within one thousand feet of, the real property comprising a public or private elementary or secondary school after a prior conviction or convictions under subsection (a) of this section have become final is punishable (1) by a term of imprisonment of not less than three years and not more than life imprisonment and (2) at least three times any special term authorized by section 841(b) of this title for a second or subsequent offense involving the same controlled substance and schedule.

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[4] So in original. The period probably should be a semicolon.

(c) Suspension of sentence; probation; parole

In the case of any sentence imposed under subsection (b) of this section, imposition or execution of such sentence shall not be suspended and probation shall not be granted. An individual convicted under subsection (b) of this section shall not be eligible for parole under section 4202 of title 18[5] until the individual has served the minimum sentence required by such subsection.

(Pub. L. 91-513, title II, § 405A, as added Pub. L. 98-473, title II, § 503(a), Oct. 12, 1984, 98 Stat. 2069.)

REFERENCES IN TEXT

Section 4202 of title 18, referred to in subsec. (c), which related to eligibility of prisoners for parole at the time of enactment of this chapter, was repealed and a new section 4202 enacted as part of the repeal and enactment of a new chapter 311 (§ 4201 et seq.) of Title 18, Crimes and Criminal Procedure, by Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 219. For provisions relating to the eligibility of prisoners for parole, see section 4205 of Title 18. Pub. L. 98-473, title II, §§ 218(a)(5), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), chapter 311 of Title 18 is repealed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 841, 845 of this title.

§ 848. Continuing criminal enterprise

(a) Penalties; forfeitures

Any person who engages in a continuing criminal enterprise shall be sentenced to a term of imprisonment which may not be less than 10 years and which may be up to life imprisonment, to a fine of not more than $100,000, and to the forfeiture prescribed in section 853 of this title; except that if any person engages in such activity after one or more prior convictions of him under this section have become final, he shall be sentenced to a term of imprisonment which may not be less than 20 years and which may be up to life imprisonment, to a fine of not more than $200,000, and to the forfeiture prescribed in section 853 of this title.

[*See main edition for text of* (*b*)]

(c) Suspension of sentence and probation prohibited

In the case of any sentence imposed under this section, imposition or execution of such sentence shall not be suspended, probation shall not be granted, and section 4202[5] of title 18 and the Act of July 15, 1932 (D.C. Code, secs. 24-203—24-207), shall not apply.

(d) Repealed. Pub. L. 98-473, title II, § 305(b), Oct. 12, 1984, 98 Stat. 2050

(As amended Pub. L. 98-473, title II, § 305, Oct. 12, 1984, 98 Stat. 2050.)

AMENDMENT OF SUBSECTION (c)

Pub. L. 98-473, title II, §§ 224(c), 235(a)(1), Oct. 12, 1984, 98 Stat. 2030, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subsection (c) of this section is amended by striking out "and section 4202 of title 18".

REFERENCES IN TEXT

Section 4202 of title 18, referred to in subsec. (c), which related to eligibility of prisoners for parole at the time of enactment of this section, was repealed and a new section 4202 enacted as part of the repeal and enactment of a new chapter 311 (§ 4201 et seq.) of Title 18, Crimes and Criminal Procedure, by Pub. L. 94-233, § 2, Mar. 15, 1976, 90 Stat. 219. For provisions relating to the eligibility of prisoners for parole, see section 4205 of Title 18. Pub. L. 98-473, title II, §§ 218(a)(5), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), chapter 311 of title 18 is repealed.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473, § 305, struck out par. (1) designation, substituted references to section 853 of this title for references to paragraph (2) in two places, and struck out par. (2) which related to forfeitures to the United States by any person convicted under par. (1).

Subsec. (d). Pub. L. 98-473, § 305(b), struck out subsec. (d) relating to jurisdiction of courts of the United States.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 853 of this title.

§ 849. Dangerous special drug offender sentencing

REPEAL OF SECTION

Pub. L. 98-473, title II, §§ 219(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2027, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is repealed.

§ 853. Criminal forfeitures

(a) Property subject to criminal forfeiture

Any person convicted of a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year shall forfeit to the United States, irrespective of any provision of State law—

(1) any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation;

(2) any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, such violation; and

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[5] See References in Text note below.

(3) in the case of a person convicted of engaging in a continuing criminal enterprise in violation of section 848 of this title, the person shall forfeit, in addition to any property described in paragraph (1) or (2), any of his interest in, claims against, and property or contractual rights affording a source of control over, the continuing criminal enterprise.

The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to this subchapter or subchapter II of this chapter, that the person forfeit to the United States all property described in this subsection. In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(b) Meaning of term "property"

Property subject to criminal forfeiture under this section includes—

(1) real property, including things growing on, affixed to, and found in land; and

(2) tangible and intangible personal property, including rights, privileges, interests, claims, and securities.

(c) Third party transfers

All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (*o*)[6] of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(d) Rebuttable presumption

There is a rebuttable presumption at trial that any property of a person convicted of a felony under this subchapter or subchapter II of this chapter is subject to forfeiture under this section if the United States establishes by a preponderance of the evidence that—

(1) such property was acquired by such person during the period of the violation of this subchapter or subchapter II of this chapter or within a reasonable time after such period; and

(2) there was no likely source for such property other than the violation of this subchapter or subchapter II of this chapter.

(e) Protective orders

(1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section—

(A) upon the filing of an indictment or information charging a violation of this subchapter or subchapter II of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or

(B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that—

(i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered:

Provided, however, That an order entered pursuant to subparagraph (B) shall be effective for not more than ninety days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(f) Warrant of seizure

The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (f) of this section[6] may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

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[6] See References in Text note below.

(g) Execution

Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(h) Disposition of property

Following the seizure of property ordered forfeited under this section, the Attorney General shall direct the disposition of the property by sale or any other commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or a person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(i) Authority of the Attorney General

With respect to property ordered forfeited under this section, the Attorney General is authorized to—

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter,[7] or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) compromise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, in accordance with the provisions of section 881(e) of this title, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(j) Applicability of civil forfeiture provisions

Except to the extent that they are inconsistent with the provisions of this section, the provisions of section 881(d) of this title shall apply to a criminal forfeiture under this section.

(k) Bar on intervention

Except as provided in subsection (*o*)[7] of this title, no party claiming an interest in property subject to forfeiture under this section may—

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(*l*) Jurisdiction to enter orders

The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(m) Depositions

In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(n) Third party interests

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within thirty days

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[7] See References in Text note below.

of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within thirty days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that—

(A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or

(B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(*o*) Construction

The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(Pub. L. 91-513, title II, § 413, as added and amended Pub. L. 98-473, title II, §§ 303, 2301(d)-(f), Oct. 12, 1984, 98 Stat. 2044, 2192, 2193.)

References in Text

Subsecs. (*o*) and (f) of this section, referred to in subsecs. (c), (f), and (k), were redesignated as subsecs. (n) and (e) of this section, respectively by Pub. L. 98-473, title II, § 2301(e)(2), Oct. 12, 1984, 98 Stat. 2193. See 1984 Amendment note below.

The Federal Rules of Evidence, referred to in subsec. (e)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

This chapter, referred to in subsec. (i), probably should have been a reference to "this title", meaning title II of Pub. L. 91-513, which is classified to this subchapter. See section 970 of this title for applicability of this section to a violation of subchapter II of this chapter.

The Federal Rules of Criminal Procedure, referred to in subsec. (m), are set out in the Appendix to Title 18, Crimes and Criminal Procedure.

Amendments

1984—Subsec. (a). Pub. L. 98-473, § 2301(d), added "In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds."

Subsec. (d). Pub. L. 98-473, § 2301(e), struck out subsec. (d) which related to forfeiture of property other than that described in subsec. (a) and the conditions therefor, and redesignated former subsec. (e) as (d).

Subsecs. (e) to (p). Pub. L. 98-473, § 2301(e)(2), which directed that this section be amended by redesignating subsecs. (e), (f), (g), (h), (i), (*l*), (m), (n), (*o*), and (p) as subsecs. (d), (e), (f), (g), (h), (i), (j), (h), (*l*), (m), (n), and (*o*), respectively, was executed by redesignating subsecs. (e) to (p) as (d) to (*o*), respectively, to give effect to the probable intent of Congress.

Subsec. (n)(1). Pub. L. 98-473, § 2013(f), struck out "for at least seven successive court days" after "to dispose of the property".

Section Referred to in Other Sections

This section is referred to in sections 848, 970 of this title; title 18 section 3554.

§ 854. Investment of illicit drug profits

(a) Prohibition

It shall be unlawful for any person who has received any income derived, directly or indirectly, from a violation of this subchapter or subchapter II of this chapter punishable by imprisonment for more than one year in which such person has participated as a principal within the meaning of section 2 of title 18, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect interstate or foreign commerce. A purchase of securities on the open market for purposes of investment, and without the intention of controlling or participating in the control of the issuer, or of assisting another to do so, shall not be unlawful under this section if the securities of the issuer held by the purchaser, the members of his immediate family, and his or their accomplices in any violation of this subchapter or subchapter II of this chapter after such purchase do not amount in the aggregate to 1 per centum of the outstanding securities of any one class, and do not confer, either in law or in fact, the power to elect one or more directors of the issuer.

(b) Penalty

Whoever violates this section shall be fined not more than $50,000 or imprisoned not more than ten years, or both.

(c) "Enterprise" defined

As used in this section, the term "enterprise" includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity.

(d) Construction

The provisions of this section shall be liberally construed to effectuate its remedial purposes.

(Pub. L. 91-513, title II, § 414, as added Pub. L. 98-473, title II, § 303, Oct. 12, 1984, 98 Stat. 2049.)

§ 855. Alternative fine

In lieu of a fine otherwise authorized by this part, a defendant who derives profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(Pub. L. 91-513, title II, § 415, as added Pub. L. 98-473, title II, § 2302, Oct. 12, 1984, 98 Stat. 2193.)

PART E—ADMINISTRATIVE AND ENFORCEMENT PROVISIONS

§ 873. Cooperative arrangements

(a) Cooperation of Attorney General with local, State, and Federal agencies

The Attorney General shall cooperate with local, State, and Federal agencies concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he is authorized to—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) maintain in the Department of Justice a unit which will accept, catalog, file, and otherwise utilize all information and statistics, including records of controlled substance abusers and other controlled substance law offenders, which may be received from Federal, State, and local agencies, and make such information available for Federal, State, and local law enforcement purposes;

(5) conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substances may be extracted; and

(6) assist State and local governments in suppressing the diversion of controlled substances from legitimate medical, scientific, and commercial channels by—

(A) making periodic assessments of the capabilities of State and local governments to adequately control the diversion of controlled substances;

(B) providing advice and counsel to State and local governments on the methods by which such governments may strengthen their controls against diversion; and

(C) establishing cooperative investigative efforts to control diversion.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Grants by Attorney General

(1) The Attorney General may make grants, in accordance with paragraph (2), to State and local governments to assist in meeting the costs of—

(A) collecting and analyzing data on the diversion of controlled substances,

(B) conducting investigations and prosecutions of such diversions,

(C) improving regulatory controls and other authorities to control such diversions,

(D) programs to prevent such diversions,

(E) preventing and detecting forged prescriptions, and

(F) training law enforcement and regulatory personnel to improve the control of such diversions.

(2) No grant may be made under paragraph (1) unless an application therefor is submitted to the Attorney General in such form and manner as the Attorney General may prescribe. No grant may exceed 80 per centum of the costs for which the grant is made, and no grant may be made unless the recipient of the grant provides assurances satisfactory to the Attorney General that it will obligate funds to meet the remaining 20 per centum of such costs. The Attorney General shall review the activities carried out with grants under paragraph (1) and shall report annually to Congress on such activities.

(3) To carry out this subsection there is authorized to be appropriated $6,000,000 for fiscal year 1985 and $6,000,000 for fiscal year 1986.

(As amended Pub. L. 98-473, title II, § 517, Oct. 12, 1984, 98 Stat. 2074.)

AMENDMENTS

1984—Subsec. (a)(6). Pub. L. 98-473, § 517(a), added par. (6).

Subsec. (d). Pub. L. 98-473, § 517(b), added subsec. (d).

§ 881. Forfeitures

(a) Subject property

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

[*See main edition for text of* (*1*) *to* (*6*)]

(7) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment, except that no property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by that owner to have been committed or omit-

ted without the knowledge or consent of that owner.

(8) All controlled substances which have been possessed in violation of this subchapter.

(b) Seizure pursuant to Supplemental Rules for Certain Admiralty and Maritime Claims

Any property subject to civil or criminal forfeiture to the United States under this subchapter may be seized by the Attorney General upon process issued pursuant to the Supplemental Rules for Certain Admiralty and Maritime Claims by any district court of the United States having jurisdiction over the property, except that seizure without such process may be made when—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) the Attorney General has probable cause to believe that the property is subject to civil or criminal forfeiture under this subchapter.

In the event of seizure pursuant to paragraph (3) or (4) of this subsection, proceedings under subsection (d) of this section shall be instituted promptly.

(c) Custody of Attorney General

Property taken or detained under this section shall not be repleviable, but shall be deemed to be in the custody of the Attorney General, subject only to the orders and decrees of the court or the official having jurisdiction thereof. Whenever property is seized under any of the provisions of this subchapter, the Attorney General may—

(1) place the property under seal;

(2) remove the property to a place designated by him; or

(3) require that the General Services Administration take custody of the property and remove it, if practicable, to an appropriate location for disposition in accordance with law.

(d) Other laws and proceedings applicable

The provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property or the proceeds from the sale thereof; the remission or mitigation of such forfeitures; and the compromise of claims shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this subchapter, insofar as applicable and not inconsistent with the provisions hereof; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this subchapter by such officers, agents, or other persons as may be authorized or designated for that purpose by the Attorney General, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer.

(e) Disposition of forfeited property

Whenever property is civilly or criminally forfeited under this subchapter the Attorney General may—

(1) retain the property for official use or transfer the custody or ownership of any forfeited property to any Federal, State, or local agency pursuant to section 1616 of title 19;

(2) sell any forfeited property which is not required to be destroyed by law and which is not harmful to the public;

(3) require that the General Services Administration take custody of the property and dispose of it in accordance with law; or

[*See main edition for text of* (*4*)]

The Attorney General shall ensure the equitable transfer pursuant to paragraph (1) of any forfeited property to the appropriate State or local law enforcement agency so as to reflect generally the contribution of any such agency participating directly in any of the acts which led to the seizure or forfeiture of such property. A decision by the Attorney General pursuant to paragraph (1) shall not be subject to review. The proceeds from any sale under paragraph (2) and any moneys forfeited under this subchapter shall be used to pay all proper expenses of the proceedings for forfeiture and sale including expenses of seizure, maintenance of custody, advertising, and court costs. The Attorney General shall forward to the Treasurer of the United States for deposit in accordance with section 524(c) of title 28 any amounts of such moneys and proceeds remaining after payment of such expenses.

[*See main edition for text of* (*f*) *and* (*g*)]

(h) Vesting of title in United States

All right, title, and interest in property described in subsection (a) of this section shall vest in the United States upon commission of the act giving rise to forfeiture under this section.

(i) Stay of civil forfeiture proceedings

The filing of an indictment or information alleging a violation of this subchapter or subchapter II of this chapter which is also related to a civil forfeiture proceeding under this section shall, upon motion of the United States and for good cause shown, stay the civil forfeiture proceeding.

(j) Venue

In addition to the venue provided for in section 1395 of title 28 or any other provision of law, in the case of property of a defendant charged with a violation that is the basis for forfeiture of the property under this section, a proceeding for forfeiture under this section may be brought in the judicial district in which the defendant owning such property is found or in the judicial district in which the criminal prosecution is brought.

(As amended Pub. L. 98-473, title II, §§ 306, 309, 518, Oct. 12, 1984, 98 Stat. 2050, 2051, 2075.)

AMENDMENTS

1984—Subsec. (a)(7). Pub. L. 98-473, § 306(a), added par. (7).

Subsec. (a)(8). Pub. L. 98-473, § 518, added par. (8).

Subsec. (b). Pub. L. 98-473, § 306(b)(1), added "civil or criminal" after "property subject to".

Subsec. (b)(4). Pub. L. 98-473, § 306(b)(2), substituted "is subject to civil or criminal forfeiture under" for "has been used or is intended to be used in violation of".

Subsec. (c). Pub. L. 98-473, § 306(c)(1), in provisions preceding par. (1), added "any of" after "seized under".

Subsec. (c)(3). Pub. L. 98-473, § 306(c)(2), added ", if practicable," after "remove it".

Subsec. (d). Pub. L. 98-473, § 306(d), added "any of" after "incurred, under".

Subsec. (e). Pub. L. 98-473, §§ 306(e), 309, added "civilly or criminally" after "Whenever property is" and in provisions preceding par. (1), added provisions relating to transfer of custody or ownership of forfeited property in par. (1), substituted "and dispose of it" for "and remove it for disposition" in par. (3), and, in provisions following par. (4), added sentence requiring the Attorney General to ensure equitable transfer of any forfeited property, and substituted "accordance with section 524(c) of title 28" for "the general fund of the United States Treasury".

Subsecs. (h) to (j). Pub. L. 98-473, § 306(f), added subsecs. (h) to (j).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 824, 842, 853, 955d, 958, 965 of this title.

SUBCHAPTER II—IMPORT AND EXPORT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 381, 824, 828, 830, 841, 842, 843, 844, 848, 849, 850, 853, 854, 881 of this title; title 10 section 374; title 18 sections 3142, 3554; title 28 section 524; title 42 section 242.

§ 952. Importation of controlled substances

(a) Controlled substances in schedule I or II and narcotic drugs in schedule III, IV, or V; exceptions

It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any controlled substance in schedule I or II of subchapter I of this chapter, or any narcotic drug in schedule III, IV, or V of subchapter I of this chapter, except that—

(1) such amounts of crude opium, poppy straw, concentrate of poppy straw, and coca leaves as the Attorney General finds to be necessary to provide for medical, scientific, or other legitimate purposes, and

(2) such amounts of any controlled substance in schedule I or II or any narcotic drug in schedule III, IV, or V that the Attorney General finds to be necessary to provide for the medical, scientific, or other legitimate needs of the United States—

(A) during an emergency in which domestic supplies of such substance or drug are found by the Attorney General to be inadequate,

(B) in any case in which the Attorney General finds that competition among domestic manufacturers of the controlled substance is inadequate and will not be rendered adequate by the registration of additional manufacturers under section 823 of this title, or

(C) in any case in which the Attorney General finds that such controlled substance is in limited quantities exclusively for scientific, analytical, or research uses,

may be so imported under such regulations as the Attorney General shall prescribe. No crude opium may be so imported for the purpose of manufacturing heroin or smoking opium.

(b) Nonnarcotic controlled substances in schedule III, IV, or V

It shall be unlawful to import into the customs territory of the United States from any place outside thereof (but within the United States), or to import into the United States from any place outside thereof, any nonnarcotic controlled substance in schedule III, IV, or V, unless such nonnarcotic controlled substance—

(1) is imported for medical, scientific, or other legitimate uses, and

(2) is imported pursuant to such notification, or declaration, or in the case of any nonnarcotic controlled substance in schedule III, such import permit, notification, or declaration, as the Attorney General may by regulation prescribe, except that if a nonnarcotic controlled substance in schedule IV or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-473, title II, §§ 519-521, Oct. 12, 1984, 98 Stat. 2075.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-473, § 519, amended par. (1) generally adding references to poppy straw and concentrate of poppy straw.

Subsec. (a)(2)(C). Pub. L. 98-473, § 520, added subpar. (C).

Subsec. (b)(2). Pub. L. 98-473, § 521, substituted "is imported pursuant to such notification, or declaration, or in the case of any nonnarcotic controlled substance in schedule III, such import permit, notification, or declaration, as the Attorney General may by regulation prescribe, except that if a nonnarcotic controlled substance in schedule IV or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention" for "is imported pursuant to such notification or declaration requirements as the Attorney General may by regulation prescribe, except that if a nonnarcotic controlled substance in schedule III, IV, or V is also listed in schedule I or II of the Convention on Psychotropic Substances it shall be imported pursuant to such import permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 954, 956, 958, 960 of this title; title 18 sections 5032, 5038; title 28 section 994.

§ 953. Exportation of controlled substances

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Nonnarcotic controlled substances in schedule III or IV; controlled substances in schedule V

It shall be unlawful to export from the United States to any other country any nonnarcotic controlled substance in schedule III or IV or any controlled substances in schedule V unless—

(1) there is furnished (before export) to the Attorney General documentary proof that importation is not contrary to the laws or regulations of the country of destination for consumption for medical, scientific, or other legitimate purposes;

(2) it is exported pursuant to such notification or declaration, or in the case of any nonnarcotic controlled substance in schedule III, such export permit, notification, or declaration as the Attorney General may by regulation prescribe; and

(3) in the case of a nonnarcotic controlled substance in schedule IV or V which is also listed in schedule I or II of the Convention on Psychotropic Substances, it is exported pursuant to such export permit requirements, prescribed by regulation of the Attorney General, as are required by the Convention.

(As amended Pub. L. 98-473, title II, § 522, Oct. 12, 1984, 98 Stat. 2076.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-473 in cl. (1) added provisions for consumption for medical, etc., purposes, added cls. (2) and (3), and struck out former cls. (2) to (4), respectively, relating to a special controlled substance invoice, two additional copies of the invoice, and exportation of a nonnarcotic controlled substance in schedule III, IV, or V, also listed in schedule I or II of the Convention.

§ 955. Possession on board vessels, etc., arriving in or departing from United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 956, 960 of this title; title 18 sections 5032, 5038; title 28 section 994.

§ 955a. Manufacture, distribution, or possession with intent to manufacture or distribute controlled substances on board vessels

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 955b, 955c, 955d of this title; title 18 section 3142; title 28 section 994.

§ 955b. Definitions

As used in sections 955a to 955d of this title—

[See main edition for text of (a) and (b)]

(c) "Vessel of the United States" means any vessel documented under the laws of the United States, or numbered as provided by chapter 123 of title 46, or owned in whole or in part by the United States or a citizen of the United States, or a corporation created under the laws of the United States, or any State, Territory, District, Commonwealth, or possession thereof, unless the vessel has been granted nationality by a foreign nation in accordance with article 5 of the Convention on the High Seas, 1958.

[See main edition for text of (d) and (e); credits]

CODIFICATION

In subsec. (c), "chapter 123 of title 46" was substituted for "the Federal Boat Safety Act of 1971, as amended [46 U.S.C. 1451 et seq.]" on authority of Pub. L. 98-89, § 2(b), Aug. 26, 1983, 97 Stat. 598, section 1 of which enacted Title 46, Shipping.

§ 957. Persons required to register

(a) Coverage

No person may—

[See main edition for text of (1)]

(2) export from the United States any controlled substance in schedule I, II, III, IV, or V,

unless there is in effect with respect to such person a registration issued by the Attorney General under section 958 of this title, or unless such person is exempt from registration under subsection (b) of this section.

[See main edition for text of (b)]

(As amended Pub. L. 98-473, title II, § 523, Oct. 12, 1984, 98 Stat. 2076.)

REFERENCES IN TEXT

Schedules I, II, III, IV, and V, referred to in subsec. (a)(2), are set out in section 812(c) of this title.

Section 802(25) of this title, referred to in subsec. (b)(1)(C), was redesignated section 802(26) of this title by Pub. L. 98-473, title II, § 507(a), Oct. 12, 1984, 98 Stat. 2071.

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-473 added reference to schedule V.

§ 958. Registration requirements

[See main edition for text of (a)]

(b) Activity limited to specified substances

Registration granted under this section shall not entitle a registrant to import or export controlled substances other than specified in the registration.

[See main edition for text of (c)]

(d) Denial of application

(1) The Attorney General may deny an application for registration under subsection (a) of this section if he is unable to determine that such registration is consistent with the public interest (as defined in subsection (a) of this section) and with the United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

(2) The Attorney General may deny an application for registration under subsection (c) of this section, or revoke or suspend a registration under subsection (a) or (c) of this section, if he determines that such registration is inconsistent with the public interest (as defined in subsection (a) or (c) of this section) or with the United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

(3) The Attorney General may limit the revocation or suspension of a registration to the particular controlled substance, or substances, with respect to which grounds for revocation or suspension exist.

(4) Before taking action pursuant to this subsection, the Attorney General shall serve upon the applicant or registrant an order to show cause as to why the registration should not be denied, revoked, or suspended. The order to show cause shall contain a statement of the basis thereof and shall call upon the applicant or registrant to appear before the Attorney General, or his designee, at a time and place stated in the order, but in no event less than thirty days after the date of receipt of the order. Proceedings to deny, revoke, or suspend shall be conducted pursuant to this subsection in accordance with subchapter II of chapter 5 of title 5. Such proceedings shall be independent of, and not in lieu of, criminal prosecutions or other proceedings under this subchapter or any other law of the United States.

(5) The Attorney General may, in his discretion, suspend any registration simultaneously with the institution of proceedings under this subsection, in cases where he finds that there is an imminent danger to the public health and safety. Such suspension shall continue in effect until the conclusion of such proceedings, including judicial review thereof, unless sooner withdrawn by the Attorney General or dissolved by a court of competent jurisdiction.

(6) In the event that the Attorney General suspends or revokes a registration granted under this section, all controlled substances owned or possessed by the registrant pursuant to such registration at the time of suspension or the effective date of the revocation order, as the case may be, may, in the discretion of the Attorney General, be seized or placed under seal. No disposition may be made of any controlled substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded, except that a court, upon application therefor, may at any time order the sale of perishable controlled substances. Any such order shall require the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all such controlled substances (or proceeds of the sale thereof which have been deposited with the court) shall be forfeited to the United States; and the Attorney General shall dispose of such controlled substances in accordance with section 881(e) of this title.

(e) Registration period

No registration shall be issued under this subchapter for a period in excess of one year. Unless the regulations of the Attorney General otherwise provide, section[2] 822(f), 825, and 827 of this title shall apply to persons registered under this section to the same extent such sections apply to persons registered under section 823 of this title.

(f) Rules and regulations

The Attorney General is authorized to promulgate rules and regulations and to charge reasonable fees relating to the registration of importers and exporters of controlled substances under this section.

(g) Scope of authorized activity

Persons registered by the Attorney General under this section to import or export controlled substances may import or export (and for the purpose of so importing or exporting, may possess) such substances to the extent authorized by their registration and in conformity with the other provisions of this subchapter and subchapter I of this chapter.

(h) Separate registrations for each principal place of business

A separate registration shall be required at each principal place of business where the applicant imports or exports controlled substances.

(i) Emergency situations

Except in emergency situations as described in section 952(a)(2)(A) of this title, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a regulation under section 952(a) of this title authorizing the importation of such a substance, the Attorney General shall give manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

(As amended Pub. L. 98–473, title II, §§ 524, 525, Oct. 12, 1984, 98 Stat. 2076.)

REFERENCES IN TEXT

Schedules I, II, III, IV, and V, referred to in subsecs. (a), (c), and (i), are set out in section 812(c) of this title.

This subchapter, referred to in subsecs. (d)(4) and (g), was in the original "this title", meaning title III of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1285, as amended. Part A of title III comprises this subchapter. For classification of Part B, consisting of sections 1101 to 1105 of title III, see Tables.

CODIFICATION

In subsecs. (a) and (d), "May 1, 1971" was substituted for "the effective date of this section" and "the effective date of this part", respectively.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–473, § 524, substituted "Registration granted under this section shall not entitle a registrant to import or export controlled substances other than specified in the registration" for "Registration granted under subsection (a) of this section shall not entitle a registrant to import or export controlled substances in schedule I or II other than those specified in the registration".

Subsecs. (d) to (i). Pub. L. 98–473, § 525, added subsec. (d), redesignated former subsec. (d) as (e), and in subsec. (e), as so redesignated, struck out reference to section 824 of this title, and redesignated former subsecs. (e) to (h) as (f) to (i), respectively.

§ 959. Manufacture or distribution for purposes of unlawful importation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 960 of this title; title 18 sections 5032, 5038; title 28 section 994.

§ 960. Prohibited acts A

[*See main edition for text of* (*a*)]

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[2] So in original. Probably should be "sections".

(b) Penalties

(1) In the case of a violation under subsection (a) of this section involving—

(A) 100 grams or more of a mixture or substance containing a detectable amount of a narcotic drug in schedule I or II other than a narcotic drug consisting of—

(i) coca leaves;

(ii) a compound, manufacture, salt, derivative, or preparation of coca leaves; or

(iii) a substance chemically identical thereto;

(B) a kilogram or more of any other narcotic drug in schedule I or II;

(C) 500 grams or more of phencyclidine (PCP);

(D) 5 grams or more of lysergic acid diethylamide (LSD);

the person committing such violation shall be imprisoned for not more than twenty years, or fined not more than $250,000, or both.

(2) In the case of a violation under subsection (a) of this section with respect to a controlled substance in schedule I or II, the person committing such violation shall, except as provided in paragraphs (1) and (3), be imprisoned not more than fifteen years, or fined not more than $125,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall include a special parole term of not less than three years in addition to such term of imprisonment.

(3) In the case of a violation under subsection (a) of this section with respect to less than 50 kilograms of marihuana, less than 10 kilograms of hashish, less than one kilogram of hashish oil, or any quantity of a controlled substance in schedule III, IV, or V, the person committing such violation shall, except as provided in paragraph (4)[3] be imprisoned not more than five years, or be fined not more than $50,000, or both. If a sentence under this paragraph provides for imprisonment, the sentence shall, in addition to such term of imprisonment, include (A) a special parole term of not less than two years if such controlled substance is in schedule I, II, III, or (B) a special parole term of not less than one year if such controlled substance is in schedule IV.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-473, title II, § 504, Oct. 12, 1984, 98 Stat. 2070.)

AMENDMENT OF SUBSECTION (b) AND REPEAL OF SUBSECTION (c)

Pub. L. 98-473, title II, §§ 225(a), 235(a)(1), Oct. 12, 1984, 98 Stat. 2030, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), this section is amended as follows:

(1) in subsection (b)(1), by deleting the last sentence;

(2) in subsection (b)(2), by deleting the last sentence; and

(3) by repealing susection (c).

[*These prospective amendments apparently do not reflect the amendment of this section by section 504(1), of Pub. L. 98-473, which redesignated subsection (b)(1) and (2) as (b)(2) and (3), respectively, and added a new subsection (b)(1).*]

REFERENCES IN TEXT

Schedules I, II, III, IV, and V, referred to in subsec. (b), are set out in section 812(c) of this title.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-473, § 504(1), added par. (1). Former par. (1) redesignated (2).

Subsec. (b)(2). Pub. L. 98-473, § 504(1), (2), redesignated former par. (1) as (2) and in par. (2), as so redesignated, added provisions excepting pars. (1) and (3), and substituted reference to controlled substance for reference to narcotic drug, and "$125,000" for "$25,000". Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 98-473, § 504(1), (3), redesignated former par. (2) as (3) and in par. (3), as so redesignated, substituted "less than 50 kilograms of marihuana, less than 10 kilograms of hashish, less than one kilogram of hashish oil, or any quantity of a controlled substance in schedule III, IV, or V, the person committing such violation shall, except as provided in paragraph (4)" for "a controlled substance other than a narcotic drug in schedule I or II, the person committing such violation shall", and "$50,000" for "$15,000".

§ 962. Second or subsequent offenses

[*See main edition for text of* (*a*)]

(b) Determination of status

For purposes of this section, a person shall be considered convicted of a second or subsequent offense if, prior to the commission of such offense, one or more prior convictions of him for a felony under any provision of this subchapter or subchapter I of this chapter or other law of a State, the United States, or a foreign country relating to narcotic drugs, marihuana, or depressant or stimulant drugs, have become final.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-473, title II, § 505, Oct. 12, 1984, 98 Stat. 2070.)

AMENDMENT OF SUBSECTION (a)

Pub. L. 98-473, title II, §§ 225(b), 235(a)(1), Oct. 12, 1984, 98 Stat. 2030, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subsection (a) of this section is amended by striking out the last sentence.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-473, § 505, added references to laws of a State or of a foreign country..

§ 970. Criminal forfeitures

Section 853 of this title, relating to criminal forfeitures, shall apply in every respect to a violation of this subchapter punishable by imprisonment for more than one year.

(Pub. L. 91-513, title III, § 1017, as added Pub. L. 98-473, title II, § 307, Oct. 12, 1984, 98 Stat. 2051.)

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[3] So in original. Probably should be followed by a comma.

CHAPTER 16—DRUG ABUSE PREVENTION, TREATMENT, AND REHABILITATION

SUBCHAPTER II—DRUG ABUSE POLICY COORDINATION

Sec.
1117 to 1155. Repealed or Omitted.

SUBCHAPTER III—NATIONAL DRUG ABUSE STRATEGY

1161 to 1165. Repealed.

SUBCHAPTER IV—OTHER FEDERAL PROGRAMS

1172. Repealed.
1173. Transferred and Omitted.
1174, 1175. Transferred.
1180. Transferred.

SUBCHAPTER V—NATIONAL INSTITUTE ON DRUG ABUSE

1191 to 1193. Transferred.
1194. Repealed.

Chapter Referred to in Other Sections

This chapter is referred to in title 7 section 2012; title 38 section 4134.

SUBCHAPTER II—DRUG ABUSE POLICY COORDINATION

§ 1111. Concentration of Federal effort

[See main edition for text of (a) to (c)]

(d) Support to National Drug Enforcement Policy Board

One of the duties of the White House Office of Drug Abuse Policy shall be to insure coordination between the National Drug Enforcement Policy Board and the health issues associated with drug abuse.

(As amended Pub. L. 98-473, title II, § 1306, Oct. 12, 1984, 98 Stat. 2170.)

Amendments

1984—Subsec. (d). Pub. L. 98-473 added subsec. (d).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-473, effective January 20, 1985, see section 1307 of Pub. L. 98-473, set out as an Effective Date note under section 1201 of this title.

§ 1117. Repealed. Pub. L. 98-24, § 4(b), Apr. 26, 1983, 97 Stat. 183

Section, Pub. L. 92-255, title II, § 207, as added Pub. L. 96-181, § 4, Jan. 2, 1980, 93 Stat. 1311, required the President to make annual reports to the Congress on the drug abuse prevention activities under this subchapter. See section 290aa-4 of Title 42, The Public Health and Welfare.

SUBCHAPTER III—NATIONAL DRUG ABUSE STRATEGY

§§ 1161 to 1165. Repealed. Pub. L. 98-509, title III, § 301(d), Oct. 19, 1984, 98 Stat. 2364

Section 1161, Pub. L. 92-255, title III, § 301, Mar. 21, 1972, 86 Stat. 74, related to the development, and initial promulgation no later than nine months after Mar. 21, 1972, by the President, of a national drug abuse strategy.

Section 1162, Pub. L. 92-255, title III, § 302, Mar. 21, 1972, 86 Stat. 75; Pub. L. 94-237, § 4(c)(2), (3), (5)(A), Mar. 19, 1976, 90 Stat. 244; Pub. L. 96-181, § 5(a), (b), Jan. 2, 1980, 93 Stat. 1311; Pub. L. 97-35, title IX, § 973(b), Aug. 13, 1981, 95 Stat. 598, related to the establishment and membership of a Strategy Council, interim provision of services by the Director, and review and commentary on the national drug abuse strategy by those Federal officials participating in its preparation.

Section 1163, Pub. L. 92-255, title III, § 303, Mar. 21, 1972, 86 Stat. 75, related to the contents of the national drug abuse strategy.

Section 1164, Pub. L. 92-255, title III, § 304, Mar. 21, 1972, 86 Stat. 75; Pub. L. 94-237, § 4(c)(4), Mar. 19, 1976, 90 Stat. 244; Pub. L. 96-181, § 5(c), Jan. 2, 1980, 93 Stat. 1311, related to the preparation of the national drug abuse strategy.

Section 1165, Pub. L. 92-255, title III, § 305, Mar. 21, 1972, 86 Stat. 75; Pub. L. 94-237, § 5, Mar. 19, 1976, 90 Stat. 244; Pub. L. 98-24, § 4(a), Apr. 26, 1983, 97 Stat. 183, related to the submission by the President to the Congress, on or before Aug. 1, 1984, and every two years thereafter, of a written report describing the national drug abuse strategy, and prescribed the contents of the report.

SUBCHAPTER IV—OTHER FEDERAL PROGRAMS

§ 1172. Repealed. Pub. L. 98-24, § 2(c)(2), Apr. 26, 1983, 97 Stat. 182

Section, Pub. L. 92-255, title IV, § 405, Mar. 21, 1972, 86 Stat. 77; Pub. L. 95-461, § 3(b), Oct. 14, 1978, 92 Stat. 1268; Pub. L. 97-35, title IX, § 973(c)(1), Aug. 13, 1981, 95 Stat. 598, required that the Secretary of Health and Human Services make periodic reports to the Congress and to the President on drug abuse in the United States. See section 290aa-4 of Title 42, The Public Health and Welfare.

§ 1173. Transferred and omitted

Section, Pub. L. 92-255, title IV, § 406, Mar. 21, 1972, 86 Stat. 78; Pub. L. 97-35, title IX, § 968(a), Aug. 13, 1981, 95 Stat. 595, established additional drug abuse prevention functions of the Secretary of Health and Human Services.

Subsec. (a) was redesignated as section 503(e) of the Public Health Service Act by Pub. L. 98-24, § 2(b)(5), Apr. 26, 1983, 97 Stat. 177, and is classified to section 290aa-2(e) of Title 42, The Public Health and Welfare.

Subsec. (b), which directed that the Secretary carry out his functions under subsec. (a) of this section through the National Institute on Drug Abuse, was omitted.

§§ 1174, 1175. Transferred

Section 1174, Pub. L. 92-255, title IV, § 407, Mar. 21, 1972, 86 Stat. 78; Pub. L. 94-237, § 6(a), Mar. 19, 1976, 90 Stat. 244; Pub. L. 94-581, title I, § 111(c)(2), Oct. 21, 1976, 90 Stat. 2852, which prohibited discrimination against drug abusers by general hospitals, was redesignated section 526 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(16)(B), Apr. 26, 1983, 97 Stat. 182, and is classified to section 290ee-2 of Title 42, The Public Health and Welfare.

Section 1175, Pub. L. 92-255, title IV, § 408, Mar. 21, 1972, 86 Stat. 79; Pub. L. 93-282, title III, § 303(a), (b), May 14, 1974, 88 Stat. 137, 138; Pub. L. 94-237, § 4(c)(5)(A), (B), Mar. 19, 1976, 90 Stat. 244; Pub. L. 94-581, title I, § 111(c)(3), Oct. 21, 1976, 90 Stat. 2852; Pub. L. 97-35, title IX, § 973(d), Aug. 13, 1981, 95 Stat. 598, which related to the confidentiality of patients' records, was redesignated section 527 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(16)(B), Apr. 26, 1983, 97 Stat. 182, and is classified to section 290ee-3 of Title 42.

§ 1177. Special project grants and contracts

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Programs and projects aimed at underserved groups; encouragement and special consideration given to applications

The Secretary shall encourage the submission of and give special consideration to applications under this section to programs and projects aimed at underserved populations such as racial and ethnic minorities, Native Americans (including Native Hawaiians and Native American Pacific Islanders), youth, the elderly, women, handicapped individuals, and families of drug abusers.

[*See main edition for text of* (*e*) *to* (*g*)]

(As amended Pub. L. 98-24, § 5(a)(3), Apr. 26, 1983, 97 Stat. 183.)

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-24 substituted "Native Americans (including Native Hawaiians and Native American Pacific Islanders)" for "native Americans".

§ 1180. Transferred

Section, Pub. L. 92-255, title IV, § 413, Mar. 21, 1972, 86 Stat. 84; Pub. L. 96-181, § 8(a), (b)(1), Jan. 2, 1980, 93 Stat. 1313, 1314; Pub. L. 97-35, title IX, § 973(e), Aug. 13, 1981, 95 Stat. 598, which related to drug abuse among government and other employees, was redesignated section 525 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(16)(A), Apr. 26, 1983, 97 Stat. 182, and is classifed to section 290ee-1 of Title 42, The Public Health and Welfare.

§ 1181. Contract authority

REFERENCES IN TEXT

Subchapter V of this chapter, referred to in text, consisted of sections 501 to 504 of title V of Pub. L. 92-255, Mar. 21, 1972, 86 Stat. 85, which were classified to sections 1191 to 1194 of this title, respectively. Sections 501 to 503 were made part of the Public Health Service Act by Pub. L. 98-24, § 2(b)(4), (11), (15), Apr. 26, 1983, 97 Stat. 177, 180, 181, and were transferred to sections 290aa-2, 290ee, and 290cc, respectively, of Title 42, The Public Health and Welfare. Section 504 was repealed by Pub. L. 98-24, § 2(c)(2).

SUBCHAPTER V—NATIONAL INSTITUTE ON DRUG ABUSE

§§ 1191 to 1193. Transferred

Section 1191, Pub. L. 92-255, title V, § 501, Mar. 21, 1972, 86 Stat. 85; Pub. L. 93-282, title II, § 204, May 14, 1974, 88 Stat. 136; Pub. L. 94-237, § 12(a), Mar. 19, 1976, 90 Stat. 247; Pub. L. 96-181, § 10, Jan. 2, 1980, 93 Stat. 1314; Pub. L. 97-35, title IX, § 973(f), Aug. 13, 1981, 95 Stat. 598, which established the National Institute on Drug Abuse, was redesignated section 503(a)-(d) of the Public Health Service Act by Pub. L. 98-24, § 2(b)(4), Apr. 26, 1983, 97 Stat. 177, and is classified to section 290aa-2(a)-(d) of Title 42, The Public Health and Welfare.

Section 1192, Pub. L. 92-255, title V, § 502, as added Pub. L. 94-237, § 12(b)(1), Mar. 19, 1976, 90 Stat. 247, and amended Pub. L. 95-461, § 5, Oct. 14, 1978, 92 Stat. 1269; Pub. L. 96-181, § 11, Jan. 2, 1980, 93 Stat. 1315, which related to the coordination, information, assistance, and assignment activities and services, was redesignated section 524 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(15), Apr. 26, 1983, 97 Stat. 181, and is classified to section 290ee of Title 42.

Section 1193, Pub. L. 92-255, title V, § 503, as added Pub. L. 94-237, § 13(a), Mar. 19, 1976, 90 Stat. 248, and amended Pub. L. 95-461, § 2(c), Oct. 14, 1978, 92 Stat. 1268; Pub. L. 96-181, § 12, Jan. 2, 1980, 93 Stat. 1315; Pub. L. 97-35, title IX, § 972(a), (b), Aug. 13, 1981, 95 Stat. 597, which related to research and development functions, was redesignated section 515 of the Public Health Service Act by Pub. L. 98-24, § 2(b)(11), Apr. 26, 1983, 97 Stat. 180, and is classified to section 290cc of Title 42.

PRIOR PROVISIONS

A prior section 502 of Pub. L. 92-255, Mar. 21, 1972, 86 Stat. 85, amended section 217 of the Public Health Service Act by adding subsec. (e) [section 218(e) of Title 42, The Public Health and Welfare], and amended section 266 of the Community Mental Health Centers Act [former section 2688t of Title 42].

§ 1194. Repealed. Pub. L. 98-24, § 2(c)(2), Apr. 26, 1983, 97 Stat. 182

Section, Pub. L. 92-255, title V, § 504, as added Pub. L. 95-461, § 6(b)(1), Oct. 14, 1978, 92 Stat. 1270, related to review by the Secretary of programs and activities. See section 290aa-5 of Title 42, The Public Health and Welfare.

CHAPTER 17—NATIONAL DRUG ENFORCEMENT POLICY

Sec.
1201. Congressional findings and declaration of purpose.
1202. National Drug Enforcement Policy Board.
1203. Responsibilities and functions of National Drug Enforcement Policy Board.
    (a) Coordination of operations and policy.
    (b) Duties of Chairman.
    (c) Authority of Chairman.
    (d) Non-interference with operations of other agencies.
    (e) Administrative support services.
1204. Reports to Congress.

§ 1201. Congressional findings and declaration of purpose

(a) The Congress hereby makes the following findings:

(1) The flow of illegal narcotics into the United States is a major and growing problem.

(2) The problem of illegal drug activity falls across the entire spectrum of Federal activities both nationally and internationally.

(3) Illegal drug trafficking is estimated by the General Accounting Office to be an $80,000,000,000 per annum industry in the United States.

(4) The annual consumption of drugs has reached epidemic proportions.

(5) Despite the efforts of the United States Government and other nations, the mechanisms for smuggling opium and other hard drugs into the United States remain virtually intact and United States agencies estimate that they are able to interdict no more than 5 to 15 percent of all hard drugs flowing into the country.

(6) Such significant indicators of the drug problem as drug-related deaths, emergency room visits, hospital admissions due to drug-

related incidents, and addiction rates are soaring.

(7) Increased drug trafficking is strongly linked to violent, addiction-related crime and recent studies have shown that over 90 percent of heroin users rely upon criminal activity as a means of income.

(8) Much of the drug trafficking is handled by syndicates, a situation which results in increased violence and criminal activity because of the competitive struggle for control of the domestic drug market.

(9) Controlling the supply of illicit drugs is a key to reducing the crime epidemic confronting every region of the country.

(10) The magnitude and scope of the problem requires the establishment of a National Drug Enforcement Policy Board, chaired by the Attorney General, to facilitate coordination of all Federal efforts by relevant agencies.

(11) Such a Board must have responsibility for coordinating the operations of Federal agencies involved in attacking this problem through the development of policy and resources, so that a unified and efficient effort can be undertaken.

(b) It is the purpose of this chapter to insure—[1]

(1) the maintenance of a national and international effort against illegal drugs;

(2) that the activities of the Federal agencies involved are fully coordinated; and

(3) that a single, competent, and responsible high-level Board of the United States Government, chaired by the Attorney General, will be charged with this responsibility of coordinating United States policy with respect to national and international drug law enforcement.

(Pub. L. 98-473, title II, § 1302, Oct. 12, 1984, 98 Stat. 2168.)

EFFECTIVE DATE

Section 1307 of chapter XIII (§§ 1301 to 1307) of title II of Pub. L. 98-473 provided that: "This chapter and the amendments made by this chapter [enacting this chapter and amending section 1111 of this title] shall take effect January 20, 1985."

SHORT TITLE

Section 1301 of chapter XIII (§§ 1301 to 1307) of title II of Pub. L. 98-473 provided that: "This chapter [enacting this chapter and amending section 1111 of this title] may be cited as the 'National Narcotics Act of 1984'."

§ 1202. National Drug Enforcement Policy Board

There is established in the executive branch of the Government a Board to be known as the "National Drug Enforcement Policy Board" (hereinafter in this chapter referred to as the "Board"). There shall be at the head of the Board a chairman who shall be the Attorney General (hereinafter in this chapter referred to as the "Chairman"). In addition to the Chairman, the Board shall be comprised of the Secretaries of State, Treasury, Defense, Transportation, Health and Human Services, the Director of the Office of Management and Budget, and the Director of Central Intelligence and such other officials as may be appointed by the President. Decisions made by the Board pursuant to section 1203(a) of this title shall be acknowledged by each member thereof in writing.

(Pub. L. 98-473, title II, § 1303, Oct. 12, 1984, 98 Stat. 2168.)

CODIFICATION

Section 1203(a) of this title, referred to in text, was in the original "section 4(a) of this Act" and was translated as reading section 1304(a) of this Act to reflect the probable intent of Congress, in view of the fact that Pub. L. 98-473 did not contain a section 4.

§ 1203. Responsibilities and functions of National Drug Enforcement Policy Board

(a) Coordination of operations and policy

The Board shall facilitate coordination of United States operations and policy on illegal drug law enforcement. In the furtherance of that responsibility, the Board shall have the responsibility, and is authorized to—

(1) review, evaluate and develop United States Government policy, strategy and resources with respect to illegal drug law enforcement efforts, including budgetary priorities and a National and International Drug Law Enforcement Strategy;

(2) facilitate coordination of all United States Government efforts to halt national and international trafficking in illegal drugs; and

(3) coordinate the collection and evaluation of information necessary to implement United States policy with respect to illegal drug law enforcement.

(b) Duties of Chairman

For the purpose of coordinating the activities of the several departments and agencies with responsibility for drug law enforcement and implementing the determinations of the Board, it shall be the duty of the Chairman—

(1) to advise the Board in matters concerning drug law enforcement;

(2) to make recommendations to the Board for the coordination of drug enforcement activities;

(3) to correlate and evaluate intelligence and other information on drug law enforcement to support the activities of the Board;

(4) to act as primary adviser to the President and Congress on national and international illegal drug law enforcement programs and policies developed by the Board under subsection (a) of this section and the implementation thereof; and

(5) to perform such other duties as the President may direct.

(c) Authority of Chairman

In carrying out responsibilities under this section, the Chairman, on behalf of the Board, is authorized to—

(1) direct, with the concurrence of the head of the agency employing such personnel, the assignment of Government personnel within

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[1] So in original. Probably should be "ensure—".

the United States Government in order to implement United States policy with respect to illegal drug law enforcement;

(2) provide guidance in the implementation and maintenance of policy, strategy, and resources developed under subsection (a) of this section;

(3) review and approve the reprograming of funds relating to budgetary priorities developed under subsection (a) of this section;

(4) procure temporary and intermittent services under section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the maximum annual rate of basic pay payable for the grade of GS-18 of the General Schedule;

(5) accept and use donations of property from all Government agencies; and

(6) use the mails in the same manner as any other department or agency of the executive branch.

(d) Non-interference with operations of other agencies

Notwithstanding the authority granted in this section, the Board and the Chairman shall not interfere with routine law enforcement or intelligence decisions of any agency and shall undertake no activity inconsistent with the authorities and responsibilities of the Director of Central Intelligence under the provisions of the National Security Act of 1947, as amended, or Executive Order 12333.

(e) Administrative support services

The Administrator of the General Services Administration shall provide to the Board on a reimbursable basis such administrative support services as the Chairman may request.

(Pub. L. 98-473, title II, § 1304, Oct. 12, 1984, 98 Stat. 2169.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (c)(4), is set out under section 5332 of Title 5, Government Organization and Employees.

The National Security Act of 1947, as amended, referred to in subsec. (d), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50, War and National Defense and Tables.

Executive Order 12333, referred to in subsec. (d), is set out as a note under section 401 of Title 50.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1202 of this title.

§ 1204. Reports to Congress

The Chairman shall submit to the Congress, within nine months after October 12, 1984, and biannually thereafter, a full and complete report reflecting United States policy with respect to illegal drug law enforcement, plans proposed for the implementation of such policy, and, commencing with the submission of the second report, a full and complete report reflecting accomplishments with respect to the United States policy and plans theretofore submitted to the Congress.

(Pub. L. 98-473, title II, § 1305, Oct. 12, 1984, 98 Stat. 2170.)

TITLE 22—FOREIGN RELATIONS AND INTERCOURSE

Chap. Sec.
46. International Investment and Trade in Services Survey 3101
54. Private Organization Assistance 4401
55. Soviet-Eastern European Research and Training 4501
56. United States Institute of Peace 4601

CHAPTER 6—FOREIGN DIPLOMATIC AND CONSULAR OFFICERS

Sec.
254c-1. Policy toward certain agents of foreign governments.

§ 254a. Definitions

Section Referred to in Other Sections

This section is referred to in section 4304a of this title; title 28 section 1351.

§ 254c-1. Policy toward certain agents of foreign governments

(a) It is the sense of the Congress that the numbers, status, privileges and immunities, travel, accommodations, and facilities within the United States of official representatives to the United States of any foreign government that engages in intelligence activities within the United States harmful to the national security of the United States should not exceed the respective numbers, status, privileges and immunities, travel accommodations, and facilities within such country of official representatives of the United States to such country.

(b) Beginning one year after November 8, 1984, and at intervals of one year thereafter, the President shall prepare and transmit to the Committee on Foreign Relations and Select Committee on Intelligence of the Senate and the Committee on Foreign Affairs and Permanent Select Committee on Intelligence of the House of Representatives a report on the numbers, status, privileges and immunities, travel, accommodations, and facilities within the United States of official representatives to the United States of any foreign government that engages in intelligence activities within the United States harmful to the national security of the United States and the respective numbers, status, privileges and immunities, travel, accommodations, and facilities within such country of official representatives of the United States to such country, and any action which may have been taken with respect thereto.

(Pub. L. 98-618, title VI, § 601(a), (b), Nov. 8, 1984, 98 Stat. 3303.)

§ 254e. Liability insurance for members of mission

(a) Compliance with regulations

Each mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, shall comply with any requirement imposed by the regulations promulgated by the Director of the Office of Foreign Missions in the Department of State pursuant to subsection (b) of this section.

(b) Establishment by regulation of liability insurance requirements

The Director of the Office of Foreign Missions shall, by regulation, establish liability insurance requirements which can reasonably be expected to afford adequate compensation to victims and which are to be met by each mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, relating to risks arising from the operation in the United States of any motor vehicle, vessel, or aircraft.

(c) Enforcement of liability insurance requirements

The Director of the Office of Foreign Missions shall take such steps as he may deem necessary to insure that each mission, members of the mission and their families, and individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, who operate motor vehicles, vessels, or aircraft in the United States comply with the requirements established pursuant to subsection (b) of this section.

(As amended Pub. L. 98-164, title VI, § 602, Nov. 22, 1983, 97 Stat. 1042.)

Amendments

1983—Subsec. (a). Pub. L. 98-164, § 602(1), substituted "Director of the Office of Foreign Missions in the Department of State" for "President".

Subsec. (b). Pub. L. 98-164, § 602(2), added provision respecting adequate compensation to victims, and substituted reference to Director for reference to President.

Subsec. (c). Pub. L. 98-164, § 602(3), substituted reference to Director for reference to President.

CHAPTER 7—INTERNATIONAL BUREAUS, CONGRESSES, ETC.

Sec.
276c-3. Personnel practices.

SUBCHAPTER XII—INTER-AMERICAN DEVELOPMENT BANK

283z-3. Increase in authorized capital stock of Bank and increases in resources of Fund for Special Operations; United States share; authorization of appropriations.

SUBCHAPTER XII-A—INTER-AMERICAN INVESTMENT CORPORATION

283aa. Acceptance of membership.
283bb. Governor, Director, and alternates.
283cc. Applicability of Bretton Woods Agreements Act.
283dd. Restrictions.
283ee. Federal Reserve banks as depositories.
283ff. Subscription of stock.
  (a) Secretary of the Treasury as subscribing authority.
  (b) Authorization of appropriations.
  (c) Disposition of dividends.
283gg. Jurisdiction of United States courts.
283hh. Effectiveness of agreement.
283ii. Securities issued by the Corporation.
  (a) Exempted securities.
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SUBCHAPTER XIII—INTERNATIONAL DEVELOPMENT ASSOCIATION

284p. Seventh replenishment; authorization of appropriations.

SUBCHAPTER XIV—ASIAN DEVELOPMENT BANK

285x. Additional subscription to shares.
  (a) United States share.
  (b) Authorization of appropriations.
  (c) Continued membership of Republic of China in Bank.
285y. Additional contribution to special funds; authorization of appropriations.

SUBCHAPTER XV—INTERNATIONAL MONETARY FUND AND BANK FOR RECONSTRUCTION AND DEVELOPMENT

286b-2. Reports to Congress.
  (a) Report by National Advisory Council on International Monetary and Financial Policies; contents.
  (b) Report by Secretary of the Treasury on operation of the international monetary and financial system.
  (c) Report by Secretary of the Treasury with respect to strengthening and improving operation of Fund.
286e-1i. Increase in United States quota; consultations with Congress.
286y. Promoting conditions for exchange rate stability.
286z. Collection and exchange of information on monetary and financial problems.
  (a) Sense of Congress.
  (b) Initiation by United States Executive Director of discussions with other Directors; adoption of procedures.
  (c) "Credit" defined.
  (d) Providing necessary information.
286aa. Instructions to United States Executive Director; Communist dictatorships and countries practicing apartheid.
286bb. Elimination of predatory agricultural export subsidies.

Sec.
286cc. Sustaining economic growth.
  (a) Economic adjustment programs.
  (b) Changes in Fund guidelines; limitations on debt service exceptions.
  (c) Emergencies and extraordinary circumstances.
286dd. Fund bailouts of banks; rescheduling of debt.
286ee. International cooperation.
286ff. Fund interest rates.
286gg. Elimination of trade restrictions.
  (a) Promotion of fair trade as financial assistance policy.
  (b) Agreement to eliminate unfair trade practices as condition of financial assistance.
  (c) United States position on requests for drawing under Fund programs; progress made in eliminating unfair trade practices.

SUBCHAPTER XXII—AFRICAN DEVELOPMENT FUND

290g-12. Additional authorization for payment of United States contribution.

SUBCHAPTER XXV—UNITED STATES-INDIA FUND FOR CULTURAL, EDUCATIONAL, AND SCIENTIFIC COOPERATION

290j. Establishment of the Fund.
  (a) Agreement with Government of India; program purposes.
  (b) United States representatives.
  (c) Funding of programs.
290j-1. Use of United States owned rupees to capitalize the Fund.

§ 262d. Human rights and United States assistance policies with international financial institutions

(a) Policy goals

The United States Government, in connection with its voice and vote in the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the African Development Fund, the Asian Development Bank, and the African Development Bank, shall advance the cause of human rights, including by seeking to channel assistance toward countries other than those whose governments engage in—

(1) a pattern of gross violations of internationally recognized human rights, such as torture or cruel, inhumane, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial to life, liberty, and the security of person; or

[*See main edition for text of* (2); (*b*) *to* (*f*)]

(g) Consultative and additional reporting requirements

(1) Not later than thirty days after the end of each calendar quarter, the Secretary of the Treasury, in consultation with the Secretary of State, shall report.[1] to the chairmen and rank-

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[1] So in original.

ing minority members of the Committee on Banking, Finance and Urban Affairs of the House of Representatives, the Subcommittee on International Development Institutions and Finance of such Committee, and the Committee on Foreign Relations of the Senate, in each instance in which the United States Executive Director of an institution listed in subsection (a) of this section opposes any loan, financial assistance, or technical assistance for reasons regarding human rights. Each such report shall include—

[*See main edition for text of (A) to (E); (2)*]

(As amended Pub. L. 98-181, title X, § 1004, Nov. 30, 1983, 97 Stat. 1286.)

Amendments

1983—Subsec. (a)(1). Pub. L. 98-181 substituted "pattern" for "consistent pattern".

Subsec. (g)(1). Pub. L. 98-181 substituted "Not later than thirty days after the end of each calendar quarter, the Secretary of the Treasury, in consultation with the Secretary of State, shall report." for "The Secretary of the Treasury, in consultation with the Secretary of State, shall report quarterly".

Cross References

Denial of international development assistance to countries violating human rights, see section 2151n of this title.

Implementation of United States policy opposing the practice of torture by foreign governments, see Pub. L. 98-447, set out as a note under section 2656 of this title.

§ 262h. Opposition by United States Executive Directors of international financial institutions to assistance for production of export commodities in surplus on world markets

The Secretary of the Treasury shall instruct the United States Executive Directors of the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation, the Inter-American Development Bank, the International Monetary Fund, the Asian Development Bank, the Inter-American Investment Corporation, the African Development Bank, and the African Development Fund to use the voice and vote of the United States to oppose any assistance by these institutions, using funds appropriated or made available pursuant to this Act, for the production of any commodity for export, if it is in surplus on world markets and if the assistance will cause substantial injury to the United States producers of the same, similar, or competing commodity.

(Pub. L. 98-473, title I, § 101(1) [title V, § 524], Oct. 12, 1984, 98 Stat. 1884, 1899.)

References in Text

This Act, referred to in text, is the Foreign Assistance and Related Programs Appropriations Act, 1985, as enacted into law by Pub. L. 98-473, title I, § 101(1), Oct. 12, 1984, 98 Stat. 1884. For complete classification of this Act to the Code, see Tables.

Codification

Section is from the appropriation act cited as the credit to this section.

Similar Provisions

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 97-121, title V, § 522, Dec. 29, 1981, 95 Stat. 1656.

§ 269a. Central Bureau of the International Map of the World on the Millionth Scale; authorization of appropriations

Annual Appropriations

Annual appropriations to meet the obligations of membership in various international organizations were contained in the following acts:

Aug. 30, 1984, Pub. L. 98-411, title III, § 300, 98 Stat. 1565, 1566.

Nov. 28, 1983, Pub. L. 98-166, title III, § 300, 97 Stat. 1094.

§ 269f. International Bureau for the Protection of Industrial Property; authorization of appropriations

Funds appropriated to the Secretary of State for "International Organizations and Conferences" shall be available for the payment by the United States of its proportionate share of the expenses of the International Bureau for the Protection of Industrial Property for any year after 1981 as determined under article 16(4) of the Paris Convention for the Protection of Industrial Property, as revised, except that in no event shall the payment for any year exceed 6 per centum of all expenses of the Bureau apportioned among countries for that year.

(As amended Pub. L. 98-164, title I, § 112, Nov. 22, 1983, 97 Stat. 1019.)

Amendments

1983—Pub. L. 98-164 substituted provisions making appropriations available for the payment of expenses of the International Bureau for the Protection of Industrial Property for any year after 1981, for provisions authorizing appropriations for contributions for the support of the International Bureau of Intellectual Property for the period from July 1, 1950, through June 30, 1959, and for the payment by the United States of its share of the expenses of the Bureau.

§ 271. International Labor Organization; membership

Extension of Term of President's Committee on the International Labor Organization

Term of the President's Committee on the International Labor Organization extended until Sept. 30, 1985, see Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 276c-2. Employee benefits for United States citizen-representatives to International Monetary Fund, International Bank for Reconstruction and Development, Inter-American Development Bank, Asian Development Bank, African Development Fund, African Development Bank, and Inter-American Investment Corporation; Treasury Department as collecting, accounting, and depositing agency for employee payments; contributions from appropriated funds

Notwithstanding the provisions of any other law, the Executive Directors and Directors and their alternates, representing the United States in the International Monetary Fund, the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, the African Development Fund, the African Development Bank, and the Inter-American Investment Corporation, shall, if they are citizens of the United States, in the discretion of the Secretary of the Treasury, each be eligible on the basis of such service and the total compensation received therefor, for all employee benefits afforded employees in the civil service of the United States. The Treasury Department shall serve as the employing office for collecting, accounting for, and depositing in the Civil Service Retirement and Disability Fund, Employees Life Insurance Fund, and Employees Health Benefits Fund, all retirement and health insurance benefits payments made by these employees, and shall make any necessary agency contributions from funds appropriated to the Department of the Treasury.

(As amended Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885.)

CODIFICATION

Amendment by Pub. L. 98-473 is based on section 211(b) of title II of S. 2416, Ninety-eighth Congress, as introduced in the Senate on Mar. 13, 1984, which was enacted into permanent law by Pub. L. 98-473.

AMENDMENTS

1984—Pub. L. 98-473 added reference to the Inter-American Investment Corporation.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 7 of Pub. L. 95-612 provided that: "This Act [amending this section, section 5108 of Title 5, Government Organization and Employees, and section 822a of former Title 31, Money and Finance, and enacting provisions set out as a note under section 5108 of Title 5] shall take effect on October 1, 1978, or on such later date as funds are made available pursuant to appropriation Acts authorized by section 5 of this Act [authorizing appropriations of $24,000,000 for fiscal year 1979; not classified to the Code]." Section 7 of Pub. L. 95-612 was repealed as executed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, section 1 of which enacted Title 31, Money and Finance.

§ 276c-3. Personnel practices

(a) It shall be the policy of the United States that no initiatives, discussions, or recommendations concerning the placement or removal of any Inter-American Development Bank, Asian Development Bank, or African Development Bank personnel shall be based on the political philosophy or activity of the individual under consideration.

(b) The Secretary of the Treasury shall consult with the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate and the relevant subcommittees prior to any discussions or recommendations by any official of the United States Government concerning the placement or removal of any principal officer of the Inter-American Development Bank, Asian Development Bank, or African Development Bank management.

(Pub. L. 98-181, title X, § 1006, Nov. 30, 1983, 97 Stat. 1287.)

SUBCHAPTER XII—INTER-AMERICAN DEVELOPMENT BANK

§ 283a. Appointment of officers; term of office; salary

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 283bb of this title.

§ 283z-3. Increase in authorized capital stock of Bank and increases in resources of Fund for Special Operations; United States share; authorization of appropriations

(a)(1) The United States Governor of the Bank is authorized to vote for resolutions—

(A) which were proposed by the Governors at a special meeting in February 1983;

(B) which are pending before the Board of Governors of the Bank; and

(C) which provide for—

(i) an increase in the authorized capital stock of the Bank and subscriptions thereto; and

(ii) an increase in the resources of the Fund for Special Operations and contributions thereto.

(2)(A) Upon adoption of the resolutions specified in paragraph (1), the United States Governor of the Bank is authorized on behalf of the United States to—

(i) subscribe to 427,396 shares of the increase in the authorized capital stock of the Bank; and

(ii) contribute $350,000,000 to the Fund for Special Operations.

(B) Any commitment to make such subscriptions to paid-in and callable capital stock and to make such contributions to the Fund for Special Operations shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(b) In order to pay for the increase in the United States subscription and contribution provided for in this section, there are authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury—

(1) $5,155,862,744 for the United States subscriptions to the capital stock of the Bank; and

(2) $350,000,000 for the United States share of the increase in the resources of the Fund for Special Operations.

(Pub. L. 86-147, § 31, as added Pub. L. 98-181, title X, § 1001, Nov. 30, 1983, 97 Stat. 1284.)

SUBCHAPTER XII-A—INTER-AMERICAN INVESTMENT CORPORATION

§ 283aa. Acceptance of membership

The President is hereby authorized to accept membership for the United States in the Inter-American Investment Corporation (hereinafter in this subchapter referred to as the "Corporation") provided for by the agreement establishing the Corporation (hereinafter in this sub chapter referred to as the "agreement") deposited in the archives of the Inter-American Development Bank.

(Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885.)

CODIFICATION

Enactment of section by Pub. L. 98-473 is based on section 202 of title II of S. 2416, Ninety-eighth Congress, as introduced in the Senate Mar. 13, 1984, which was enacted into permanent law by Pub. L. 98-473.

SHORT TITLE

Section 201 of title II of S. 2416, as introduced in the Senate Mar. 13, 1984, and as enacted into permanent law by section 101(1) [title I, § 101] of Pub. L. 98-473, provided that: "This title [enacting this subchapter and amending section 276c-2 of this title and section 24 of Title 12, Banks and Banking] may be cited as the 'Inter-American Investment Corporation Act'."

§ 283bb. Governor, Director, and alternates

The Governor and Executive Director of the Inter-American Development Bank, and the alternate for each of them, appointed under section 283a of this title, shall serve as Governor, Director, and alternates, respectively, of the Corporation.

(Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885.)

CODIFICATION

Enactment of section by Pub. L. 98-473 is based on section 203 of title II of S. 2416, Ninety-eighth Congress, as introduced in the Senate Mar. 13, 1984, which was enacted into permanent law by Pub. L. 98-473.

§ 283cc. Applicability of Bretton Woods Agreements Act

The provisions of section 286b of this title shall apply with respect to the Corporation to the same extent as with respect to the International Bank for Reconstruction and Development and the International Monetary Fund. Reports with respect to the Corporation under paragraphs (5) and (6) of subsection (b) of section 286b of this title shall be included in the first and subsequent reports made thereunder after the United States accepts membership in the Corporation.

(Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885.)

CODIFICATION

Enactment of section by Pub. L. 98-473 is based on section 204 of title II of S. 2416, Ninety-eighth Congress, as introduced in the Senate Mar. 13, 1984, which was enacted into permanent law by Pub. L. 98-473.

§ 283dd. Restrictions

(a)[1] Unless authorized by law, neither the President nor any person or agency shall, on behalf of the United States—

(1) subscribe to additional shares of stock of the Corporation;

(2) vote for or agree to any amendment of the agreement which increases the obligations of the United States, or which changes the purpose or functions of the Corporation; or

(3) make a loan or provide other financing to the Corporation.

(Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885.)

CODIFICATION

Enactment of section by Pub. L. 98-473 is based on section 205 of title II of S. 2416, Ninety-eighth Congress, as introduced in the Senate Mar. 13, 1984, which was enacted into permanent law by Pub. L. 98-473.

§ 283ee. Federal Reserve banks as depositories

Any Federal Reserve bank which is requested to do so by the Corporation shall act as its depository or as its fiscal agent, and the Board of Governors of the Federal Reserve System shall supervise and direct the carrying out of these functions by the Federal Reserve banks.

(Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885.)

CODIFICATION

Enactment of section by Pub. L. 98-473 is based on section 206 of title II of S. 2416, Ninety-eighth Congress, as introduced in the Senate Mar. 13, 1984, which was enacted into permanent law by Pub. L. 98-473.

§ 283ff. Subscription of stock

(a) Secretary of the Treasury as subscribing authority

The Secretary of the Treasury is authorized to subscribe on behalf of the United States to five thousand one hundred shares of the capital stock of the Corporation: *Provided, however,* That the subscription shall be effective only to such extent or in such amounts as are provided in advance in appropriations Acts.

(b) Authorization of appropriations

There is authorized to be appropriated, without fiscal year limitation, for payment by the Secretary of the Treasury of the subscription of the United States for those shares, $51,000,000.

(c) Disposition of dividends

Any payment of dividends made to the United States by the Corporation shall be deposited into the Treasury as a miscellaneous receipt.

(Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885.)

CODIFICATION

Enactment of section by Pub. L. 98-473 is based on section 207 of title II of S. 2416, Ninety-eighth Congress, as introduced in the Senate Mar. 13, 1984, which was enacted into permanent law by Pub. L. 98-473.

§ 283gg. Jurisdiction of United States courts

For the purposes of any civil action which may be brought within the United States, its territories or possessions, or the Commonwealth of Puerto Rico, by or against the Corporation in accordance with the agreement, the Corporation shall be deemed to be an inhabitant of the Federal judicial district in which its principal office within the United States or its agent appointed for the purpose of accepting service or notice of service is located, and any such action to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the district courts of the United States, including the courts enumerated in section 460 of title 28, shall have original jurisdiction of any such action. When the Corporation is a defendant in any action in a State court, it may at any time before the trial thereof remove the action into the appropriate district court of the United States by following the procedure for removal provided in section 1446 of title 28.

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[1] So in original. Section enacted without a subsec. (b).

(Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885.)

CODIFICATION

Enactment of section by Pub. L. 98-473 is based on section 208 of title II of S. 2416, Ninety-eighth Congress, as introduced in the Senate Mar. 13, 1984, which was enacted into permanent law by Pub. L. 98-473.

§ 283hh. Effectiveness of agreement

Article VI, section 4(c), and article VII, sections 2 to 9, both inclusive, of the agreement shall have full force and effect in the United States, its territories and possessions, and the Commonwealth of Puerto Rico, upon acceptance of membership by the United States in the Corporation.

(Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885.)

CODIFICATION

Enactment of section by Pub. L. 98-473 is based on section 209 of title II of S. 2416, Ninety-eighth Congress, as introduced in the Senate Mar. 13, 1984, which was enacted into permanent law by Pub. L. 98-473.

§ 283ii. Securities issued by the Corporation

(a) Exempted securities

Any securities issued by the Corporation (including any guarantee by the Corporation, whether or not limited in scope) in connection with the raising of funds for inclusion in the Corporation's resources as defined in article II, section 2 of the agreement, and any securities guaranteed by the Corporation as to both principal and interest to which the commitment in article II, section 2(e) of the agreement is expressly applicable, shall be deemed to be exempted securities within the meaning of section 77c(a)(2) of title 15 and section 78c(a)(12) of title 15. The Corporation shall file with the Securities and Exchange Commission such annual and other reports with regard to such securities as the Commission shall determine to be appropriate in view of the special character of the Corporation and its operations as necessary in the public interest or for the protection of investors.

(b) Suspension by Securities and Exchange Commission

The Securities and Exchange Commission, acting in consultation with such agency or officer as the President shall designate, is authorized to suspend the provisions of subsection (a) of this section at any time as to any or all securities issued or guaranteed by the Corporation during the period of such suspension. The Commission shall include in its annual reports to Congress such information as it shall deem advisable with regard to the operations and effect of this section and in connection therewith shall include any views submitted for such purpose by any association of dealers registered with the Commission.

(Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885.)

CODIFICATION

Enactment of section by Pub. L. 98-473 is based on section 210 of title II of S. 2416, Ninety-eighth Congress, as introduced in the Senate Mar. 13, 1984, which was enacted into permanent law by Pub. L. 98-473.

SUBCHAPTER XIII—INTERNATIONAL DEVELOPMENT ASSOCIATION

§ 284p. Seventh replenishment; authorization of appropriations

(a) The United States Governor is hereby authorized to agree on behalf of the United States to pay to the Association $2,250,000,000 as the United States contribution to the seventh replenishment of the resources of the Association, except that any commitment to make such contributions shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in subsection (a) of this section, there are authorized to be appropriated, without fiscal year limitation, $2,250,000,000 for payment by the Secretary of the Treasury.

(Pub. L. 86-565, § 18, as added Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885.)

CODIFICATION

Enactment of section by Pub. L. 98-473 is based on section 901 of S. 2582, Ninety-eighth Congress, as reported by the Committee on Foreign Relations of the Senate Apr. 18, 1984, which was enacted into permanent law by Pub. L. 98-473.

CREDITS AVAILABLE TO SUB-SAHARAN AFRICA

Pub. L. 98-473, title I, § 101(1) [title I, § 101], Oct. 12, 1984, 98 Stat. 1884, 1885, provided: "That the Secretary of the Treasury shall instruct the United States Executive Director to undertake negotiations to ensure, to the maximum extent possible consistent with the effective use of resources, that the amount of development credits made available to sub-Saharan Africa through the seventh replenishment shall equal or exceed the amount of development credits made available to sub-Saharan Africa through the sixth replenishment."

SUBCHAPTER XIV—ASIAN DEVELOPMENT BANK

§ 285x. Additional subscription to shares

(a) United States share

(1) The United States Governor of the Bank is authorized to subscribe on behalf of the United States to one hundred twenty-three thousand three hundred and seventy-five additional shares of the capital stock of the Bank.

(2) Any subscription to the capital stock of the Bank shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(b) Authorization of appropriations

In order to pay for the increase in the United States subscription to the Bank provided for in subsection (a) of this section, there are authorized to be appropriated, without fiscal year limitation, $1,322,999,476 for payment by the Secretary of the Treasury.

(c) Continued membership of Republic of China in Bank

(1) The Congress hereby finds that—

(A) the Republic of China (Taiwan) is a charter member in good standing of the Asian Development Bank;

(B) the Republic of China has grown from a borrower to a lender in the Asian Development Bank; and

(C) the Republic of China provides, through its economic success, a model for other nations in Asia.

(2) It is the sense of the Congress that—

(A) Taiwan, Republic of China, should remain a full member of the Asian Development Bank, and that its status within that body should remain unaltered no matter how the issue of the People's Republic of China's application for membership is disposed of;

(B) the President and the Secretary of State should express support of Taiwan, Republic of China, making it clear that the United States will not countenance attempts to expel Taiwan, Republic of China, from the Asian Development Bank; and

(C) the Secretary of the Senate and Clerk of the House shall transmit a copy of this resolution to the President with the request that he transmit such copy to the Board of Governors of the Asian Development Bank.

(Pub. L. 89–369, § 27, as added Pub. L. 98–181, title X, § 1002, Nov. 30, 1983, 97 Stat. 1285.)

§ 285y. Additional contribution to special funds; authorization of appropriations

(a)(1) The United States Governor of the Bank is authorized to contribute on behalf of the United States $520,000,000 to the Asian Development Fund, a special fund of the Bank.

(2) Any commitment to make the contribution authorized in paragraph (1) shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution to the Asian Development Fund provided for in this section, there are authorized to be appropriated, without fiscal year limitation, $520,000,000 for payment by the Secretary of the Treasury.

(Pub. L. 89–369, § 28, as added Pub. L. 98–181, title X, § 1002, Nov. 30, 1983, 97 Stat. 1286.)

SUBCHAPTER XV—INTERNATIONAL MONETARY FUND AND BANK FOR RECONSTRUCTION AND DEVELOPMENT

§ 286b. National Advisory Council on International Monetary and Financial Problems

[*See main edition for text of* (*a*)]

(b) Duties and functions; reports by Council

[*See main edition for text of* (*1*) *to* (*7*)]

(8) The general policy objectives for the guidance of the United States Executive Director of the Bank shall take into account the effect that development assistance loans have upon individual industry sectors and international commodity markets—

(A) to minimize projected adverse impacts; and

(B) to avoid, wherever possible, government subsidization of production and exports of international commodities without regard to economic conditions in the markets for such commodities.

[*See main edition for text of* (*c*)]

(As amended Nov. 30, 1983, Pub. L. 98–181, title VIII, § 808(a), 97 Stat. 1273.)

AMENDMENTS

1983—Subsec. (b)(8). Pub. L. 98–181 added par. (8).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 282b, 283b, 283i, 283cc, 284b, 286k–1, 290g–2, 290i–3 of this title.

§ 286b–2. Reports to Congress

(a) Report by National Advisory Council on International Monetary and Financial Policies; contents

The National Advisory Council on International Monetary and Financial Policies shall include in its annual reports to the Congress—

(1) a statement listing all appraisal reports which have been circulated during the preceding year within the Bank for project assistance which would establish or enhance the capacity of any country to produce a commodity for export, if—

(A) such commodity is in surplus on world markets or is likely to be in surplus on world markets at the time the resulting productive capacity is expected to become operative; and

(B) such project assistance will cause material injury to United States producers of the same, similar, or competing commodity;

(2) a review of success in reducing or eliminating import restrictions and unfair export subsidies which have been determined to be inconsistent with international agreements, and which have a serious adverse impact on the United States, or any other member's, exports or employment;

(3) a study for the fiscal year 1984 report of the impact on the United States steel and copper industries of steel and copper subsidies by nations who are borrowers from the Fund;

(4) a review for the fiscal year 1984 report regarding progress achieved in reaching the goal of eliminating all predatory agricultural export subsidies which might result in the reduction of other member countries' exports as set forth in section 286bb of this title; and

(5) copies of the analyses and any written documentation prepared by the Secretary of the Treasury pursuant to subsections (b)(2) and (c) of section 286cc of this title and a statement detailing the actions and progress made in carrying out the requirements of subsections (a) and (b) of section 286cc of this title.

(b) Report by Secretary of the Treasury on operation of the international monetary and financial system

Not later than one year after November 30, 1983, the Secretary of the Treasury shall transmit a report to the Congress on the operation of the international monetary and financial system, including—

(1) findings of the Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve, and the Secretary of State regarding consideration of United States membership in the Bank for International Settlements; and

(2) proposals to improve the floating exchange rate system.

(c) Report by Secretary of the Treasury with respect to strengthening and improving operation of Fund

Not later than one year after November 30, 1983, the Secretary of the Treasury shall transmit a report to the Congress with respect to strengthening the role and improving the operation of the International Monetary Fund, including—

(1) ways to maintain realistic, market-determined exchange rates with other major currencies and recommendations regarding what can be done to avoid exchange rate manipulation. In particular, such report shall examine the policies of major trading partners which (A) maintain a substantial trade surplus with the United States, and (B) encourage export of capital to such an extent that exchange rates do not appear to reflect adjustments based on trade patterns alone;

(2) a review and analysis of—

(A) the ability of the Fund to promote real economic growth and sustained, noninflationary recovery, pursuant to its mandate in article I of the Articles of Agreement of the Fund, in countries which enter into stabilization programs with the Fund;

(B) the feasibility of the Fund issuing securities in the private capital markets as a means of increasing its resources, either in lieu of, or in addition to, future quota increases, together with an evaluation of how such borrowing would affect the credit markets of the United States;

(C) the feasibility of returning all or part of the Fund's gold reserves to Fund members or of selling the Fund's gold reserves in the private markets in an effort to raise capital;

(D) the feasibility of establishing temporary, supplemental financing facilities at the Fund;

(E) the feasibility of establishing a Gold Lending Facility whereby the Fund would lend gold to Fund members who would in turn use such gold as collateral for commercial loans;

(F) recommendations for amendments to the Articles of Agreement of the Fund, if any, to improve the role of the Fund in the international monetary system; and

(G) the effect on (i) the market price of gold, (ii) countries whose central banks maintain reserves in the form of gold, and (iii) credit markets of the United States as a result of taking any of the actions described in subparagraphs (C), (D), or (E) of this paragraph;

(3) actions which have been taken to carry out the provisions of section 286s of this title;

(4) progress made in implementing section 286ff of this title;

(5) a study on the past and potential impact of Fund loan quota extension on world oil prices, such study to be done in cooperation with the Secretary of State and the Secretary of Energy;

(6) an assessment—

(A) of whether under present circumstances a systematic restructuring and stretching out of developing country debt should be conducted;

(B) regarding the role global recovery will play in solving the debt crisis and what interim financing measures may have to be taken for those countries which have no possibility of continuing to service their debts even in the event of a vigorous economic recovery;

(C) of whether the Fund, which is increasingly being used as a source of credit to finance balance of payments deficits, has adeqate resources to cover all conceivable requests for credit extensions taking into account the quota increase consented to under section 286e–1i of this title;

(D) regarding what role the United States Government sees for the Fund in providing finance and credit to the least developed countries who have such a limited capacity to borrow to finance payments deficits; and

(E) pursuant to the agreement at the Williamsburg Summit, outlining what progress has been made in the consultations among finance ministers and the managing director of the Fund on the conditions for improving the international monetary system; and

(7) establishing collection, review, comment, and reporting procedures within the Fund as provided in section 286z of this title.

(July 31, 1945, ch. 339, § 50, as added Nov. 30, 1983, Pub. L. 98-181, title VIII, § 813, 97 Stat. 1276.)

§ 286c. Congressional authorization needed for certain actions

Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States (a) request or consent to any change in the quota of the United States under article III, section 2(a), of the Articles of Agreement of the Fund; (b) propose a par value for the United States dollar under paragraph 2, paragraph 4, or paragraph 10 of schedule C of the Articles of Agreement of the Fund; (c) propose any change in the par value of the United States dollar under paragraph 6 of schedule C of the Articles of Agreement of the Fund, or approve any general change in par values under paragraph 11 of schedule C; (d) subscribe to additional shares of stock under article II, section 3, of the Articles of Agreement of the Bank; (e) accept any amendment under article XXVIII of the Articles of Agreement of the Fund or Article VIII of the Articles of Agreement of the Bank; (f) make any loan to the Fund or the Bank; or (g) approve either the disposition of more than 25 million ounces of Fund gold for the benefit of the Trust Fund established by the Fund on May 6, 1976, or the establishment of any additional trust fund whereby resources of the International Monetary Fund would be used for the special benefit of a single member, or of a particular segment of the membership, of the fund. Unless Congress by law authorizes such action, no governor or alternate appointed to represent the United States shall vote for an increase of capital stock of the Bank under article II, section 2, of the Articles of Agreement of the Bank, if such increase involves an increased subscription on the part of the United States. Neither the President nor any person or agency shall, on behalf of the United States, consent to any borrowing (other than borrowing from a foreign government or other official public source) by the Fund of funds denominated in United States dollars, unless the Secretary of the Treasury transmits a notice of such proposed borrowing to both Houses of the Congress at least 60 days prior to the date on which such borrowing is scheduled to occur.

(As amended Nov. 30, 1983, Pub. L. 98-181, title VIII, § 811, 97 Stat. 1274.)

Amendments

1983—Pub. L. 98-181 added provision prohibiting the President or any person or agency from consenting to a borrowing of funds denominated in dollars unless notice of such borrowing is transmitted to Congress at least 60 days prior to such borrowing.

§ 286e-11. Increase in United States quota; consultations with Congress

(a) The United States Governor of the Fund is authorized to consent to an increase in the quota of the United States in the Fund equivalent to 5,310,800,000 Special Drawing Rights, limited to such amounts as are provided in advance in appropriations Acts.

(b)(1) The Secretary of the Treasury shall consult with the chairman and the ranking minority member of—

(A) the Committee on Banking, Finance and Urban Affairs and the Committee on Appropriations of the House of Representatives, and any appropriate subcommittee of each such committee; and

(B) the committee on Foreign Relations, the Committee on Appropriations, and the Committee on Banking, Housing, and Urban Affairs of the Senate, and any appropriate subcommittee of each such committee,

for purposes of discussing the position of the executive branch and the views of the Congress with respect to any international negotiations being held to consider any future quota increase for the International Monetary Fund which may involve an increased contribution, subscription, or loan by the United States.

(2) Such consultation shall be made—

(A) not later than thirty days before the initiation of such international negotiations;

(B) during the period in which such negotiations are being held, in a frequent and timely manner; and

(C) before a session of such negotiations is held at which the United States representatives may agree to such quota increase.

(July 31, 1945, ch. 339, § 41, as added Nov. 30, 1983, Pub. L. 98-181, title VIII, § 802(a)(4), 97 Stat. 1268.)

Section Referred to in Other Sections

This section is referred to in sections 286b-2, 286y of this title.

§ 286e-2. Loans to Fund

(a) Limitation; balance of payments and reserve position considerations

In order to carry out the purposes of the decisions of January 5, 1962, and February 24, 1983, as amended in accordance with their terms, of the Executive Directors of the International Monetary Fund, the Secretary of the Treasury is authorized to make loans, in an amount not to exceed the equivalent of 4,250,000,000 Special Drawing Rights, limited to such amounts as are provided in advance in appropriations Acts, except that prior to activation, the Secretary of the Treasury shall certify that supplementary resources are needed to forestall or cope with an impairment of the international monetary system and that the Fund has fully explored other means of funding, to the Fund under article VII, section 1(i), of the Articles of Agreement of the Fund. Any loan under the authority granted in this subsection shall be made with due regard to the present and prospective balance of payments and reserve position of the United States.

(b) Authorization of appropriations; repayments available for loans to Fund

For the purpose of making loans to the International Monetary Fund pursuant to this section, there is authorized to be appropriated 4,250,000,000 Special Drawing Rights, except that prior to activation, the Secretary of the Treasury shall certify whether supplementary resources are needed to forestall or cope with an impairment of the international monetary system and that the Fund has fully explored other means of funding, to remain available until expended to meet calls by the International Monetary Fund. Any payments made to the United States by the International Monetary Fund as a repayment on account of the principal of a loan made under this section shall continue to be available for loans to the International Monetary Fund.

[*See main edition for text of* (c)]

(d) Amendment to Executive Directors' decision prohibited; conditions

Unless the Congress by law so authorizes, neither the President, the Secretary of the Treasury, nor any other person acting on behalf of the United States, may instruct the United States Executive Director to the Fund to consent to any amendment to the Decision of February 24, 1983, of the Executive Directors of the Fund, if the adoption of such amendment would significantly alter the amount, terms, or conditions of participation by the United States in the General Arrangements to Borrow.

(As amended Nov. 30, 1983, Pub. L. 98-181, title VIII, § 802(a)(1)-(3), 97 Stat. 1268.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-181, § 802(a)(1), substituted "decisions of January 5, 1962, and February 24, 1983, as amended in accordance with their terms" for "decision of January 5, 1962", and "in an amount not to exceed the equivalent of 4,250,000,000 Special Drawing Rights, limited to such amounts as are provided in advance in appropriations Acts, except that prior to activation, the Secretary of the Treasury shall certify that supplementary resources are needed to forestall or cope with an impairment of the international monetary system and that the fund has fully explored other means of funding" for "not to exceed $2,000,000,000 outstanding at any one time".

Subsec. (b). Pub. L. 98-181, § 802(a)(2), substituted "4,250,000,000 Special Drawing Rights, except that prior to activation, the Secretary of the Treasury shall certify whether supplementary resources are needed to forestall or cope with an impairment of the international monetary system and that the Fund has fully explored other means of funding" for "$2,000,000,000".

Subsec. (d). Pub. L. 98-181, § 802(a)(3), added subsec. (d).

§ 286f. Obtaining and furnishing information to the Fund

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286z of this title; title 31 section 5315.

§ 286q. Limitation on allocations to the United States

(a) Unless Congress by law authorizes such action, neither the President nor any person or agency shall on behalf of the United States vote to allocate in each basic period Special Drawing Rights under article XVIII, sections 2 and 3, of the Articles of Agreement of the Fund so that allocations to the United States in that period exceed an amount equal to the United States quota in the Fund as authorized under the Bretton Woods Agreements Act [22 U.S.C. 286 et seq.].

(b)(1) Neither the President nor any person or agency shall on behalf of the United States vote to allocate Special Drawing Rights under article XVIII, sections 2 and 3, of the Articles of Agreement of the Fund without consultations by the Secretary of the Treasury at least 90 days prior to any such vote, with the Chairman and ranking minority members of the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the appropriate subcommittees thereof.

(2) Such consultations shall include an explanation of the consistency of such proposal to allocate with the requirements of the Articles of Agreement of the Fund, in particular the requirement that in all its decisions with respect to allocation of Special Drawing Rights, the Fund shall "seek to meet the long-term global need, as and when it arises, to supplement existing reserve assets in such manner as will promote the attainment of its purposes and will avoid economic stagnation and deflation as well as excess demand and inflation in the world".

(As amended Pub. L. 98-181, title VIII, § 803, Nov. 30, 1983, 97 Stat. 1270.)

REFERENCES IN TEXT

The Bretton Woods Agreements Act, referred to in subsec. (a), is act July 31, 1945, ch. 339, 59 Stat. 512, as amended, which is classified principally to this subchapter (§ 286 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 286 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98-181 designated existing provisions as subsec. (a) and added subsec. (b).

§ 286s. Consideration of basic human needs in economic adjustment programs supported by Fund

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286b-2 of this title.

§ 286y. Promoting conditions for exchange rate stability

(a) In order to help assure that the resources provided under section 286e-1i of this title are used to support pro-growth policies which will help establish the economic conditions necessary for more appropriate financial and exchange rate alignment and stability, it is the sense of Congress that the Secretary of the Treasury shall—

(1) in consultation with the Secretary of State and the United States Trade Representative, initiate discussions with other countries regarding the economic dislocations which result from structural exchange rate imbalances; and

(2) instruct the United States Executive Director of the Fund to work for adoption of policies in the Fund, both within the framework of article IV (of the Articles of Agreement of the Fund) consultations and with respect to the conditions associated with Fund-supported balance of payments adjustments programs, which promote conditions contributing to the stability of exchange rates and avoid the manipulation of exchange rates between major currencies. Among other initia-

tives, the Secretary of the Treasury shall propose strengthening the article IV consultation procedures of the Fund to attempt to ensure that countries which are artificially maintaining undervalued or overvalued rates of exchange agree to adopt market determined exchange rates.

(b) In determining his vote on extensions of assistance to any Fund borrower, the United States Executive Director of the Fund shall take into account whether such borrower's policies are consistent with the requirements of article IV of the Articles of Agreement of the Fund.

(July 31, 1945, ch. 339, § 40, as added Nov. 30, 1983, Pub. L. 98-181, title VIII, § 801, 97 Stat. 1267.)

§ 286z. Collection and exchange of information on monetary and financial problems

(a) Sense of Congress

It is the sense of the Congress that—

(1) the lack of sufficient information currently available to allow members of the Fund to make sound and prudent decisions concerning their public and private sector international borrowing, and to allow lenders to make sound and prudent decisions concerning their international lending, threatens the stability of the international monetary system; and

(2) in recognition of the Fund's duties, as provided particularly by article VIII of the Articles of Agreement of the Fund, to act as a center for the collection and exchange of information on monetary and financial problems, the Fund should adopt necessary and appropriate measures to ensure that more complete and timely financial information will be available.

(b) Initiation by United States Executive Director of discussions with other Directors; adoption of procedures

To this end, the Secretary of the Treasury shall instruct the United States Executive Director of the Fund to initiate discussions with other directors of the Fund and with Fund management, and to propose and vote for, the adoption of procedures, within the Fund—

(1) to collect and disseminate information, on a quarterly basis, from and to Fund members, and to such other persons as the Fund deems appropriate, concerning—

(A) the extension of credit by banks or nonbanks to private and public entities, including all government entities, instrumentalities, and central banks of member countries; and

(B) the receipt of such credit by those private and public entities of member countries, where such banks or nonbanks are not principally established within the borders of the member country to which the credits are extended; and

(2) to disseminate publicly information which is developed in the course of the Fund's collection, and to review and comment on efforts which the Fund determines would serve to enhance the informational base upon which international borrowing and lending decisions are taken.

(c) "Credit" defined

For purposes of this section, the term "credit" includes—

(1) outstanding loans to private and public entities, including government entities, instrumentalities, and central banks of any member, and

(2) unused lines of credit which have been made available to those private and public entities of any member,

where such loans or lines of credit are repayable in freely convertible currency.

(d) Providing necessary information

The President is authorized to use the authority provided under section 286f of this title to require any person (as defined in such section) subject to the jurisdiction of the United States to provide such information as the Fund determines to be necessary in order to carry out the provisions of this section.

(July 31, 1945, ch. 339, § 42, as added Nov. 30, 1983, Pub. L. 98-181, title VIII, § 802(a)(4), 97 Stat. 1269.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286b-2 of this title.

§ 286aa. Instructions to United States Executive Director; Communist dictatorships and countries practicing apartheid

(a) The Congress hereby finds that Communist dictatorships result in severe constraints on labor and capital mobility and other highly inefficient labor and capital supply rigidities which contribute to balance of payments deficits in direct contradiction of the goals of the International Monetary Fund. Therefore, the Secretary of the Treasury shall instruct the United States Executive Director of the Fund to actively oppose any facility involving use of Fund credit by any Communist dictatorship, unless the Secretary of the Treasury certifies and documents in writing upon request and so notifies and appears, if requested, before the Foreign Relations and Banking, Housing, and Urban Affairs Committees of the Senate and the Banking, Finance and Urban Affairs Committee of the House of Representatives, at least twenty-one days in advance of any vote on such drawing that such drawing—

(1) provides the basis for correcting the balance of payments difficulties and restoring a sustainable balance of payments position;

(2) would reduce the severe constraints on labor and capital mobility or other highly inefficient labor and capital supply rigidities and advances market-oriented forces in that country; and

(3) is in the best economic interest of the majority of the people in that country.

Should the Secretary not meet a request to appear before the aforementioned committees at least twenty-one days in advance of any vote on any facility involving use of Fund credit by any communist dictatorship and certify and document in writing that these three conditions have been met, the United States Executive Director shall vote against such program.

(b) The Congress hereby finds that the practice of apartheid results in severe constraints on labor and capital mobility and other highly inefficient labor and capital supply rigidities which contribute to balance of payments deficits in direct contradiction of the goals of the International Monetary Fund. Therefore, the President shall instruct the United States Executive Director of the Fund to actively oppose any facility involving use of Fund credit by any country which practices apartheid unless the Secretary of the Treasury certifies and documents in writing, upon request, and so notifies and appears, if requested, before the Foreign Relations and Banking, Housing, and Urban Affairs Committees of the Senate and the Banking, Finance and Urban Affairs Committee of the House of Representatives, at least twenty-one days in advance of any vote on such drawing, that such drawing: (1) would reduce the severe constraints on labor and capital mobility, through such means as increasing access to education by workers and reducing artificial constraints on worker mobility and substantial reduction of racially-based restrictions on the geographical mobility of labor; (2) would reduce other highly inefficient labor and capital supply rigidities; (3) would benefit economically the majority of the people of any country which practices apartheid; (4) is suffering from a genuine balance of payments imbalance that cannot be met by recourse to private capital markets. Should the Secretary not meet a request to appear before the aforementioned committees at least twenty-one days in advance of any vote on any facility involving use of Fund credit by any country practicing apartheid and certify and document in writing that these four conditions have been met, the United States Executive Director shall vote against such program.

(July 31, 1945, ch. 339, § 43, as added Nov. 30, 1983, Pub. L. 98-181, title VIII, § 804, 97 Stat. 1270.)

§ 286bb. Elimination of predatory agricultural export subsidies

The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to propose and work for the adoption of a policy encouraging Fund members to eliminate all predatory agricultural export subsidies which might result in the reduction of other member countries' exports.

(July 31, 1945, ch. 339, § 44, as added Nov. 30, 1983, Pub. L. 98-181, title VIII, § 805, 97 Stat. 1271.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286b-2 of this title.

§ 286cc. Sustaining economic growth

(a) Economic adjustment programs

(1) The President shall instruct the Secretary of the Treasury, the Secretary of State, and other appropriate Federal officials, and shall request the Chairman of the Board of Governors of the Federal Reserve System, to use all appropriate means to encourage countries to formulate economic adjustment programs to deal with their balance of payment difficulties and external debt owed to private banks.

(2) Such economic adjustment programs should be designed to safeguard, to the maximum extent feasible, international economic growth, world trade, employment, and the long-term solvency of banks, and to minimize the likelihood of civil disturbances in countries needing economic adjustment programs.

(b) Changes in Fund guidelines; limitations on debt service exceptions

To ensure the effectiveness of economic adjustment programs supported by Fund resources—

(1) the United States Executive Director of the Fund shall recommend and shall work for changes in Fund guidelines, policies, and decisions which would—

(A) convert short-term bank debt which was made at high interest rates into long-term debt at lower rates of interest;

(B) assure that the annual external debt service, which shall include principal, interest, points, fees, and other charges required of the country involved, is a manageable and prudent percentage of the projected annual export earnings of such country; and

(C) provide that in approving any economic adjustment program the Fund shall take into account the number of countries applying to the Fund for economic adjustment programs and the aggregate effects that such programs will have on international economic growth, world trade, exports and employment of other member countries, and the long-term solvency of banks; and

(2) except as provided in subsection (c) of this section, the United States Executive Director of the Fund shall oppose and vote against providing assistance from the Fund for any economic adjustment program for a country in which the annual external debt service exceeds 85 per centum of the annual export earnings of such country, unless the Secretary of the Treasury first determines and provides written documentation to the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives that—

(A) the economic adjustment program converts high interest rate, short-term bank debt into long-term debt at significantly narrower interest rate spreads than the average interest rate spreads prevailing on bank debt reschedulings negotiated between

August 1982 and August 1983 for countries receiving assistance from the Fund for economic adjustment programs in order to minimize the burdens of adjustment on the debtor nation, provided that such interest rate spreads are consistent with that nation's need to obtain adequate external private financing;

(B) the annual external debt service required of the country involved is a manageable and prudent percentage of the projected annual export earnings of such country; and

(C) the economic adjustment program will not have an adverse impact on international economic growth, world trade, exports, and employment of other member countries, and the long-term solvency of banks.

(c) Emergencies and extraordinary circumstances

The provisions of subsection (b)(2) of this section shall not apply in any case in which the Secretary of the Treasury first determines and provides written documentation to the Committee on Banking, Housing, and Urban Affairs and the Committee on Foreign Relations of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives that—

(1) an emergency exists in a nation that has applied to the Fund for assistance that requires an immediate short-term loan to avoid disrupting orderly financial markets;

(2) a sudden decrease in export earnings in the country applying to the Fund for assistance has increased the ratio of annual external debt service to annual export earnings, to greater than 85 per centum for a period projected to be no more than one year; or

(3) other extraordinary circumstances exist which warrant waiving the provisions of subsection (b)(2) of this section.

(July 31, 1945, ch. 339, § 45, as added Nov. 30, 1983, Pub. L. 98-181, title VIII, § 806, 97 Stat. 1272.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286b-2 of this title.

§ 286dd. Fund bailouts of banks; rescheduling of debt

The Secretary of the Treasury shall instruct the United States Executive Director of the Fund—

(1) to oppose and vote against any Fund drawing by a member country where, in his judgment, the Fund resources would be drawn principally for the purpose of repaying loans which have been imprudently made by banking institutions to the member country; and

(2) to work to insure that the Fund encourages borrowing countries and banking institutions to negotiate, where appropriate, a rescheduling of debt which is consistent with safe and sound banking practices and the country's ability to pay.

(July 31, 1945, ch. 339, § 46, as added Nov. 30, 1983, Pub. L. 98-181, title VIII, § 807, 97 Stat. 1273.)

§ 286ee. International cooperation

The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to propose that the Fund adopt the following policies with respect to international lending:

(1) In its consultations with a member government on its economic policies pursuant to article IV of the Articles of Agreement of the Fund, the Fund should—

(A) intensify its examination of the trend and volume of external indebtedness of private and public borrowers in the member country and comment, as appropriate, in its report to the Executive Board from the viewpoint of the contribution of such borrowings to the economic stability of the borrower; and

(B) consider to what extent and in what form these comments might be made available to the international banking community and the public.

(2) As part of any Fund-approved stabilization program, the Fund should give consideration to placing limits on public sector external short- and long-term borrowing.

(3) As a part of its annual report, and at such times as it may consider desirable, the Fund should publish its evaluation of the trend and volume of international lending as it affects the economic situation of lenders, borrowers, and the smooth functioning of the international monetary system.

(July 31, 1945, ch. 339, § 47, as added Nov. 30, 1983, Pub. L. 98-181, title VIII, § 809, 97 Stat. 1274.)

§ 286ff. Fund interest rates

The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to propose and work for the adoption of Fund policies regarding the rate of remuneration paid on use of member's quota subscriptions and the rate of charges on Fund drawings to bring those rates in line with market rates.

(July 31, 1945, ch. 339, § 48, as added Nov. 30, 1983, Pub. L. 98-181, title VIII, § 810, 97 Stat. 1274.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286b-2 of this title.

§ 286gg. Elimination of trade restrictions

(a) Promotion of fair trade as financial assistance policy

(1) The Secretary of the Treasury shall instruct the United States Executive Director of the Fund to initiate a wide consultation with the Managing Director of the Fund and the other directors of the Fund with regard to the development of Fund financial assistance policies which, to the maximum feasible extent—

(A) reduce obstacles to and restrictions upon international trade and investment in goods and services;

(B) eliminate unfair trade and investment practices; and

(C) promote mutually advantageous economic relations.

(2) The Secretary of the Treasury shall work closely in this effort with the Trade Policy Committee.

(3) As part of this effort, the Secretary of the Treasury shall also instruct the United States Executive Director of the Fund to encourage close cooperation between Fund staff and the GATT Secretariat.

(b) Agreement to eliminate unfair trade practices as condition of financial assistance

(1) The Secretary of the Treasury shall instruct the United States Executive Director of the Fund, prior to the extension to any country of financial assistance by the Fund, to work to have the Fund obtain the agreement of such country to eliminate, in a manner consistent with its balance of payments adjustment program, unfair trade and investment practices with respect to goods and services which the United States Trade Representative, after consultation with the Trade Policy Committee, has determined to have a significant deleterious effect on the international trading system.

(2) Such practices include—

(A) the provision of predatory export subsidies, employed in connection with the exporting of agricultural commodities and products thereof to foreign countries;

(B) the provision of other export subsidies, such as government subsidized below-market interest rate financing for commodities or manufactured goods;

(C) unreasonable import restrictions;

(D) the imposition of trade-related performance requirements on foreign investment; and

(E) practices which are inconsistent with international agreements.

(c) United States position on requests for drawing under Fund programs; progress made in eliminating unfair trade practices

(1) In determining the United States position on requests for periodic drawing under Fund programs, the Secretary of the Treasury shall take full account of the progress countries have made in achieving targets for eliminating or phasing out the practices referred to in subsection (b) of this section.

(2) In the event that the United States supports a request for drawing by a country that has not achieved the Fund targets relating to such practices specified in its program, the Secretary of the Treasury shall report to the appropriate committees of the Congress the reasons for the United States position.

(July 31, 1945, ch. 339, § 49, as added Nov. 30, 1983, Pub. L. 98-181, title VIII, § 812, 97 Stat. 1275.)

SUBCHAPTER XVI—UNITED NATIONS ORGANIZATION

§ 287. Representation in Organization

UNITED STATES PARTICIPATION IN THE UNITED NATIONS IF ISRAEL IS ILLEGALLY EXPELLED

Pub. L. 98-164, title I, § 115, Nov. 22, 1983, 97 Stat. 1021, provided that:

"(a) The Congress finds that—

"(1) the United Nations was founded on the principle of universality,

"(2) the United Nations Charter stipulates that members may be suspended by the General Assembly only 'upon the recommendation of the Security Council'; and

"(3) any move by the General Assembly that would illegally deny Israel its credentials in the Assembly would be a direct violation of these provisions of the Charter.

"(b) If Israel is illegally expelled, suspended, denied its credentials, or in any other manner denied its right to participate in the General Assembly of the United Nations or any specialized agency of the United Nations, the United States shall suspend its participation in the General Assembly or such specialized agency until the illegal action is reversed. The United States shall withhold payment of its assessed contribution to the United Nations or a specialized agency during any period in which United States participation is suspended pursuant to this section."

§ 287b. Reports to Congress by President

REPORT ON POLICIES PURSUED BY OTHER COUNTRIES IN INTERNATIONAL ORGANIZATIONS

Pub. L. 98-164, title I, § 117, Nov. 22, 1983, 97 Stat. 1022, provided that: "The Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, by January 31 of each year, a report regarding the policies which each member country of the United Nations pursues in international organizations of which the United States is a member. The report shall describe generally each country's foreign policies as reflected in its activities in international organizations and shall detail their respective positions on major issues of interest to the United States, including key decisions relating to the budget of international organizations."

§ 287e. Authorization of appropriations; payment of expenses

RESTRICTIONS RELATING TO THE PALESTINE LIBERATION ORGANIZATION AND THE SOUTH WEST AFRICA PEOPLE'S ORGANIZATION

Pub. L. 98-164, title I, § 114, Nov. 22, 1983, 97 Stat. 1020, provided that:

"(a) Funds appropriated for any fiscal year for the Department of State for 'International Organizations and Conferences' may not be used for payment by the United States, as its contribution toward the assessed budget of the United Nations for any year, of any amount which would cause the total amount paid by the United States as its assessed contribution for that year to exceed the amount assessed as the United States contribution for that year less—

"(1) 25 per centum of the amount budgeted for that year for the Committee on the Exercise for the Inalienable Rights of the Palestinian People (or any similar successor entity); and

"(2) 25 per centum of the amount budgeted for that year for the Special Unit on Palestinian Rights (or any similar successor entity); and

"(3) 25 per centum of the amount budgeted for that year for projects whose primary purpose is to provide benefits to the Palestine Liberation Organization or entities associated with it or to the South West Africa People's Organization.

"(b) Funds appropriated for any fiscal year for the Department of State for 'International Organizations and Conferences' may not be used for payment by the United States, as its contribution toward the assessed budget of any specialized agency of the United Nations for any year, of any amount which would cause the total amount paid by the United States as its assessed contribution for that year to exceed the amount assessed as the United States contribution for that year less 25 per centum of the amount budgeted by such agency for that year for projects whose primary purpose is to provide benefits to the Palestine Liberation Organization or entities associated with it or to the South West Africa People's Organization.

"(c) The President shall annually review the budgets of the United Nations and its specialized agencies to determine which projects have the primary purpose of providing benefits to the Palestine Liberation Organization or to the South West Africa People's Organization. The President shall report to the Congress on any such project for which a portion of the United States assessed contribution is withheld and the amount withheld.

"(d) Subsections (a)(3) and (b) shall not be construed as limiting United States contributions to the United Nations or its specialized agencies for projects whose primary purpose is to provide humanitarian, educational, developmental, and other nonpolitical benefits."

§ 287e-1. Housing supplement for certain employees assigned to the United States Mission to the United Nations

The President may, under such regulations as he shall prescribe, and notwithstanding section 3324(a) and (b) of title 31 and section 5536 of title 5,

(1) grant any employee of the staff of the United States Mission to the United Nations designated by the Secretary of State, and any employee of the United States Information Agency designated by the Director of that Agency, who is required because of important representational responsibilities to live in the extraordinarily high-rent area immediately surrounding the headquarters of the United Nations in New York, New York, an allowance to compensate for the portion of expenses necessarily incurred by the employee for quarters and utilities which exceed the average of such expenses necessarily incurred by the employee for quarters and utilities which exceed the average of such expenses incurred by typical, permanent residents of the Metropolitan New York, New York, area with comparable salary and family size who are not compelled by reason of their employment to live in such high-rent area; and

[*See main edition for text of* (2)]

Not more than fifty employees, including not more than five employees of the United States Information Agency, shall be receiving an allowance under paragraph (1) of this section at any one time.

(As amended Nov. 22, 1983, Pub. L. 98-164, title II, § 215, 97 Stat. 1035.)

Amendments

1983—Pub. L. 98-164, § 215(2), added limitation of five United States Information Agency employees, and substituted "fifty" for "forty-five".

Par. (1). Pub. L. 98-164, § 215(1), added provisions relating to applicability to United States Information Agency employees.

SUBCHAPTER XVII—UNITED NATIONS EDUCATIONAL, SCIENTIFIC, AND CULTURAL ORGANIZATION

§ 287q. General and special conferences; expenses; acceptance of services and gifts or bequests of money or materials

The National Commission shall call general conferences for the discussion of matters relating to the activities of the Organization, to which conferences organized bodies actively interested in such matters shall be invited to send representatives: *Provided, however,* That the travel and maintenance of such representation shall be without expense to the Government. Such general conferences shall be held annually or biennially, as the National Commission may determine, and in such places as it may designate. They shall be attended so far as possible by the members of the National Commission and by the delegates of the United States to the General Conference of the Organization. The National Commission is further authorized to call special conferences of experts for the consideration of specific matters relating to the Organization by persons of specialized competences. The Department of State may pay their transportation and other expenses as authorized by section 5703 of title 5, for the period of actual attendance and of necessary travel. The National Commission is further authorized to receive and accept services and gifts or bequests of money or materials to carry out any of the educational, scientific, or cultural purposes of the National Commission as set forth in this subchapter and in the constitution of the Organization. Any money so received shall be held by the Secretary of State and shall be subject to disbursement through the disbursement facilities of the Treasury Department as the terms of the gift or bequest may require and shall remain available for expenditure by grant or otherwise until expended: *Provided,* That no such gift or bequest may be accepted or disbursed if the terms thereof are inconsistent with the purposes of the National Commission as set forth in this subchapter and in the constitution of the Organization. Gifts or bequests provided for herein shall, for the purposes of Federal income, estate, and gift taxes, be deemed to be a gift to or for the United States. The National Commission and Secretary of State shall submit to Congress annual reports of receipts and expenditures of funds and bequests received and disbursed pursuant to the provisions of this section.

(As amended Nov. 22, 1983, Pub. L. 98-164, title I, § 106(a), 97 Stat. 1018.)

Amendments

1983—Pub. L. 98-164 struck out provision prohibiting acceptance of gifts or bequests aggregating more than $200,000 in any year.

SUBCHAPTER XVIII—PRIVILEGES AND IMMUNITIES OF INTERNATIONAL ORGANIZATIONS

§ 288. "International organization" defined; authority of President

PUBLIC INTERNATIONAL ORGANIZATIONS ENTITLED TO ENJOY CERTAIN PRIVILEGES, EXEMPTIONS, AND IMMUNITIES

Ex. Ord. No. 9698, Feb. 19, 1946, 11 F.R. 1809; Ex. Ord. No. 9751, July 11, 1946, 11 F.R. 7713; Ex. Ord. No. 9823, Jan. 24, 1947, 12 F.R. 551; Ex. Ord. No. 9863, May 31, 1947, 12 F.R. 3559; Ex. Ord. No. 9911, Dec. 19, 1947, 12 F.R. 8719; Ex. Ord. No. 9972, June 25, 1948, 13 F.R. 3573; Ex. Ord. No. 10025, Dec. 30, 1948, 13 F.R. 9361; Ex. Ord. No. 10083, Oct. 10, 1949, 14 F.R. 6161; Ex. Ord. No. 10086, Nov. 25, 1949, 14 F.R. 7147; Ex. Ord. No. 10228, Mar. 26, 1951, 16 F.R. 2676; Ex. Ord. No. 10533, June 3, 1954, 19 F.R. 3289; Ex. Ord. No. 10676, Sept. 1, 1956, 21 F.R. 6625; Ex. Ord. No. 10680, Oct. 2, 1956, 21 F.R. 7647; Ex. Ord. No. 10727, Aug. 31, 1957, 22 F.R. 7099; Ex. Ord. No. 10769, May 29, 1958, 23 F.R. 3801; Ex. Ord. No. 10795, Dec. 13, 1958, 23 F.R. 9709; Ex. Ord. No. 10832, Aug. 18, 1959, 24 F.R. 6753; Ex. Ord. No. 10864, Feb. 18, 1960, 25 F.R. 1507; Ex. Ord. No. 10866, Feb. 20, 1960, 25 F.R. 1584; Ex. Ord. No. 10873, Apr. 8, 1960, 25 F.R. 3097; Ex. Ord. No. 10943, May 19, 1961, 26 F.R. 4419; Ex. Ord. No. 10983, Dec. 30, 1961, 27 F.R. 32; Ex. Ord. No. 11059, Oct. 23, 1962, 27 F.R. 10405; Ex. Ord. No. 11225, May 22, 1965, 30 F.R. 7093; Ex. Ord. No. 11227, June 2, 1965, 30 F.R. 7369; Ex. Ord. No. 11277, Apr. 30, 1966, 31 F.R. 6609; Ex. Ord. No. 11283, May 27, 1966, 31 F.R. 7667; Ex. Ord. No. 11318, Dec. 5, 1966, 31 F.R. 15307; Ex. Ord. No. 11334, Mar. 7, 1967, 32 F.R. 3933; Ex. Ord. No. 11351, May 22, 1967, 32 F.R. 7511; Ex. Ord. No. 11363, July 20, 1967, 32 F.R. 10779; Ex. Ord. No. 11372, Sept. 8, 1967, 32 F.R. 13251; Ex. Ord. No. 11484, Sept. 29, 1969, 34 F.R. 15337; Ex. Ord. No. 11596, June 5, 1971, 36 F.R. 11079; Ex. Ord. No. 11718, May 14, 1973, 38 F.R. 12797; Ex. Ord. No. 11760, Jan. 17, 1974, 39 F.R. 2343; Ex. Ord. No. 11767, Feb. 19, 1974, 39 F.R. 6603; Ex. Ord. No. 11866, June 18, 1975, 40 F.R. 26015; Ex. Ord. No. 11966, Jan. 19, 1977, 42 F.R. 4331; Ex. Ord. No. 11977, Mar. 14, 1977, 42 F.R. 14671; Ex. Ord. No. 12033, Jan. 10, 1978, 43 F.R. 1915; Ex. Ord. No. 12238, Sept. 12, 1980, 45 F.R. 60877; Ex. Ord. No. 12359, Apr. 22, 1982, 47 F.R. 17791; Ex. Ord. No. 12403, Feb. 8, 1983, 48 F.R. 6087; Ex. Ord. No. 12425, June 16, 1983, 48 F.R. 28069; Ex. Ord. No. 12467, Mar. 2, 1984, 49 F.R. 8229; Ex. Ord. No. 12508, Mar. 22, 1985, 50 F.R. 11837, designated the following-named international organizations as public international organizations entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act [this subchapter]:

African Development Bank.
African Development Fund.
Asian Development Bank.
Caribbean Organization.
Customs Cooperation Council.
Food and Agriculture Organization.
Great Lakes Fishery Commission.
Inter-American Defense Board.
Inter-American Development Bank.
Inter-American Institute of Agricultural Sciences.
Inter-American Statistical Institute.
Inter-American Tropical Tuna Commission.
Intergovernmental Maritime Consultative Organization.
International Atomic Energy Agency.
International Bank for Reconstruction and Development.
International Boundary and Water Commission, United States and Mexico.
International Centre for Settlement of Investment Disputes.
International Civil Aviation Organization.
International Coffee Organization.
International Cotton Advisory Committee.
International Cotton Institute.
International Criminal Police Organization (except those privileges, exemptions, and immunities provided for in 288a(c), portions of sections 288a(d) and 288b, relating to customs duties and federal internal-revenue importation taxes, and section 288c of this title).
International Development Association.
International Fertilizer Development Center.
International Finance Corporation.
International Food Policy Research Institute (except those privileges, exemptions, and immunities provided for in sections 288a(a) to (c), the last clause of (d), relating to treatment of official communications, and 288d(b) of this title).
International Hydrographic Bureau.
International Joint Commission—United States and Canada.
International Labor Organization.
International Maritime Satellite Organization.
International Monetary Fund.
International Pacific Halibut Commission.
International Secretariat for Volunteer Service.
International Telecommunication Union.
International Wheat Advisory Committee (International Wheat Council).
Lake Ontario Claims Tribunal.
Multinational Force and Observers.
Organization of African Unity (OAU).
Organization of American States (including Pan American Union).
Pan American Health Organization.
South Pacific Commission.
United International Bureaux for the Protection of Intellectual Property (BIRPI).
United Nations.
United Nations Educational, Scientific, and Cultural Organization.
Universal Postal Union.
World Health Organization.
World Intellectual Property Organization (WIPO).
World Meteorological Organization.
World Tourism Organization.

§ 288f–1. European Space Agency; extension of privileges, exemptions, and immunities to members

The provisions of this subchapter may be extended to the European Space Agency in the same manner, to the same extent, and subject to the same conditions, as they may be extended to a public international organization in which the United States participates pursuant to any treaty or under the authority of any Act of Congress authorizing such participation or making an appropriation for such participation.

(As amended Nov. 22, 1983, Pub. L. 98–164, title I, § 120, 97 Stat. 1023.)

AMENDMENTS

1983—Pub. L. 98–164 substituted "Space Agency" for "Space Research Organization".

SUBCHAPTER XXI—INTER-AMERICAN FOUNDATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2291 of this title.

§ 290f. Inter-American Foundation

[See main edition for text of (a) to (r)]

(s) Authorization of appropriations

[See main edition for text of (1)]

(2) There is authorized to be appropriated not to exceed $16,000,000 for the fiscal year 1984 and $16,000,000 for the fiscal year 1985 to carry out the purposes of this section. Amounts appropriated under this paragraph are authorized to remain available until expended.

[See main edition for text of (t) and (u)]

(As amended Pub. L. 98-164, title X, § 1001, Nov. 22, 1983, 97 Stat. 1051.)

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in subsec. (s), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. Part I of the Foreign Assistance Act of 1961 is classified generally to subchapter I (§ 2151 et seq.) of chapter 32 of this title. For provisions deeming references to subchapter I to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of chapter 32, see section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

AMENDMENTS

1983—Subsec. (s)(2). Pub. L. 98-164 substituted "$16,000,000 for the fiscal year 1984 and $16,000,000 for the fiscal year 1985" for "$12,000,000 for the fiscal year 1982 and $12,800,000 for the fiscal year 1983".

SUBCHAPTER XXII—AFRICAN DEVELOPMENT FUND

§ 290g-12. Additional authorization for payment of United States contribution

(a)(1) The United States Governor of the Fund is authorized to contribute on behalf of the United States $150,000,000 to the Fund as the United States contribution to the third replenishment of the resources of the Fund.

(2) Any commitment to make the contribution authorized in paragraph (1) shall be made subject to obtaining the necessary appropriations.

(b) In order to pay for the United States contribution provided for in this section, there are authorized to be appropriated, without fiscal year limitation, $150,000,000 for payment by the Secretary of the Treasury.

(Pub. L. 94-302, title II, § 213, as added Pub. L. 98-181, title X, § 1003, Nov. 30, 1983, 97 Stat. 1286.)

SUBCHAPTER XXIII—AFRICAN DEVELOPMENT FOUNDATION

§ 290h-8. Use of certain funds

REFERENCES IN TEXT

The Foreign Assistance Act of 1961, referred to in text, is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. Part I of the Foreign Assistance Act of 1961 is classified generally to subchapter I (§ 2151 et seq.) of chapter 32 of this title. For provisions deeming references to subchapter I to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of chapter 32, see section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

SUBCHAPTER XXV—UNITED STATES-INDIA FUND FOR CULTURAL, EDUCATIONAL, AND SCIENTIFIC COOPERATION

§ 290j. Establishment of the Fund

(a) Agreement with Government of India; program purposes

The President is authorized to enter into an agreement with the Government of India for the establishment of a fund (hereafter in this subchapter referred to as the "Fund") which would provide grants and other assistance for cultural, educational, and scientific programs of mutual interest. Such programs may include exchanges of persons, exchanges of information, and other programs of study, research, and scholarly cooperation. The agreement may also provide for the establishment of an endowment, a foundation, or other means to carry out the purposes of the agreement.

(b) United States representatives

The United States representatives on any board or other entity created in accordance with the agreement to administer the Fund shall be designated by the President predominately from among representatives of United States Government agencies, including those administering programs which may be supported in whole or in part by the Fund.

(c) Funding of programs

United States Government agencies carrying out programs of the types specified in subsection (a) of this section may receive amounts directly from the Fund for use in carrying out those programs.

(Pub. L. 98-164, title IX, § 902, Nov. 22, 1983, 97 Stat. 1051.)

SHORT TITLE

Section 901 of title IX of Pub. L. 98-164 provided that: "This title [enacting this subchapter] may be cited as the 'United States-India Fund for Cultural, Educational, and Scientific Cooperation Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 290j-1 of this title.

§ 290j-1. Use of United States owned rupees to capitalize the Fund

Subject to applicable requirements concerning reimbursement to the Treasury for United States owned foreign currencies, the President may make available to the Fund, for use in carrying out the agreement authorized by section 290j of this title, up to the equivalent of $200,000,000 in foreign currencies owned by the United States in India or owed to the United States by the Government of India. Such use may include investment in order to generate interest which would be retained in the Fund and used to support programs pursuant to that agreement.

(Pub. L. 98-164, title IX, § 903, Nov. 22, 1983, 97 Stat. 1051.)

CHAPTER 8—FOREIGN SERVICE BUILDINGS

Sec.
302. Award of contracts.
  (a) Eligibility limitation for construction, etc., abroad.
  (b) Foreign laws and regulations; competitive status and adequacy; bidder qualifications.
  (c) Contracts for construction, etc. in United States.
  (d) Discretionary determinations by Secretary of State.
  (e) Termination of requirements.

§ 302. Award of contracts

(a) Eligibility limitation for construction, etc., abroad

Eligibility for award of contracts under this chapter or of any other contract by the Secretary of State, including lease-back or other agreements, the purpose of which is to obtain the construction, alteration, or repair of buildings and grounds abroad, when estimated to exceed $5,000,000, including any contract alternatives or options, shall be limited, after a determination that adequate competition will be obtained thereby, to (1) American-owned bidders and (2) bidders from countries which permit or agree to permit substantially equal access to American bidders for comparable diplomatic and consular building projects, except that participation may be permitted by or limited to host-country bidders where required by international agreement or by the law of the host country or where determined by the Secretary of State to be necessary in the interest of bilateral relations or necessary to carry out the construction project.

(b) Foreign laws and regulations; competitive status and adequacy; bidder qualifications

(1) Generally applicable laws and regulations pertaining to licensing and other qualifications to do business in the country in which the contract is to be performed shall not be deemed a limitation of access for purposes of this section.

(2) For purposes of determining competitive status, bids qualifying under subsection (a)(1) of this section shall be reduced by 10 per centum.

(3) A determination of adequacy of competition for purposes of subsection (a) of this section shall be made after advance publication by the Secretary of State of the proposed project, and receipt from not less than two prospective responsible bidders of intent to submit a bid or proposal. If competition is not determined to be adequate, contracts may be awarded without regard to subsection (a) of this section and this subsection.

(4) Bidder qualification under subsection (a) of this section shall be determined on the basis of nationality of ownership, the burden of which shall be on the prospective bidder. Qualification under subsection (a)(1) of this section shall require evidence of (A) performance of similar construction work in the United States, and (B) either (i) ownership in excess of fifty percent by United States citizens or permanent residents, or (ii) incorporation in the United States for more than three years and employment of United States citizens or permanent residents in more than half of the corporation's permanent full-time professional and managerial positions in the United States.

(5) Qualification under this section shall be established on the basis of determinations at the time bids are requested.

(c) Contracts for construction, etc. in United States

Contracts for construction, alteration, or repair in the United States for or on behalf of any foreign mission (as defined in section 202(a)(4) of title II of the State Department Basic Authorities Act of 1956 (22 U.S.C. 4302(a)(4)) may, pursuant to the authority of that title [22 U.S.C. 4301 et seq.], only be awarded to or performed by bidders qualifying under subsection (a) (1) or (2) or by nationals of the country for which the contract is being performed who are granted the right of entry into the United States for that purpose.

(d) Discretionary determinations by Secretary of State

Determinations under this section shall be committed to the discretion of the Secretary of State.

(e) Termination of requirements

This section shall cease to be effective when the Secretary of State determines that there are internationally-agree-upon [1] rules in effect on bidding for construction contracts.

(May 7, 1926, ch. 250, § 11, as added Nov. 22, 1983, Pub. L. 98-164, title I, § 136, 97 Stat. 1029.)

REFERENCES IN TEXT

The State Department Basic Authorities Act of 1956, referred to in subsec. (c), is act Aug. 1, 1956, ch. 841, 70 Stat. 890, as amended. Title II of the State Department Basic Authorities Act of 1956, is classified generally to chapter 53 (§ 4301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1956 Amendment note set out under section 2651 of this title and Tables.

CHAPTER 9—FOREIGN WARS, WAR MATERIALS, AND NEUTRALITY

SUBCHAPTER II—NEUTRALITY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 613, 2393 of this title; title 46 App. section 1242a.

CHAPTER 11—FOREIGN AGENTS AND PROPAGANDA

SUBCHAPTER II—REGISTRATION OF FOREIGN PROPAGANDISTS

§ 618. Enforcement and penalties

[See main edition for text of (*a*) *to* (*e*)]

(f) Injunctive remedy; jurisdiction of district court

Whenever in the judgment of the Attorney General any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of this subchapter, or regulations issued thereunder, or whenever any agent of a foreign principal fails to comply with any of the provisions of this subchapter or the regulations issued thereunder, or otherwise is in violation of the subchapter, the Attorney General may make application to the appropriate United States district court for an order enjoining such acts or enjoining such person from continuing to act as an agent of such foreign principal, or for an order requiring compliance with any appropriate provision of the subchapter or regulation thereunder. The district court shall have jurisdiction and authority to issue a temporary or permanent injunction, restraining order or such other order which it may deem proper.

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[1] So in original. Probably should be "internationally-agreed-upon".

[See main edition for text of (g) and (h)]

(As amended Nov. 8, 1984, Pub. L. 98-620, title IV, § 402(26), 98 Stat. 3359.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-620 struck out provision that the proceedings shall be made a preferred cause and expedited in every way.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 15—THE REPUBLIC OF THE PHILIPPINES

SUBCHAPTER IV—GENERAL PROVISIONS RELATING TO TRADE RELATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1373 of this title; title 48 section 734.

SUBCHAPTER IV-A—TRADE RELATIONS UNDER REVISED AGREEMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 48 section 734.

CHAPTER 18—UNITED STATES INFORMATION AND EDUCATIONAL EXCHANGE PROGRAMS

SUBCHAPTER V-A—RADIO BROADCASTING TO CUBA

Sec.
1465. Congressional findings and declaration of purposes.
1465a. Additional functions of United States Information Agency.
  (a) Radio broadcasting to Cuba.
  (b) Broadcasting as part of Voice of America.
  (c) Location of broadcast facilities; frequency; leased time from nongovernmental shortwave stations.
  (d) Changes in frequencies to other AM bands; jamming and interference.
  (e) Voice of America: Cuba Service; Voice of America: Radio Marti program.
  (f) Use of other facilities.
1465b. Cuba Service of Voice of America.
1465c. Advisory Board for Radio Broadcasting to Cuba.
  (a) Establishment; membership; Chairman.
  (b) Review; recommendations.
  (c) Terms; vacancies.
  (d) Head of Cuba Service as ex officio member.
  (e) Compensation; travel expenses.
  (f) Procurement powers of Board.
  (g) Indefinite life span of Board.
  (h) Authorization of appropriations.
1465d. Assistance from other government agencies.
1465e. Compensation for Cuban interference with broadcasting in United States.
  (a) Interim assistance to United States broadcasters.
  (b) Money payments pursuant to authority from Federal Communications Commission.
  (c) Regulations and procedures.
  (d) Authorization of appropriations.
  (e) Four-year availability for appropriated funds.
  (f) Presidential task force.
1465f. Authorization of appropriations.
1465g. Independent evaluation of Cuba Service.

SUBCHAPTER VIII—APPROPRIATIONS AND OTHER FUNDS

1477c. Notification of reprogramings and grants; covered programs, projects, or activities; award of program grants.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1431. Congressional declaration of objectives

SHORT TITLE OF 1983 AMENDMENT

For short title of Pub. L. 98-111, which enacted subchapter V-A of this chapter, as the "Radio Broadcasting to Cuba Act", see section 1 of Pub. L. 98-111, set out as a Short Title note under section 1465 of this title.

§ 1438. Veterans' preference

REFERENCES IN TEXT

Sections 7511 and 7512 of title 5, referred to in text, which related to adverse actions against preference eligible employees and comprised subchapter II of chapter 75 of Title 5, Government Organization and Employees, were repealed by Pub. L. 95-454 and replaced by a new subchapter II (§§ 7511-7514) of chapter 75 relating to removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less.

SUBCHAPTER V—DISSEMINATION ABROAD OF INFORMATION ABOUT THE UNITED STATES

§ 1463. Voice of America broadcasts; principles governing communications

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1465a of this title.

SUBCHAPTER V-A—RADIO BROADCASTING TO CUBA

§ 1465. Congressional findings and declaration of purposes

The Congress finds and declares—

(1) that it is the policy of the United States to support the right of the people of Cuba to seek, receive, and impart information and ideas through any media and regardless of frontiers, in accordance with article 19 of Universal Declaration of Human Rights;

(2) that, consonant with this policy, radio broadcasting to Cuba may be effective in furthering the open communication of accurate information and ideas to the people of Cuba, in particular information about Cuba;

(3) that such broadcasting to Cuba, operated in a manner not inconsistent with the broad foreign policy of the United States and in accordance with high professional standards, would be in the national interest; and

(4) that the Voice of America already broadcasts to Cuba information that represents America, not any single segment of American society, and includes a balanced and comprehensive projection of significant American thought and institutions but that there is a need for broadcasts to Cuba which provide news, commentary and other information about events in Cuba and elsewhere to promote the cause of freedom in Cuba.

(Pub. L. 98-111, § 2, Oct. 4, 1983, 97 Stat. 749.)

CODIFICATION

Section was enacted as part of the Radio Broadcasting to Cuba Act which comprises this subchapter, and not as part of the United States Information and Educational Exchange Act of 1948 which comprises this chapter.

SHORT TITLE

Section 1 of Pub. L. 98-111 provided: "That this Act [enacting this subchapter] may be cited as the 'Radio Broadcasting to Cuba Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1465a, 1465d of this title.

§ 1465a. Additional functions of United States Information Agency

(a) Radio broadcasting to Cuba

In order to carry out the objectives set forth in section 1465 of this title, the United States Information Agency (hereafter in this subchapter referred to as the "Agency") shall provide for the open communication of information and ideas through the use of radio broadcasting to Cuba. Radio broadcasting to Cuba shall serve as a consistently reliable and authoritative source of accurate, objective, and comprehensive news.

(b) Broadcasting as part of Voice of America

Radio broadcasting in accordance with subsection (a) of this section shall be part of the Voice of America radio broadcasting to Cuba and shall be in accordance with all Voice of America standards to ensure the broadcast of programs which are objective, accurate, balanced, and which present a variety of views.

(c) Location of broadcast facilities; frequency; leased time from nongovernmental shortwave stations

Radio broadcasting to Cuba authorized by this subchapter shall utilize the broadcasting facilities located at Marathon, Florida, and the 1180 AM frequency that were used by the Voice of America prior to October 4, 1983. Other frequencies, not on the commercial Amplitude Modulation (AM) Band (535 kHz to 1605 kHz), may also be simultaneously utilized: *Provided*, That no frequency shall be used for radio broadcasts to Cuba in accordance with this subchapter which is not also used for all other Voice of America broadcasts to Cuba. Time leased from nongovernmental shortwave radio stations may be used to carry all or part of the Service programs and to rebroadcast Service programs: *Provided*, That not less than 30 per centum of the programs broadcast or rebroadcast shall be regular Voice of America broadcasts with particular emphasis on news and programs meeting the requirements of section 1463(2) of this title.

(d) Changes in frequencies to other AM bands; jamming and interference

Notwithstanding subsection (c) of this section, in the event that broadcasts to Cuba on the 1180 AM frequency are subject to jamming or interference greater by 25 per centum or more than the average daily jamming or interference in the twelve months preceding September 1, 1983, the Director of the United States Information Agency may lease time on commercial or noncommercial educational AM band radio broadcasting stations. The Federal Communications Commission shall determine levels of jamming and interference by conducting regular monitoring of the 1180 AM frequency. In the event that more than two hours a day of time is leased, not less than 30 per centum of the programing broadcast shall be regular Voice of America broadcasts with particular emphasis on news and programs meeting the requirements of section 1463(2) of this title.

(e) Voice of America: Cuba Service; Voice of America: Radio Marti program

Any program of United States Government radio broadcasts to Cuba authorized by this section shall be designated "Voice of America: Cuba Service" or "Voice of America: Radio Marti program".

(f) Use of other facilities

In the event broadcasting facilities located at Marathon, Florida, are rendered inoperable by natural disaster or by unlawful destruction, the Director of the United States Information Agency may, for the period in which the facilities are inoperable but not to exceed one hundred and fifty days, use other United States Government-owned transmission facilities for Voice of America broadcasts to Cuba authorized by this subchapter.

(Pub. L. 98-111, § 3, Oct. 4, 1983, 97 Stat. 749.)

CODIFICATION

Section was enacted as part of the Radio Broadcasting to Cuba Act which comprises this subchapter, and not as part of the United States Information and Educational Exchange Act of 1948 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1465b, 1465d, 1465f of this title.

§ 1465b. Cuba Service of Voice of America

The Director of the United States Information Agency shall establish within the Voice of America a Cuba Service (hereafter in this section referred to as the "Service"). The Service shall be responsible for all radio broadcasts to Cuba authorized by section 1465a of this title. The Director of the United States Information Agency shall appoint a head of the Service and shall employ such staff as the head of the Service may need to carry out his duties. The Cuba Service shall be administered separately from other Voice of America functions and the head of the Cuba Service shall report directly to the Director and the Associate Director for Broadcasting of the United States Information Agency.

(Pub. L. 98-111, § 4, Oct. 4, 1983, 97 Stat. 750.)

CODIFICATION

Section was enacted as part of the Radio Broadcasting to Cuba Act which comprises this subchapter, and not as part of the United States Information and Educational Exchange Act of 1948 which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1465f of this title.

§ 1465c. Advisory Board for Radio Broadcasting to Cuba

(a) Establishment; membership; Chairman

There is established within the Office of the President the Advisory Board for Radio Broadcasting to Cuba (hereafter in this subchapter referred to as the "Board"). The Board shall consist of nine members, appointed by the President by and with the advice and consent of the Senate, of whom not more than five shall be members of the same political party. The President shall designate one member of the Board to serve as Chairman.

(b) Review; recommendations

The Board shall review the effectiveness of the activities carried out under this subchapter and shall make such recommendations to the President, the Director and the Associate Director for Broadcasting of the United States Information Agency as it may deem necessary.

(c) Terms; vacancies

In appointing the initial voting members of the Board, the President shall designate three members to serve for a term of three years, three members to serve for a term of two years, and three members to serve for a term of one year. Thereafter, the term of each member of the Board shall be three years. The President shall appoint, by and with the advice and consent of the Senate, members to fill vacancies occurring prior to the expiration of a term, in which case the members so appointed shall serve for the remainder of such term. Any member whose term has expired may serve until his successor has been appointed and qualified.

(d) Head of Cuba Service as ex officio member

The head of the Service shall serve, ex officio, as a member of the Board.

(e) Compensation; travel expenses

Members of the Board appointed by the President shall, while attending meetings of the Board or while engaged in duties relating to such meetings or in other activities of the Board pursuant to this section, including traveltime, be entitled to receive compensation equal to the daily equivalent of the compensation prescribed for level V of the Executive Schedule under section 5316 of title 5. While away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently. The ex officio member of the Board shall not be entitled to any compensation under this section, but may be allowed travel expenses as provided in the preceding sentence.

(f) Procurement powers of Board

The Board may, to the extent it deems necessary to carry out its functions under this section, procure supplies, services, and other personal property, including specialized electronic equipment.

(g) Indefinite life span of Board

Notwithstanding any other provision of law, the Board shall remain in effect indefinitely.

(h) Authorization of appropriations

There are authorized to be appropriated $130,000 to carry out the provisions of this section.

(Pub. L. 98-111, § 5, Oct. 4, 1983, 97 Stat. 750.)

CODIFICATION

Section was enacted as part of the Radio Broadcasting to Cuba Act which comprises this subchapter, and not as part of the United States Information and Educational Exchange Act of 1948 which comprises this chapter.

§ 1465d. Assistance from other government agencies

(a) In order to assist the United States Information Agency in carrying out the purposes set forth in section 1465 of this title, any agency or instrumentality of the United States may sell, loan, lease, or grant property (including interests therein) and may perform administrative and technical support and services at the request of the Agency. Support and services shall be provided on a reimbursable basis. Any reimbursement shall be credited to the appropriation from which the property, support, or services was derived.

(b) The Agency may carry out the purposes of section 1465a of this title by means of grants, leases, or contracts (subject to the availability of appropriations), or such other means as the Agency determines will be most effective.

(Pub. L. 98-111, § 6, Oct. 4, 1983, 97 Stat. 751.)

CODIFICATION

Section was enacted as part of the Radio Broadcasting to Cuba Act which comprises this subchapter, and not as part of the United States Information and Educational Exchange Act of 1948 which comprises this chapter.

§ 1465e. Compensation for Cuban interference with broadcasting in United States

(a) Interim assistance to United States broadcasters

It is the intent of the Congress that the Secretary of State should seek prompt and full settlement of United States claims against the Government of Cuba arising from Cuban interference with broadcasting in the United States. Pending the settlement of these claims, it is appropriate to provide some interim assistance to the United States broadcasters who are adversely affected by Cuban radio interference and who seek to assert their right to measures to counteract the effects of such interference.

(b) Money payments pursuant to authority from Federal Communications Commission

Accordingly, the Agency may make payments to the United States radio broadcasting station licensees upon their application for expenses which they have incurred before, on, or after October 4, 1983, in mitigating, pursuant to special temporary authority from the Federal Communications Commission, the effects of activities by the Government of Cuba which directly interfere with the transmission or reception of broadcasts by these licensees. Such expenses shall be limited to the costs of equipment replaced (less depreciation) and associated technical and engineering costs.

(c) Regulations and procedures

The Federal Communications Commission shall issue such regulations and establish such procedures for carrying out this section as the Federal Communications Commission finds appropriate. Such regulations shall be issued no later than one hundred and eighty days after October 4, 1983.

(d) Authorization of appropriations

There are authorized to be appropriated to the Agency, $5,000,000 for use in compensating United States radio broadcasting licensees pursuant to this section. Amounts appropriated under this section are authorized to be available until expended.

(e) Four-year availability for appropriated funds

Funds appropriated for implementation of this section shall be available for a period of no more than four years following the initial broadcast occurring as a result of programs described in this subchapter.

(f) Presidential task force

It is the sense of the Congress that the President should establish a task force to analyze the level of interference from the operation of Cuban radio stations experienced by broadcasters in the United States and to seek a practical political and technical solution to this problem.

(Pub. L. 98-111, § 7(a)-(f), Oct. 4, 1983, 97 Stat. 752; Pub. L. 98-411, title V, § 512, Aug. 30, 1984, 98 Stat. 1574.)

CODIFICATION

Section was enacted as part of the Radio Broadcasting to Cuba Act which comprises this subchapter, and not as part of the United States Information and Educational Exchange Act of 1948 which comprises this chapter.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-411 substituted "replaced (less" for "(replaced less".

EFFECTIVE DATE

Section 7(g) of Pub. L. 98-111 provided that: "This section [22 U.S.C. 1465e] shall enter into effect on October 1, 1984."

§ 1465f. Authorization of appropriations

(a) There are authorized to be appropriated for the United States Information Agency $14,000,000 for fiscal year 1984 and $11,000,000 for fiscal year 1985 to carry out sections 1465a and 1465b of this title. The amount obligated by the United States Information Agency in ensuing fiscal years shall be sufficient to maintain broadcasts to Cuba under this subchapter at rates no less than the fiscal year 1985 level.

(b) In addition to amounts otherwise authorized to be appropriated to the Agency for the fiscal years 1984 and 1985, there are authorized to be appropriated to the Agency $54,800,000 for the fiscal year 1984 and $54,800,000 for the fiscal year 1985, which amounts shall be available only for expenses incurred by essential modernization of the facilities and operations of the Voice of America.

(c) Amounts appropriated under this section are authorized to be made available until expended.

(Pub. L. 98-111, § 8, Oct. 4, 1983, 97 Stat. 752.)

CODIFICATION

Section was enacted as part of the Radio Broadcasting to Cuba Act which comprises this subchapter, and not as part of the United States Information and Educational Exchange Act of 1948 which comprises this chapter.

§ 1465g. Independent evaluation of Cuba Service

The United States Information Agency shall arrange, by contract if necessary, an independent evaluation of Cuba Service programing, the results of which are to be set forth in a report to be prepared and transmitted to the Agency eighteen months after October 4, 1983, and at intervals of one year thereafter for the following three years. The Agency shall, not later than thirty days after the date of receipt of such report, transmit to the Congress such report, together with any recommendations for legislative action.

(Pub. L. 98-111, § 9, Oct. 4, 1983, 97 Stat. 753.)

CODIFICATION

Section was enacted as part of the Radio Broadcasting to Cuba Act which comprises this subchapter, and not as part of the United States Information and Educational Exchange Act of 1948 which comprises this chapter.

SUBCHAPTER VII—ADMINISTRATIVE PROCEDURE

§ 1471. Authority of Director of United States Information Agency

In carrying out the purposes of this chapter, the Director is authorized, in addition to and not in limitation of the authority otherwise vested in him—

[*See main edition for text of (1) and (2)*]

(3) whenever necessary in carrying out subchapter V of this chapter, to purchase, rent, construct, improve, maintain, and operate facilities for radio transmission and reception, including the leasing of associated real property (either within or outside the United States) for periods not to exceed twenty-five years, or for longer periods if provided for by an appropriation Act, and the alteration, improvement, and repair of such property, without regard to section 278a of title 40, and any such real property or interests therein which are outside the United States may be acquired without regard to section 255 of title 40 if the sufficiency of the title to such real property or interests therein is approved by the Director of the United States Information Agency;

[*See main edition for text of (4) to (6)*]

(As amended Nov. 22, 1983, Pub. L. 98-164, title II, § 217, 97 Stat. 1036.)

AMENDMENTS

1983—Par. (3). Pub. L. 98-164 substituted "twenty-five" for "ten".

SUBCHAPTER VIII—APPROPRIATIONS AND OTHER FUNDS

§ 1477c. Notification of reprogramings and grants; covered programs, projects, or activities; award of program grants

(a) Unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate are notified fifteen days in advance of a proposed reprograming, funds appropriated for the United States Information Agency shall not be available for obligation or expenditure through any such reprograming of funds—

(1) which creates new programs;

(2) which eliminates a program, project, or activity;

(3) which increases funds or personnel by any means for any project or activity for which funds have been denied or restricted by the Congress;

(4) which relocates an office or employees;

(5) which reorganizes offices, programs, or activities;

(6) which involves contracting out functions which had been performed by Federal employees; or

(7) which involves a reprograming in excess of $250,000 or 10 per centum, whichever is less, and which (A) augments existing programs, projects, or activities, (B) reduces by 10 per centum or more the funding for any existing program, project, or activity, or personnel approved by the Congress, or (C) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects approved by the Congress.

(b) In addition, the United States Information Agency may award program grants for the fiscal years 1984 and 1985 only if the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate are notified fifteen days in advance of the proposed grant.

(Jan. 27, 1948, ch. 36, title VII, § 705, as added Nov. 22, 1983, Pub. L. 98-164, title II, § 214, 97 Stat. 1035.)

CHAPTER 21—SETTLEMENT OF INTERNATIONAL CLAIMS

SUBCHAPTER IV—CLAIMS AGAINST CZECHOSLOVAKIA

§ 1642j. Time for filing of claims; notice

Within sixty days after August 8, 1958, or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this subchapter, whichever date is later, the Commission shall give public notice by publication in the Federal Register of the time when, and the limit of time within which claims may be filed, which limit shall not be more than twelve months after such publication.

(Mar. 10, 1950, ch. 54, title IV, § 411, as added Aug. 8, 1958, Pub. L. 85-604, § 1, 72 Stat. 529.)

CODIFICATION

Section is set out in this supplement to correct typographical error appearing in the main edition.

CHAPTER 24—MUTUAL SECURITY PROGRAM

SUBCHAPTER III—ECONOMIC ASSISTANCE

PART D—SPECIAL ASSISTANCE AND OTHER PROGRAMS

§ 1928. North Atlantic Treaty Organization

SENSE OF CONGRESS RELATING TO INCREASE IN DEFENSE SPENDING BY UNITED STATES ALLIES

Pub. L. 98-525, title X, § 1001, Oct. 19, 1984, 98 Stat. 2574, provided that: "It is the sense of Congress that the President—

"(1) should call on the pertinent member nations of the North Atlantic Treaty Organization to meet or exceed their pledges for an annual increase in defense spending during fiscal years 1984 and 1985 of at least 3 percent real growth; and

"(2) should call on Japan to further increase its defense spending during fiscal years 1984 and 1985;

in furtherance of increased unity, equitable sharing of the common defense burden, and international stability."

Similar provisions were contained in Pub. L. 98-473, title I, § 101(e) [§ 127], (h) [title VIII, § 8105], Oct. 12, 1984, 98 Stat. 1877, 1883, 1904, 1943.

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Improvements to NATO Conventional Capability

Pub. L. 98-525, title X, § 1002, Oct. 19, 1984, 98 Stat. 2574, provided that:

"(a) The Congress finds—

"(1) that the North Atlantic Treaty Organization (NATO) should improve its conventional defense capability so as to lengthen the period of time that Western Europe can be defended by conventional forces without the necessity of resorting to the early use of nuclear weapons in the event of a non-nuclear attack on any NATO member country;

"(2) that fulfillment by NATO member nations of their goals and commitments to increase defense spending, improve conventional sustainability, and provide support facilities in Western Europe for rapid reinforcements from the United States is crucial to accomplishing that objective; and

"(3) that an increase over current United States military personnel levels in European member nations of NATO can be justified only if these goals and commitments are substantially met by NATO member nations (other than the United States).

"(b) The Congress urges the President and the Secretary of Defense to continue to encourage member nations of NATO (other than the United States) to work expeditiously to fulfill the following commitments they have undertaken:

"(1) To achieve and maintain an annual increase in their defense spending of at least 3 percent, after inflation.

"(2) To acquire a 30-day supply of air and ground munitions among those NATO members which have committed forces to the Northern, Center, and Southern Regions.

"(3) To construct the number of minimum essential and emergency operating facilities and semihardened aircraft shelters in Western Europe required by NATO Ministerial Guidance to support, under NATO/SHAPE standards, as a minimum, the annual commitment of United States reinforcing tactical aircraft.

"(c)(1) After September 30, 1985, none of the funds appropriated pursuant to an authorization contained in this Act or any other Act enacted after the date of the enactment of this Act [Oct. 19, 1984] may be used to support an end strength level of members of the Armed Forces of the United States assigned to permanent duty ashore in European member nations of NATO at any level exceeding a permanent ceiling of 326,414.

"(2) If the Secretary of Defense certifies to the Congress in writing during any fiscal year after fiscal year 1985 that during the previous fiscal year the member nations of NATO (other than the United States) have undertaken significant measures to improve their conventional defense capacity consistent with the goals set forth in subsection (b) which contributes to lengthening the time period between an armed attack on any NATO country and the time the Supreme Allied Commander, Europe, would have to request the release and use of nuclear weapons, the Congress would give strong consideration to authorizing an increase in the permanent ceiling prescribed in paragraph (1) for fiscal years after such fiscal year.

"(d)(1) Not later than April 1, 1985, and each year thereafter, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and House of Representatives a report on the status, as of January 1 of the year in which the report is submitted, of the following matters:

"(A) The number of days of supply of the ground and aerial munitions in hand or on order of the member nations of NATO (other than the United States) which have committed forces to the Northern, Center, and Southern Regions.

"(B) The number of facilities and semihardened aircraft shelters completed or under construction as they relate to the United States commitment of reinforcing aircraft in the United States Defense Planning Questionnaire (DPQ) Response of the previous year.

"(2)(A) Beginning with the budget submitted to Congress for fiscal year 1986, but not later than April 1, 1985, and each year thereafter, the Secretary of Defense shall submit to Congress a report on the status and cost of the United States commitment to NATO as reflected in the DPQ Response and in the defense budget request. The report shall be an annual update of the Department of Defense Report entitled 'United States Expenditures in Support of NATO', first submitted to the Congress in June 1984 pursuant to section 1107 of the Department of Defense Authorization Act, 1984 (Public Law 98-94; 97 Stat. 677). In addition to the information required by that section, each such report shall include information which specifically identifies those items in the Secretary of Defense's procurement budget request that are in support of United States forces committed to or earmarked for NATO.

"(B) In addition to the requirements of subparagraph (A), the Secretary of Defense shall include in the report an assessment of the performance of the members of NATO (other than the United States) in the following areas:

"(i) Allied contributions to the common defense.

"(ii) Improvement in sustainability and support for United States reinforcing tactical aircraft.

"(iii) Meeting NATO force goals.

"(iv) Increasing NATO infrastructure funding.

"(v) Improvements in air base defenses.

"(vi) Increasing trained manpower levels, particularly reserves.

"(vii) Increasing war reserve material.

"(viii) Improving NATO's ability to neutralize enemy follow-on forces, including use of emerging technologies.

"(ix) Improvements in mine/counter mine capability.

"(x) Improvements in offensive counter air capability.

"(C) The requirement under clause (i) of subparagraph (B) is satisfied in any year by the submission of the report required by section 1003(c) [of Pub. L. 98-525, set out below] for that year.

"(e)(1) The Congress finds that a viable 'two-way street' of defense procurement improves NATO interoperability and therefore is important to overall improvements in conventional defense.

"(2) In addition to any funds appropriated pursuant to the authorization contained in this Act for the activities of the Director of Operational Test and Evaluation, Defense, the Director may use an additional amount, not to exceed $50,000,000, to acquire certain types of weapons, subsystems, and munitions of European NATO manufacture for side-by-side testing with comparable United States manufactured items. Such additional amount shall be derived from any funds appropriated pursuant to an authorization contained in this Act. Items that may be acquired under this paragraph include submunitions and dispensers, anti-tank and anti-armor guided missiles, mines, runway-cratering devices, torpedoes, mortar systems, light armored vehicles, and high-velocity anti-tank guns.

"(f)(1) This section shall not apply in the event of a declaration of war or an armed attack on any NATO member country.

"(2) This section may be waived by the President if he declares an emergency and immediately informs the Congress of his action and the reasons therefor."

Report on Allied Contributions to the Common Defense

Pub. L. 98-525, title X, § 1003, Oct. 19, 1984, 98 Stat. 2576, provided that:

"(a) In recognition of the increasing military threat faced by the Western World and in view of the growth, relative to the United States, in the economic strength of Japan, Canada, and a number of Western

European countries which has occurred since the signing of the North Atlantic Treaty on April 4, 1949, and the Mutual Cooperation and Security Treaty between Japan and the United States on January 19, 1960, it is the sense of the Congress that—

"(1) the burdens of mutual defense now assumed by some of the countries allied with the United States under those agreements are not commensurate with their economic resources;

"(2) since May 1978, when each member nation of the North Atlantic Treaty Organization (NATO) agreed to increase real defense spending annually in the range of 3 percent, most NATO members, except for the United States, have failed to meet the 3 percent real growth commitment consistently;

"(3) since May 1981, when the Government of Japan established its policy to defend the air and sea lines of communication out to 1,000 nautical miles from the coast of Japan, progress to develop the necessary self-defense capabilities to fulfill that pledge has been extremely disappointing;

"(4) Japan is the ally of the United States with the greatest potential for improving its self-defense capabilities and should, therefore, rapidly increase its annual defense spending to the levels required to fulfill that pledge and to enable Japan to be capable of an effective conventional self-defense capability by 1990, including the capability to carry out its 1,000-mile defense policy, a development that would be consonant not only with Japan's current prominent position in the family of nations but also with its unique sensibilities on the issues of war and peace, sensibilities that are recognized and respected by the people of the United States; and

"(5) the continued unwillingness of such countries to increase their contributions to the common defense to more appropriate levels will endanger the vitality, effectiveness, and cohesion of the alliances between those countries and the United States.

"(b) It is further the sense of the Congress that the President should seek from each signatory country (other than the United States) of the two treaties referred to in subsection (a) acceptance of international security responsibilities and an agreement to make contributions to the common defense which are commensurate with the economic resources of such country, including, when appropriate, an increase in host nation support.

"(c) The Secretary of Defense shall submit to the Congress each year, not later than March 1, a classified report containing—

"(1) a comparison of the fair and equitable shares of the mutual defense burdens of these alliances that should be borne by the United States, by other member nations of NATO, and by Japan, based upon economic strength and other relevant factors, and the actual defense efforts of each nation together with an explanation of disparities that currently exist and their impact on mutual defense efforts;

"(2) a description of efforts by the United States and the efforts of other members of the alliances to eliminate any existing disparities;

"(3) projected estimates of the real growth in defense spending for the fiscal year in which the report is submitted for each NATO member nation;

"(4) a description of the defense-related initiatives undertaken by each NATO member nation within the real growth in defense spending of such nation in the fiscal year immediately preceding the fiscal year in which the report is submitted;

"(5) an explanation of those instances in which the commitments to real growth in defense spending have not been realized and a description of efforts being made by the United States to ensure fulfillment of these important NATO commitments;

"(6) a description of the activities of each NATO member and Japan to enhance the security and stability of the Southwest Asia region and to assume additional missions for their own defense as the United States allocates additional resources to the mission of protecting Western interests in world areas not covered by the system of Western Alliances; and

"(7) a description of what additional actions the executive branch plans to take should the efforts by the United States referred to in clauses (2) and (5) fail, and, in those instances where such additional actions do not include consideration of the repositioning of American troops, a detailed explanation as to why such repositioning is not being so considered.

"(d) The Secretary of Defense shall also submit to the Congress not more than 30 days after the submission of the report required under subsection (a) an unclassified report containing the matters set forth in clauses (1) through (7) of such subsection."

Similar provisions were contained in the following prior authoization act:

Pub. L. 98-94, title XI, § 1102, Sept. 24, 1983, 97 Stat. 673.

§ 1928e. North Atlantic Assembly; appropriations for expenses of annual meeting

In addition to the amounts authorized by section 1928b of this title, there is authorized to be appropriated $50,000 for fiscal year 1977 to meet the expenses incurred by the United States group in hosting the twenty-second annual meeting of the North Atlantic Assembly. In addition to the amounts authorized by section 1928b of this title, there is authorized to be appropriated $450,000 for fiscal year 1984 to meet the expenses incurred by the United States group in hosting the thirty-first annual meeting of the North Atlantic Assembly. Amounts appropriated under this section are authorized to remain available until expended.

(As amended Nov. 22, 1983, Pub. L. 98-164, title I, § 109(a), 97 Stat. 1019.)

AMENDMENTS

1983—Pub. L. 98-164 added provisions authorizing additional appropriations for fiscal year 1984 to meet the expenses of hosting the annual meeting.

CHAPTER 25—PROTECTION OF VESSELS ON THE HIGH SEAS AND IN TERRITORIAL WATERS OF FOREIGN COUNTRIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 16 section 972c.

§ 1971. "Vessel of the United States" defined

CROSS REFERENCES

Documentation of vessels, see section 12101 et seq. of Title 46, Shipping.

§ 1972. Action by Secretary of State upon seizure of vessel by foreign country; preconditions

If—

(1) any vessel of the United States is seized by a foreign country on the basis of claims to jurisdiction that are not recognized by the United States, or on the basis of claims to jurisdiction recognized by the United States but exercised in a manner inconsistent with international law as recognized by the United States; [1]

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[1] So in original. Probably should be followed by "or".

(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

(A) are unrelated to fishery conservation and management,

(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Magnuson Fishery Conservation and Management Act [16 U.S.C. 1811 et seq.]), or

(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

the Secretary of State, unless there is clear and convincing credible evidence that the seizure did not meet the requirements under paragraph (1) or (2), as the case may be, shall immediately take such steps as are necessary—

(i) for the protection of such vessel and for the health and welfare of its crew;

(ii) to secure the release of such vessel and its crew; and

(iii) to determine the amount of any fine, license, fee, registration fee, or other direct charge reimbursable under section 1973(a) of this title.

(As amended July 17, 1984, Pub. L. 98-364, title III, § 303(a), 98 Stat. 444.)

AMENDMENTS

1984—Pub. L. 98-364, in par. (1), substituted "any vessel of the United States is seized by a foreign country on the basis of claims to jurisdiction that are not recognized by the United States, or on the basis of claims to jurisdiction recognized by the United States but exercised in a manner inconsistent with international law as recognized by the United States;" for "any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or", and in provisions following par. (2)(D), substituted "the Secretary of State, unless there is clear and convincing credible evidence that the seizure did not meet the requirements under paragraph (1) or (2), as the case may be, shall immediately take such steps as are necessary" for "and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 303(c) of Pub. L. 98-364 provided that: "The amendments made by subsections (a) and (b) [amending sections 1972 and 1974 of this title] apply with respect to seizures made after April 1, 1983, by foreign countries of vessels of the United States."

§ 1973. Reimbursement of owner for any direct charges paid to secure release of vessel and crew

(a) Reimbursement by Secretary of State; "other direct charge" defined; source of reimbursement

In any case where a vessel of the United States is seized by a foreign country under the conditions of section 1972 of this title and a fine, license fee, registration fee, or any other direct charge must be paid in order to secure the prompt release of the vessel and crew, the owners of the vessel shall be reimbursed by the Secretary of State in the amount determined and certified by him as being the amount of the fine, license fee, registration fee, or any other direct charge actually paid. For purposes of this section, the term "other direct charge" means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee. Any reimbursement under this section shall be made from the Fishermen's Protective Fund established pursuant to section 1979 of this title.

(b) Determination and certification of charges by Secretary of State; reimbursement as lien on vessel; termination of lien

The Secretary of State shall make a determination and certification under subsection (a) of this section as soon as possible after he is notified pursuant to section 1972(b) of this title of the amounts of the fines, fees, and other direct charges which were paid by the owners to secure the release of their vessel and crew. The amount of reimbursement made by the Secretary of State to the owners of any vessel under subsection (a) of this section shall constitute a lien on the vessel which may be recovered in proceedings by libel in rem in the district court of the United States for any district within which the vessel may be. Any such lien shall terminate on the ninetieth day after the date on which the Secretary of State reimburses the owners under this section unless before such ninetieth day the United States initiates action to enforce the lien.

(As amended July 17, 1984, Pub. L. 98-364, title III, § 302(a), 98 Stat. 444.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-364, § 302(a)(1), substituted "Secretary of State in the amount determined and certified by him" for "Secretary of the Treasury in the amount certified to him by the Secretary of State".

Subsec. (b). Pub. L. 98-364, § 302(a)(2), added "determination and" before "certification" in the first sentence, and substituted "State" for "the Treasury" in the second and third sentences.

§ 1974. Inapplicability of chapter to certain seizures

The provisions of this chapter shall not apply with respect to a seizure made by a country at war with the United States or a seizure made in accordance with the provisions of any applicable convention or treaty, if that treaty or convention was made with advice and consent to[1] the Senate and was in force and effect for the United States and the seizing country at the time of the seizure.

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[1] So in original. Probably should be "of".

(As amended July 17, 1984, Pub. L. 98-364, title III, § 303(b), 98 Stat. 444.)

AMENDMENTS

1984—Pub. L. 98-364 substituted "any applicable convention or treaty, if that treaty or convention was made with advice and consent to the Senate and was in force and effect for the United States and the seizing country at the time of the seizure" for "any fishery convention or treaty to which the United States is a party".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-364 applicable with respect to seizures made after Apr. 1, 1983, by foreign countries of vessels of the United States, see section 303(c) of Pub. L. 98-364, set out as a note under section 1972 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 972c.

§ 1975. Claims for amounts expended because of seizure

(a) Action by Secretary

The Secretary of State shall—

(1) immediately notify a foreign country of—

(A) any reimbursement made by him under section 1973 of this title as a result of the seizure of a vessel of the United States by such country,

[*See main edition for text of* (*B*), (*2*); (*b*)]

(As amended July 17, 1984, Pub. L. 98-364, title III, § 302(b), 98 Stat. 444.)

AMENDMENTS

1984—Subsec. (a)(1)(A). Pub. L. 98-364 substituted "him" for "the Secretary of the Treasury".

§ 1977. Reimbursement for seized commercial fishermen

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Effective date

The provisions of this section shall be effective until October 1, 1987; except that payments may be made under this section only to such extent and in such amounts as are provided in advance in appropriation Acts.

[*See main edition for text of* (*f*)]

(As amended July 17, 1984, Pub. L. 98-364, title III, § 301, 98 Stat. 444.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-364 substituted "October 1, 1987" for "October 1, 1984".

§ 1979. Fishermen's Protective Fund

There is created a Fishermen's Protective Fund which shall be used by the Secretary of State to reimburse owners of vessels for amounts determined and certified by him under section 1973 of this title. The amount of any claim or portion thereof collected by the Secretary of State from any foreign country pursuant to section 1975(a) of this title shall be deposited in the fund and shall be available for the purpose of reimbursing vessel owners under section 1973 of this title; except that if a transfer to the fund was made pursuant to section 1975(b)(1) of this title with respect to any such claim, an amount from the fund equal to the amount so collected shall be covered into the Treasury as miscellaneous receipts. There is authorized to be appropriated to the fund (1) the sum of $3,000,000 to provide initial capital, and (2) such additional sums as may be necessary from time to time to supplement the fund in order to meet the requirements of the fund.

(As amended July 17, 1984, Pub. L. 98-364, title III, § 302(c), 98 Stat. 444.)

AMENDMENTS

1984—Pub. L. 98-364 substituted "Secretary of State" for "Secretary of the Treasury" and "determined and certified by him" for "certified to him by the Secretary of State".

CHAPTER 32—FOREIGN ASSISTANCE

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SUBCHAPTER I—INTERNATIONAL DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 290f, 290h-8, 2151-1, 2151b, 2151d, 2151f, 2151k, 2151n, 2151p, 2151q, 2151t, 2151u, 2151v, 2151x, 2151y, 2169, 2179, 2182a, 2183, 2184, 2191, 2192, 2199, 2218, 2221, 2261, 2292a, 2293, 2304, 2348c, 2349aa-5, 2351, 2354, 2355, 2357, 2358, 2361, 2362, 2384, 2385, 2385a, 2391, 2392, 2395, 2396, 2421, 2427 of this title.

PART I—DECLARATION OF POLICY; DEVELOPMENT ASSISTANCE AUTHORIZATIONS

§ 2151. Congressional findings and declaration of policy

SHORT TITLE OF 1983 AMENDMENTS

Pub. L. 98-164, title VII, § 701, Nov. 22, 1984, 97 Stat. 1045, provided that: "This title [enacting section 2151q of this title and amending section 2452 of this title] may be cited as the 'International Environment Protection Act of 1983'."

Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 968, provided in part that: "Section 101(b)(2) of this joint resolution [enacting sections 2151f, and 2349aa to 2349aa-6 of this title, amending sections 2304, 2346a, 2403, and 2771 of this title, and enacting provisions set out as a note under section 2349aa of this title] may be cited as the 'International Security and Development Assistance Authorizations Act of 1983'."

PROHIBITION ON CERTAIN ASSISTANCE TO THE KHMER ROUGE IN KAMPUCHEA

Pub. L. 98-164, title X, § 1005, Nov. 22, 1983, 97 Stat. 1058, provided that:

"(a) Notwithstanding any other provision of law, none of the funds authorized to be appropriated by this Act or any other Act may be obligated or expended for the purpose or with the effect of promoting, sustaining, or augmenting, directly or indirectly, the capacity of the Khmer Rouge or any of its members to conduct military or paramilitary operations in Kampuchea or elsewhere in Indochina.

"(b) All funds appropriated before the date of enactment of this section [Nov. 22, 1983] which were obligated but not expended for activities having the purpose or effect described in subsection (a) shall be deobligated and shall be deposited in the Treasury of the United States as miscellaneous receipts.

"(c) This section shall not be construed as limiting the provision of food, medicine, or other humanitarian assistance to the Kampuchean people."

OBLIGATION OR EXPENDITURE OF FUNDS FOR PLANNING, ETC., MINING OF THE PORTS OR TERRITORIAL WATERS OF NICARAGUA

Pub. L. 98-369, div. B, title IX, § 2907, July 18, 1984, 98 Stat. 1210, provided that: "It is the sense of the Congress that no funds heretofore or hereafter appropriated in any Act of Congress shall be obligated or expended for the purpose of planning, directing, executing, or supporting the mining of the ports or territorial waters of Nicaragua."

§ 2151-1. Development assistance policy

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2151f, 2151u, 2151v, 3502 of this title.

§ 2151a. Agricultural development in rural areas

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2151b, 2151d, 2151f, 2151h, 2151p, 2151u, 2220a, 2220d, 3262 of this title; title 7 sections 1706, 1726, 1727, 1727b.

§ 2151a-1. Agricultural research

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2151f, 2220a of this title.

§ 2151b. Population planning and health programs

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Assistance for health programs

(1) In order to contribute to improvements in the health of the greatest number of poor people in developing countries, the President is authorized to furnish assistance, on such terms and conditions as he may determine, for health programs. Assistance under this subsection shall be used primarily for basic integrated health services, safe water and sanitation, disease prevention and control, and related health

planning and research. This assistance shall emphasize self-sustaining community-based health programs by means such as training of health auxiliary and other appropriate personnel, support for the establishment and evaluation of projects that can be replicated on a broader scale, measures to improve management of health programs, and other services and supplies to support health and disease prevention programs.

(2)(A) In carrying out the purposes of this subsection, the President shall promote, encourage, and undertake activities designed to deal directly with the special health needs of children and mothers. Such activities should utilize simple, available technologies which can significantly reduce childhood mortality, such as improved and expanded immunization programs, oral rehydration to combat diarrhoeal diseases, and education programs aimed at improving nutrition and sanitation and at promoting child spacing. In carrying out this paragraph, guidance shall be sought from knowledgeable health professionals from outside the agency primarily responsible for administering subchapter I of this chapter. In addition to government-to-government programs, activities pursuant to this paragraph should include support for appropriate activities of the types described in this paragraph which are carried out by international organizations (which may include international organizations receiving funds under part III of this subchapter) and by private and voluntary organizations, and should include encouragement to other donors to support such types of activities.

(B) In addition to amounts otherwise available for such purpose, there are authorized to be appropriated to the President $25,000,000 for use in carrying out this paragraph. Amounts appropriated under this subparagraph are authorized to remain available until expended.

(C) Appropriations pursuant to subparagraph (B) may be referred to as the "Child Survival Fund".

[*See main edition for text of* (*d*) *to* (*g*)]

(As amended Pub. L. 98-473, title I, § 101(1) [title V, § 541(a)], Oct. 12, 1984, 98 Stat. 1884, 1903.)

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Codification

Amendment by Pub. L. 98-473 is based on section 303 of H.R. 5119, Ninety-eighth Congress, as passed by the House of Representatives May 10, 1984, which was enacted into permanent law by Pub. L. 98-473.

Amendments

1984—Subsec. (c). Pub. L. 98-473 designated existing provisions as par. (1) and added par. (2).

Section Referred to in Other Sections

This section is referred to in sections 2151a, 2151d, 2151f, 2151u of this title; title 7 sections 1706, 1727.

§ 2151c. Education and human resources development

Section Referred to in Other Sections

This section is referred to in sections 2151d, 2151f, 2151h, 2151u of this title.

§ 2151d. Development of indigenous energy resources

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2151f, 2151u, 3262 of this title.

§ 2151f. Private sector revolving fund

(a) Establishment

The Congress finds that the development of private enterprise, including cooperatives, is a vital factor in the stable growth of developing countries and in the development and stability of a free, open, and equitable international economic system. It is therefore in the best interests of the United States to assist the development of the private sector in developing countries and to engage the United States private sector in that process. In order to promote such private sector development, the President is authorized to establish a revolving fund account in the United States Treasury. All funds deposited in such account shall, notwithstanding any provision in an appropriation Act to the contrary, be free from fiscal year limitations.

(b) Funding

Of the funds made available under this part in fiscal year 1984, up to $20,000,000 may be deposited in this account. Such funds used in accordance with the policies and authorities of this section shall be in addition to other funds available for private sector activities under other authorities in this chapter. Any reflows and income arising from activities carried out pursuant to this section, including loan repayments and fee income (as provided in subsection (e) of this section), shall be deposited into the revolving fund and remain available to carry out the purposes of this section. All funds in such account may be invested in obligations of the United States.

(c) Authorized uses; determination of small business enterprise; maximum amounts available; interest rate

(1) The agency primarily responsible for administering subchapter I of this chapter is authorized to use the funds maintained in this revolving fund account to furnish assistance in furtherance of the policy of subsection (a) of this section on such terms and conditions as it may determine. Amounts in the revolving fund

account shall be available for obligation for assistance under this section only to such extent as may be provided in advance in appropriation Acts. Assistance may be provided under this section without regard to section[1] 2354(a) and 2370(r) of this title.

(2) Assistance under this section may be provided only to support private sector activities which—

(A) are consistent with the United States development assistance policies set forth in section 2151-1 of this title and with the development priorities of the host country;

(B) are the types of activities for which assistance may be provided under sections 2151a through 2151d of this title;

(C) will have a demonstration effect;

(D) will be innovative;

(E) are financially viable;

(F) will maximize the development impact appropriate to the host country, particularly in employment and the use of appropriate technology; and

(G) are primarily directed to making available to small business enterprises and cooperatives necessary support and services which are not otherwise generally available.

In determining whether an enterprise is a small business enterprise, the agency primarily responsible for administering subchapter I of this chapter shall take into consideration the enterprise's total net fixed assets and number of employees, together with the relevant definition utilized by the host country government and the International Bank for Reconstruction and Development and other international organizations.

(3)(A) Not more than $3,000,000 may be made available under this section to support any one project.

(B) Not more than 50 per centum of the financial support for any project may be provided under this section, and a substantial portion of the financial support for a project assisted under this section must be provided by sources within the host country.

(C) Not more than 20 per centum of the assets of the revolving fund account under this section may be used to support projects in any one country.

(D) In order to maximize the impact on institution building, loans under this section shall be made primarily to intermediary entities which provide necessary support and services for private sector activities.

(E) Loans under this section shall be at or near the interest rate otherwise available to the recipient.

(d) Remittance of excess assets

(1) If at any time the assets of the revolving fund account exceeds $100,000,000, the President shall remit the amount in excess of $100,000,000 to the United States Treasury.

(2) As used in this section, "assets" includes amounts in the revolving fund account plus the value of investments made with amounts from the fund plus the current value of outstanding obligations under loans under this section.

(3) In addition to the requirement of paragraph (1), at the end of any fiscal year, the agency primarily responsible for administering subchapter I of this chapter may determine that amounts in the revolving fund are sufficient to permit the remittance to the United States Treasury of an amount equal to a portion or the total amount of appropriated funds deposited in the revolving fund. Any such remittance shall be deemed to be a decrease in the appropriated funds in the revolving fund. After remittance has been made of an amount equal to the total amount of appropriated funds, the revolving fund shall consist and be deemed to consist entirely of nonappropriated funds.

(e) Fee for carrying out activities

A fee may be charged, where appropriate, in carrying out activities with funds from the revolving fund authorized in this section. The amount of any such fee shall be determined by the agency primarily responsible for administering subchapter I of this chapter.

(f) Transfer of unobligated funds upon termination

In the event the revolving fund is terminated, all unobligated money in the fund at the time of such termination shall be transferred to and become part of the miscellaneous receipts account of the Treasury.

(g) Inclusion of proposed projects in annual congressional presentation documents

As part of its annual congressional presentation documents submitted to the Congress, the agency primarily responsible for administering subchapter I of this chapter shall include a description of projects proposed to be funded from the revolving fund account for that fiscal year. To the extent that projects are proposed for funding which are not contained in the annual congressional presentation documents, at least fifteen days advance notification shall be provided to the Congress in accordance with section 2394-1 of this title.

(h) Annual report to Congress

Not later than December 31 of each year, the President shall submit to the Congress a comprehensive report which details all projects funded under this section during the previous fiscal year, all reflows to the revolving fund account, a status report on all projects currently contained in the fund's portfolio. Such reports shall include, but not be limited to, information regarding numbers and kinds of beneficiaries reached, amounts and kinds of benefits provided by the funded projects to targeted populations, and a justification for projects within the context of the goals and objectives of the United States development assistance program.

(Pub. L. 87-195, pt. I, § 108, as added Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 972.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original, "this Act", meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

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[1] So in original. Probably should be "sections".

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Codification

Enactment of section by Pub. L. 98-151 is based on section 407 of H.R. 2992, Ninety-eighth Congress, 1st Session, as reported May 17, 1983, which was enacted into permanent law by Pub. L. 98-151.

Prior Provisions

A prior section 2151f, Pub. L. 87-195, pt. I, § 108, as added Pub. L. 93-189, § 2(3), Dec. 17, 1973, 87 Stat. 715, which related to the application of subparts I, II, or X of part II of this subchapter to assistance under this part, was repealed by Pub. L. 95-424, title I, § 102(g)(2)(K)(i), Oct. 6, 1978, 92 Stat. 943, eff. Oct. 1, 1978.

§ 2151k. Integrating women into national economies; report

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2151n. Human rights and development assistance

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Promotion of civil and political rights; grants to nongovernmental organizations in South Africa; priority, etc.

(1) The President is authorized and encouraged to use not less than $3,000,000 of the funds made available under this part and part IV of subchapter II of this chapter for each fiscal year for studies to identify, and for openly carrying out programs and activities which will encourage or promote increased adherence to civil and political rights, as set forth in the Universal Declaration of Human Rights, in countries eligible for assistance under this part. None of these funds may be used, directly or indirectly, to influence the outcome of any election in any country.

(2)(A) Of the amounts made available to carry out this subsection, $500,000 for the fiscal year 1984 and $1,000,000 for the fiscal year 1985 shall be used for grants to nongovernmental organizations in South Africa promoting political, economic, social, juridical, and humanitarian efforts to foster a just society and to help victims of apartheid.

(B) In making grants under this paragraph, priority should be given to those organizations or activities which contribute, directly or indirectly, to promoting a just society, to aiding victims of official discrimination, and to the nonviolent elimination of apartheid. Priority should also be given to those organizations whose programs and activities evidence community support. Grants may be made only for organizations whose character and membership reflect the objective of a majority of South Africans for an end to the apartheid system of separate development and for interracial cooperation and justice. Grants may not be made under this paragraph to governmental institutions or organizations or to organizations financed or controlled by the Government of South Africa.

(C)(i) Except as provided in clause (ii), grants under this paragraph may not to[2] exceed $10,000.

(ii) Of the amounts allocated to carry out this paragraph, $100,000 shall be available each fiscal year only for grants to organizations which have available for their use resources whose value is at least equal to the amount of the grant under this paragraph. Grants of up to $30,000 may be made to such organizations. For purposes of this clause, the term "resources" includes, in addition to cash assets, in-kind assets and contributions such as equipment, materials, and staff and volunteer time.

(D) Within nine months after November 22, 1983, the Administrator of the Agency for International Development shall prepare, in consultation with the Secretary of State, and shall submit to the Congress a report detailing grants and proposed grants under this paragraph and their conformity with the provisions of this paragraph.

(As amended Pub. L. 98-164, title X, § 1002(a), Nov. 22, 1983, 97 Stat. 1052.)

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Amendments

1983—Subsec. (e)(1). Pub. L. 98-164, § 1002(a)(1), (2), designated existing provisions as par. (1) and, substituted "$3,000,000 of the funds made available under this part and part IV of subchapter II of this chapter for each fiscal year" for "$1,500,000 of the funds made available under this part for each of the fiscal years 1982 and 1983".

Subsec. (e)(2). Pub. L. 98-164, § 1002(a)(3), added par. (2).

Cross References

Advancement of human rights by United States assistance policies with international financial institutions, see section 262d of this title.

Implementation of United States policy opposing the practice of torture by foreign governments, see Pub. L. 98-447, set out as a note under section 2656 of this title.

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[2] So in original.

§ 2151p. Environmental and natural resources

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2151q. Endangered species

(a) Congressional findings and purposes

The Congress finds the survival of many animal and plant species is endangered by overhunting, by the presence of toxic chemicals in water, air and soil, and by the destruction of habitats. The Congress further finds that the extinction of animal and plant species is an irreparable loss with potentially serious environmental and economic consequences for developing and developed countries alike. Accordingly, the preservation of animal and plant species through the regulation of the hunting and trade in endangered species, through limitations on the pollution of natural ecosystems, and through the protection of wildlife habitats should be an important objective of the United States development assistance.

(b) Remedial measures

In order to preserve biological diversity, the President is authorized to furnish assistance under subchapter I of this chapter to assist countries in protecting and maintaining wildlife habitats and in developing sound wildlife management and plant conservation programs. Special efforts should be made to establish and maintain wildlife sanctuaries, reserves, and parks; to enact and enforce anti-poaching measures; and to identify, study, and catalog animal and plant species, especially in tropical environments.

(c) United States strategy; development, etc.

The Administrator of the Agency for International Development, in conjunction with the Secretary of State, the Secretary of the Interior, the Administrator of the Environmental Protection Agency, the Chairman of the Council on Environmental Quality, and the heads of other appropriate Government agencies, shall develop a United States strategy, including specific policies and programs, to protect and conserve biological diversity in developing countries.

(d) Reporting requirements

Each annual report required by section 2394(a) of this title shall include, in a separate volume, a report on the implementation of this subsection. Not later than one year after November 22, 1983, the President shall submit a comprehensive report to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate on the United States strategy to protect and conserve biological diversity in developing countries.

(Pub. L. 87-195, pt. I, § 119, as added Pub. L. 98-164, title VII, § 702, Nov. 22, 1983, 97 Stat. 1045.)

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Prior Provisions

A prior section 2151q, Pub. L. 87-195, pt. I, § 119, as added Pub. L. 95-88, title I, § 114, Aug. 3, 1977, 91 Stat. 538, and amended Pub. L. 95-424, title I, § 111, Oct. 6, 1978, 92 Stat. 948; Pub. L. 96-53, title I, §§ 104(c), 107, Aug. 14, 1979, 93 Stat. 362, which related to renewable and unconventional energy technologies, was repealed by Pub. L. 96-533, title III, § 304(g), Dec. 16, 1980, 94 Stat. 3147.

Short Title

For short title of title VII of Pub. L. 98-164, which enacted this section and amended section 2452 of this title, as the "International Environment Protection Act of 1983", see section 701 of Pub. L. 98-164, set out as a Short Title of 1983 Amendment note under section 2151 of this title.

§ 2151t. Development assistance authority

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2151u. Private and voluntary organizations and cooperatives in overseas development

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Private and Volunteer Organizations

Pub. L. 98-473, title I, § 101(1) [title II, § 201], Oct. 12, 1984, 98 Stat. 1884, 1889, provided that: "None of the funds appropriated or otherwise made available in this Act [the Foreign Assistance and Related Programs Appropriations Act, 1985, as enacted by Pub. L. 98-473, title I, § 101(1)] for development assistance may be made available after January 1, 1986, to any United States private and voluntary organization, except any cooperative development organization, which obtains less than 25 per centum of its total annual funding for international activities from sources other than the United States Government, notwithstanding section 123(g) of the Foreign Assistance Act of 1961 [subsec. (g) of this section]."

§ 2151v. Aid to relatively least developed countries

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2151x. Development and illicit narcotics production

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2151y. Accelerated loan repayments; annual review of countries with bilateral concessional loan balances; priority of determinations respecting negotiations with countries having balances; criteria for determinations

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Part II—Other Programs

SUBPART I—MULTILATERAL AND REGIONAL DEVELOPMENT PROGRAMS

§ 2169. Multilateral, regional, and bilateral programs

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

SUBPART II—AMERICAN SCHOOLS AND HOSPITALS ABROAD; PROTOTYPE DESALTING PLANTS

§ 2179. Prototype desalting plant

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

SUBPART III—SHELTER AND OTHER CREDIT GUARANTY PROGRAMS

§ 2181. Policy

The Congress recognizes that shelter, including essential urban development services, is among the most fundamental of human needs. Shelter for most people in the developing countries consists largely of domestic materials assembled by local labor. While recognizing that most financing for such shelter must come from domestic resources, the Congress finds that carefully designed programs involving United States capital and expertise can increase the availability of domestic financing for improved shelter and related services for low-income people by demonstrating to local entrepreneurs and institutions that providing low-cost shelter can be financially viable. The Congress reaffirms, therefore, that the United States should continue to assist developing countries in marshalling resources for low-cost shelter. Particular attention should be given to programs which will support pilot projects for low-cost shelter or which will have a maximum demonstration impact on local institutions and national policy. The Congress declares that the long run goal of all such programs should be to develop domestic construction capabilities and to stimulate local credit institutions to make available domestic capital and other management and technological resources required for effective low-cost shelter programs and policies.

(As amended Pub. L. 98-473, title I, § 101(1) [title V, § 541(a)], Oct. 12, 1984, 98 Stat. 1884, 1903.)

Codification

Amendment by Pub. L. 98-473 is based on section 311(a) of H.R. 5119, Ninety-eighth Congress, as passed by the House of Representatives May 10, 1984, which was enacted into permanent law by Pub. L. 98-473.

Amendments

1984—Pub. L. 98-473 substituted ", including essential urban development services, is" for "requirements are" after "The Congress recognizes that shelter" and, in the remainder of the section substituted "shelter" for "housing" wherever appearing.

§ 2182. Authorization for worldwide shelter guarantees

(a) Authorization to issue guarantees to eligible investors

To carry out the policy of section 2181 of this title, the President is authorized to issue guaranties to eligible investors (as defined in section 2198(c) of this title) assuring against losses incurred in connection with loans made for projects meeting the criteria set forth in section 2181 of this title. The total principal amount of guaranties issued under this subpart or heretofore issued under prior housing guaranty authorities, which are outstanding at any one time, shall not exceed $1,958,000,000. The authority of this section shall continue through September 30, 1986. The President may issue regulations from time to time with regard to the terms and conditions upon which such guaranties shall be issued and the eligibility of lenders.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-473, title I, § 101(1) [title V, § 541(a)], Oct. 12, 1984, 98 Stat. 1884, 1903.)

Codification

Amendment by Pub. L. 98-473 is based on section 311(b) of H.R. 5119, Ninety-eighth Congress, as passed by the House of Representatives May 10, 1984, which was enacted into permanent law by Pub. L. 98-473.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473 substituted "$1,958,000,000" for "$1,718,000,000" and "1986" for "1984".

§ 2182a. Agricultural and productive credit and self-help community development programs

(a) Financing pilot programs; scope

It is the sense of the Congress that in order to stimulate the participation of the private sector in the economic development of less-developed countries, the authority conferred by this section should be used to establish pilot programs to encourage private banks, credit institutions, similar private lending organizations, cooperatives, and private nonprofit development organizations to make loans on reasonable terms to organized groups and individuals residing in a community for the purpose of enabling such groups and individuals to carry out agricultural credit and self-help community development projects for which they are unable to obtain financial assistance on reasonable terms. Agricultural credit and assistance for self-help community development projects should include, but not be limited to, material and such projects as wells, pumps, farm machinery, improved seed, fertilizer, pesticides, vocational training, food industry development, nutrition projects, improved breeding stock for farm animals, sanitation facilities, and looms and other handicraft aids.

(b) Guaranties; percentage limitation

To carry out the purposes of subsection (a) of this section, the agency primarily responsible for administering subchapter I of this chapter is authorized to issue guaranties, on such terms and conditions as it shall determine, to private lending institutions, cooperatives, and private nonprofit development organizations assuring against loss of not to exceed 50 per centum of the portfolio of such loans made by any lender to organized groups or individuals residing in a community to enable such groups or individuals to carry out agricultural credit and self-help community development projects for which they are unable to obtain financial assistance on reasonable terms. In no event shall the liability of the United States exceed 75 per centum of any one loan.

[*See main edition for text of* (*c*) *to* (*g*)]

(h) Termination of authority

The authority of this section shall continue through September 30, 1986.

[*See main edition for text of* (*i*)]

(As amended Pub. L. 98-473, title I, § 101(1) [title V, § 541(a)], Oct. 12, 1984, 98 Stat. 1884, 1903.)

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

CODIFICATION

Amendment by Pub. L. 98-473 is based on section 312 of H.R. 5119, Ninety-eighth Congress, as passed by the House of Representatives May 10, 1984, which was enacted into permanent law by Pub. L. 98-473.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-473 struck out "in Latin America," after "economic development of less-developed countries" and "in not more than six Latin American countries" after "establish pilot programs".

Subsec. (b). Pub. L. 98-473 struck out "in not more than five Latin American countries" after "nonprofit development organizations".

Subsec. (h). Pub. L. 98-473 substituted "1986" for "1983".

§ 2183. General provisions

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Authorization of appropriations; borrowing authority

(1) There is hereby authorized to be appropriated to the President such amounts, to remain available until expended, as may be necessary from time to time to carry out the purposes of this subpart.

(2)(A) In order to meet obligations incurred for the payment of claims pursuant to loan guaranties described in subsection (d) of this section, the Administrator of the agency primarily responsible for administering subchapter I of this chapter may, to the extent that reserves are not sufficient, borrow from time to time from the Treasury, except that—

(i) the Administrator may exercise the authority to borrow under this paragraph only to such extent or in such amounts as are provided in advance in appropriation Acts; and

(ii) the amount borrowed under this paragraph which is outstanding at any one time may not exceed $40,000,000.

(B) Any such borrowing shall bear interest at a rate determined by the Secretary of the Treasury, taking into account the current average market yield on outstanding marketable obligations of the United States of comparable maturities. The Secretary of the Treasury shall make loans under this paragraph and for such purpose may borrow on the credit of the United States in accordance with subchapter I of chapter 31 of title 31.

[*See main edition for text of* (*f*) *to* (*j*)]

(As amended Pub. L. 98-473, title I, § 101(1) [title V, § 541(a)], Oct. 12, 1984, 98 Stat. 1884, 1903.)

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

CODIFICATION

Amendment by Pub. L. 98-473 is based on section 311(c) of H.R. 5119, Ninety-eighth Congress, as passed by the House of Representatives May 10, 1984, which was enacted into permanent law by Pub. L. 98-473.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-473 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 311(d) of H.R. 5119, as passed by the House of Representatives on May 10, 1984, and enacted into permanent law by section 101(1) [title V, § 541(a)] of Pub. L. 98-473 provided that: "The amendment made by subsection (c) of this section [amending this section] shall take effect on the date of enactment of this Act [Oct. 12, 1984]."

§ 2184. Trade credit insurance program

(a) Guarantees to Export-Import Bank; financial transactions with private sector in Central American countries

In order to enable the Export-Import Bank of the United States (hereafter in this section referred to as the "Bank") to determine that there exists reasonable assurance of repayment as required under section 2(b)(1)(B) of the Export-Import Bank Act of 1945 [12 U.S.C. 635(b)(1)(B)], the agency primarily responsible for administering subchapter I of this chapter (hereafter in this section referred to as the "Agency") is authorized to provide guarantees to the Bank for liabilities to be incurred by the Bank in connection with guarantees or insurance provided under the Export-Import Bank Act of 1945 [12 U.S.C. 635 et seq.] for financing for transactions involving the export of goods and services for the use of the private sector in Central American countries.

(b) Extent of guarantees; agreements; reserve fund

(1) Guarantees provided by the Agency pursuant to the authority of subsection (a) of this section shall be for short-term guarantees and insurance extended by the Bank which shall be repayable within a period not to exceed one year from the date of arrival at the port of importation of the goods and services covered by such guarantees or insurance. Guarantees or insurance extended by the Bank and guaranteed by the Agency pursuant to subsection (a) of this section shall be provided by the Bank in accordance with criteria and procedures agreed to by the Agency and the Bank. Such agreement shall also provide for the establishment of a reserve fund by the Agency, with such funds made available to the reserve as the Agency deems necessary to discharge liabilities under guarantees provided by the Agency pursuant to subsection (a) of this section.

(2) The Administrator of such agency shall transmit a copy of such agreement to the Speaker of the House of Representatives and to the Committee on Foreign Relations and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(c) Deadline for guarantee commitments

The Agency shall not enter into any commitments to guarantee under subsection (a) of this section after September 30, 1989.

(d) Availability of appropriated funds

Of the funds authorized to be appropriated for part IV of subchapter II of this chapter, there are authorized to be made available such sums as may be deemed necessary by the Agency to discharge liabilities under guarantees entered into under subsection (a) of this section.

(e) Guarantee commitments limit; fiscal year 1985 limit

Commitments to guarantee under subsection (a) of this section are authorized only to the extent and in the amounts provided in appropriations Acts, not to exceed $300,000,000 in the fiscal year 1985.

(f) Credits to reserve fund

To the extent that any of the funds made available pursuant to subsection (d) of this section are paid out for a claim arising out of liabilities guaranteed under subsection (a) of this section, amounts received after the date of such payment, with respect to such claim, shall be credited to the reserve fund referred to in subsection (b) of this section, shall be merged with the funds in such reserve, and shall be available for the purpose of payments by the Agency to the Bank for guarantees under subsection (a) of this section.

(g) Reports to Congress

Beginning on a date six months after October 12, 1984, and at intervals of six months thereafter, the administrator of the agency primarily responsible for administering subchapter I of this chapter and the President of the Export-Import Bank of the United States shall prepare and transmit to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate a report on the amount and extension of credits during the preceding six-month period.

(h) Administrative and technical assistance

The Export-Import Bank shall provide without reimbursement such administrative and technical assistance to the Agency as the Bank and the Agency deem appropriate to assist the Agency in carrying out this section.

(Pub. L. 87-195, pt. I, § 224, as added Pub. L. 98-473, title I, § 101(1) [title V, § 541(a)], Oct. 12, 1984, 98 Stat. 1884, 1903.)

REFERENCES IN TEXT

The Export-Import Bank Act of 1945, referred to in subsec. (a), is act July 31, 1945, ch. 341, 59 Stat. 526, as amended, which is classified generally to subchapter I (§ 635 et seq.) of chapter 6A of Title 12, Banks and Banking. For complete classification of the Act to the Code, see Short Title note set out under section 635 of Title 12 and Tables.

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

CODIFICATION

Enactment of section by Pub. L. 98-473 is based on section 1011 of H.R. 5119, Ninety-eighth Congress, as passed by the House of Representatives May 10, 1984, which was enacted into permanent law by Pub. L. 98-473.

Prior Provisions

A prior section 224 of Pub. L. 87-195, pt. I, Sept. 4, 1961, 75 Stat. 432, as amended by Pub. L. 87-565, pt. I, § 104(c), Aug. 1, 1962, 76 Stat. 257; Pub. L. 88-205, pt. I, § 104(g), Dec. 16, 1963, 77 Stat. 382; Pub. L. 88-633, pt. I, § 103(b), Oct. 7, 1964, 78 Stat. 1010; Pub. L. 89-171, pt. I, § 104(e), Sept. 6, 1965, 79 Stat. 655; Pub. L. 89-583, pt. I, § 104(c), Sept. 19, 1966, 80 Stat. 798; Pub. L. 90-137, pt. I, § 104(d), Nov. 14, 1967, 81 Stat. 451; Pub. L. 90-554, pt. I, § 104, Oct. 8, 1968, 82 Stat. 961, covering housing projects in Latin America, was omitted in the general reorganization of this subpart by Pub. L. 91-175, pt. I, § 105, Dec. 30, 1969, 83 Stat. 807. See section 2182 of this title.

SUBPART IV—OVERSEAS PRIVATE INVESTMENT CORPORATION

Subpart Referred to in Other Sections

This subpart is referred to in sections 2291, 2360, 2396, 2394-1 of this title.

§ 2191. Congressional statement of purpose; creation and functions of Corporation

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2192. Capital of the Corporation

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2199. General provisions and powers

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

SUBPART IX—UTILIZATION OF DEMOCRATIC INSTITUTIONS IN DEVELOPMENT

§ 2218. Utilization of democratic institutions in development

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Part III—International Organizations and Programs

Part Referred to in Other Sections

This part is referred to in section 2151b of this title.

§ 2221. General authority

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2223. Indus Basin development

In the event that funds made available under this chapter (other than subchapter II of this chapter) are used by or under the supervision of the International Bank for Reconstruction and Development in furtherance of the development of the Indus Basin through the program of cooperation among South Asian and other countries of the free world, which is designed to promote economic growth and political stability in South Asia, such funds may be used in accordance with requirements, standards, or procedures established by the Bank concerning completion of plans and cost estimates and determination of feasibility, rather than with requirements, standards, or procedures, concerning such matters set forth in this chapter or other Acts; and such funds may also be used without regard to the provisions of section 1241(b) of title 46, Appendix, whenever the President determines that such provisions cannot be fully satisfied without seriously impeding or preventing accomplishment of the purposes of such programs: *Provided*, That compensating allowances are made in the administration of other programs to the same or other areas to which the requirements of said section 1241(b) of title 46, Appendix, are applicable.

(Pub. L. 87-195, pt. I, § 303, Sept. 4, 1961, 75 Stat. 433.)

References to Subchapter II Deemed To Exclude Certain Parts of Subchapter II

References to subchapter II of this chapter are deemed to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, and references to subchapter I of this chapter are deemed to include such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Codification

Section is set out in this supplement to reflect the transfer of section 1241 of title 46, referred to in text, to title 46, Appendix.

Part V—Contingencies

§ 2261. Authorization of appropriations

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

PART VIII—INTERNATIONAL NARCOTICS CONTROL

§ 2291. International narcotics control

(a) Statement of Congressional purposes and goals; development, promotion, and assistance for international cooperation

(1) It is the sense of the Congress that—

(A) under the Single Convention on Narcotic Drugs, 1961, each signatory country has the responsibility of limiting to licit purposes the cultivation, production, manufacture, sale, and other distribution of scheduled drugs;

(B) the international community should provide assistance, where appropriate, to those producer and transit countries which require assistance in discharging these primary obligations;

(C) international narcotics control programs should include, as a priority, the progressive elimination of the illicit cultivation of the crops from which narcotic and psychotropic drugs are derived, and should also include the suppression of the illicit manufacture of and traffic in narcotic and psychotropic drugs; and

(D) effective international cooperation is necessary to control the illicit cultivation, production, and smuggling of, trafficking in, and abuse of narcotic and psychotropic drugs.

This cooperation should include the development and transmittal of plans by each signatory country to the Single Convention on Narcotic Drugs, 1961, in which illicit narcotics and psychotropic crop cultivation exists, which would advise the International Narcotics Control Board, the United Nations Commission on Narcotic Drugs, and the international community of the strategy, programs, and timetable such country has established for the progressive elimination of that cultivation.

(2) In order to promote such cooperation, the President is authorized to conclude agreements with other countries to facilitate control of the production, processing, transportation, and distribution of narcotics analgesics, including opium and its derivatives, other narcotic and psychotropic drugs, and other controlled substances.

(3) Notwithstanding any other provision of law, the President is authorized to furnish assistance to any country or international organization, on such terms and conditions as he may determine, for the control of narcotic and psychotropic drugs and other controlled substances.

[*See main edition for text of* (b) *to* (*d*)]

(e) Reporting requirements

(1) Not later than February 1 of each year, the President shall transmit to the Speaker of the House of Representatives, and to the Committee on Foreign Relations of the Senate, a report on United States policy to establish and encourage an international strategy to prevent the illicit cultivation and manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances.

(2)(A) Each report pursuant to this subsection shall describe the policies adopted, agreements concluded, and programs implemented by the Department of State in pursuit of its delegated responsibilities for international narcotics control, including policy development, bilateral and multilateral funding and other support for international narcotics control projects, representations of the United States Government to international organizations and agencies concerned with narcotics control, training of foreign enforcement personnel, coordination of the international narcotics control activities of United States Government agencies, and technical assistance to international demand reduction programs.

(B) Each such report shall also describe the activities of the United States in international financial institutions to combat the entry of illicit narcotic and psychotropic drugs and other controlled substances into the United States.

(C) Each such report shall describe the activities for the fiscal year just ended, for the current fiscal year, and for the next fiscal year.

(3) Each such report shall identify those countries which are the significant direct or indirect sources of illicit narcotic and psychotropic drugs and other controlled substances significantly affecting the United States. For each such country, each report shall include the following:

(A) A detailed status report, with such information as can be reliably obtained, on the illicit narcotic or psychotropic drugs or other controlled substances which are being cultivated, produced, or processed in or transported through such country, noting significant changes in conditions, such as increases or decreases in the illicit cultivation and manufacture of and traffic in such drugs and substances.

(B) A description of the assistance under this part and the other kinds of United States assistance which such country received in the preceding fiscal year, which are planned for such country for the current fiscal year, and which are proposed for such country for the next fiscal year, with an analysis of the impact that the furnishing of each such kind of assistance has had or is expected to have on the illicit cultivation and manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances in such country.

(C) A description of the plans, programs, and timetables adopted by such country for the progressive elimination of the illicit cultivation of narcotic and pyschotropic drugs and other controlled substances, and a discussion of the adequacy of the legal and law enforcement measures taken and the accomplishments achieved in accord with these plans.

(4) In addition, each report pursuant to this subsection shall include, for each major illicit drug producing country for which the President is proposing to furnish United States as-

sistance for the next fiscal year, a determination by the President of the maximum reductions in illicit drug production which are achievable during the next fiscal year. Such determination shall be based upon (A) the measures which the country is currently taking, and the measures which the country has planned for the next fiscal year, in order to prevent narcotic and psychotropic drugs and other controlled substances from being cultivated, produced, or processed illicitly, in whole or in part in such country, from being transported through such country to United States Government personnel or their dependents, or from entering the United States unlawfully, and (B) the other information provided pursuant to this subsection.

(5) For each major illicit drug producing country which received United States assistance for the preceding fiscal year, each report pursuant to this subsection shall set forth the actual reductions in illicit drug production achieved by that country during such fiscal year.

(f) Consultative requirements

As soon as possible after the transmittal of the report required by subsection (e) of this section, the designated representatives of the President shall initiate appropriate consultations with members of the Committee on Foreign Relations of the Senate and members of the Committee on Foreign Affairs of the House of Representatives. Such consultations shall include in-person discussions by designated representatives of the President (including the Assistant Secretary of State for International Narcotics Control and appropriate representatives of the Department of Health and Human Services, the Department of the Treasury, the Department of Defense, the Department of Justice, and the Agency for International Development) to review the worldwide illicit drug production situation and the role that United States assistance to major illicit drug producing countries, and United States contributions to international financial institutions, have in combating the entry of illicit narcotic and pyschotropic drugs and other controlled substances into the United States. Such consultation shall include, with respect to each major illicit drug producing country for which the President is proposing to furnish United States assistance for the next fiscal year, the furnishing of—

(1) a description of the nature of the illicit drug production problem;

(2) an analysis of the climatic, geographic, political, economic, and social factors that affect the illicit drug production;

(3) a description of the methodology employed to determine the maximum achievable reductions in illicit drug production described pursuant to subsection (e)(4) of this section; and

(4) an analysis of any additional United States assistance that would be required to achieve those reductions.

The chairman of the Committee on Foreign Relations and the chairman of the Committee on Foreign Affairs shall each cause the substance of each consultation to be printed in the Congressional Record.

(g) Committee hearings

After consultations have been initiated pursuant to subsection (f) of this section, the Committee on Foreign Relations and the Committee on Foreign Affairs should hold a hearing to review the report submitted pursuant to subsection (e) of this section, especially the determinations described in subsection (e)(4) of this section. The hearing shall be open to the public unless the committee determines, in accordance with the rules of its House, that the hearing should be closed to the public.

(h) Suspension of assistance to countries failing to take adequate steps to prevent sales to Government personnel or dependents within jurisdiction of foreign country or to prevent smuggling into United States; determinations respecting adequate steps, etc.

(1) If the President determines that a major illicit drug producing country has failed to take adequate steps to prevent narcotic and psychotropic drugs and other controlled substances produced or processed, in whole or in part, in such country or transported through such country, from being sold illegally within the jurisdiction of such country to United States Government personnel or their dependents or from being smuggled into the United States—

(A) the President shall suspend United States assistance to or for such country; and

(B) the Secretary of the Treasury shall instruct the United States Executive Director of the International Bank for Reconstruction and Development, the United States Executive Director of the International Development Association, the United States Executive Director of the Inter-American Development Bank, and the United States Executive Director of the Asian Development Bank, to vote against any loan or other utilization of the funds of their respective institution to or for such country.

(2) In determining whether adequate steps have been taken, the President shall give foremost consideration to whether the actions of the government of the country have resulted in the maximum reductions in illicit drug production which were determined to be achievable pursuant to subsection (e)(4) of this section. The President shall also consider whether such government has taken the legal and law enforcement measures to enforce in its territory, to the maximum extent possible, the elimination of illicit cultivation and the suppression of illicit manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances, as evidenced by seizures of such drugs and substances and of illicit laboratories and the arrest and prosecution of violators involved in the traffic in such drugs and substances significantly affecting the United States.

(3) If assistance to a country is suspended pursuant to this subsection, such suspension shall continue in force until the President determines, and reports to the Congress in writ-

ing, that the government of such country has taken the adequate steps described in paragraph (2) of this subsection, including—

(A) having prepared, presented, and committed itself to a plan providing for the control, reduction, and gradual elimination of the illicit cultivation, production, processing, transportation, and distribution of narcotic and psychotropic drugs and other controlled substances within an explicitly stated period of time, with implementation commencing prior to the resumption of United States assistance to or for such country and prior to approval by the United States of the extension of any loan or the furnishing of any financial or technical assistance by any international financial institution to such country; and

(B) having taken legal and law enforcement measures to enforce effective suppression of the illicit cultivation, production, processing, transportation, and distribution of narcotic and pyschotropic drugs and other controlled substances.

(i) Definitions

As used in this section—

(1) the term "legal and law enforcement measures" means—

(A) the enactment and implementation of laws and regulations or the implementation of existing laws and regulations to provide for the progressive control, reduction, and gradual elimination of the illicit cultivation, production, processing, transportation, and distribution of narcotic drugs and other controlled substances; and

(B) the effective organization, staffing, equipping, funding, and activation of those governmental authorities responsible for narcotics control;

(2) the term "major illicit drug producing country" means a country producing five metric tons or more of opium or opium derivative during a fiscal year or producing five hundred metric tons or more of coca or marijuana (as the case may be) during a fiscal year;

(3) the term "narcotic and psychotropic drugs and other controlled substances" has the same meaning as is given by any applicable international narcotics control agreement or domestic law of the country or countries concerned; and

(4) the term "United States assistance" means assistance of any kind which is provided by grant, sale, loan, lease, credit, guaranty, or insurance, or by any other means, by any agency or instrumentality of the United States Government to any foreign country, including—

(A) assistance under this chapter (including programs under subpart IV of part II of this subchapter);

(B) sales, credits, and guaranties under the Arms Export Control Act [22 U.S.C. 2751 et seq.];

(C) sales under title I or III and donations under title II of the Agricultural Trade Development and Assistance Act of 1954 [7 U.S.C. 1701 et seq., 1727 et seq., 1721 et seq.] of nonfood commodities;

(D) other financing programs of the Commodity Credit Corporation for export sales of nonfood commodities; and

(E) financing under the Export-Import Bank Act of 1945 [12 U.S.C. 635 et seq.];

except that the term "United States assistance" does not include (i) international narcotics control assistance under this part, (ii) disaster relief assistance (including any assistance under part IX of this subchapter), (iii) assistance which involves the provision of food or medicine, (iv) assistance for refugees, (v) assistance under the Inter-American Foundation Act [22 U.S.C. 290f], or (vi) activities authorized pursuant to the National Security Act of 1947 (50 U.S.C. 401 et seq.), the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), or Executive Order Number 12333 (December 4, 1981).

(j) Actions by international bodies

The Department of State shall encourage the International Narcotics Control Board and the United Nations Commission on Narcotic Drugs to take such actions as are appropriate and necessary to secure from signatory countries to the Single Convention on Narcotic Drugs, 1961, the plans described in this section, and to obtain reports from such countries on their achievements under such plans.

(As amended Pub. L. 98-164, title X, § 1003, Nov. 22, 1983, 97 Stat. 1053.)

REFERENCES IN TEXT

The Arms Export Control Act, referred to in subsec. (i)(4)(B), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

The Agricultural Trade Development and Assistance Act of 1954, referred to in subsec. (i)(4)(C), is act July 10, 1954, ch. 469, 68 Stat. 454, as amended. Titles I, II, and III of the Act are classified to subchapters II (§ 1701 et seq.), III (§ 1721 et seq.), and III-A (§ 1727 et seq.), respectively, of chapter 41 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1691 of Title 7 and Tables.

The Export-Import Bank Act of 1945, referred to in subsec. (i)(4)(E), is act July 31, 1945, ch. 341, 59 Stat. 526, as amended, which is classified generally to subchapter I (§ 635 et seq.) of chapter 6A of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 635 of Title 12 and Tables.

The Inter-American Foundation Act, referred to in subsec. (i)(4), is Pub. L. 91-175, pt. IV, Dec. 30, 1969, 83 Stat. 821, as amended, which is classified generally to subchapter XXI (§ 290f) of chapter 7 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 290f of this title and Tables.

The National Security Act of 1947 (50 U.S.C. 401 et seq.), referred to in subsec. (i)(4), is act July 26, 1947, ch. 343, 61 Stat. 495, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 50, War and National Defense, and Tables.

The Central Intelligence Agency Act of 1949 (50 U.S.C. 403a et seq.), referred to in subsec. (i)(4), is act June 20, 1949, ch. 227, 63 Stat. 208, as amended, which is classified generally to section 403a et seq. of Title 50. For complete classification of this Act to the Code, see Short Title note set out under section 403a of Title 50 and Tables.

Executive Order Number 12333 (December 4, 1981), referred to in subsec. (i)(4), is set out as a note under section 401 of Title 50.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-164, § 1003(a), amended subsec. (a) generally, substituting provisions relating to applicability and implementation of Single Convention on Narcotic Drugs, 1961, and development, promotion and assistance respecting international narcotics control, for provisions relating to agreements, assistance, sanctions, etc., to facilitate international narcotics control.

Subsec. (e). Pub. L. 98-164, § 1003(b), amended subsec. (e) generally, substituting requirements for annual reports on cultivation and manufacture of and traffic in narcotic and psychotropic drugs and other controlled substances and the specific contents of the reports for requirements for annual reports on the status of United States policy regarding production, interdiction, and interception of trafficking in narcotics.

Subsecs. (f) to (j). Pub. L. 98-164, § 1003(b), added subsecs. (f) to (j).

PART IX—INTERNATIONAL DISASTER ASSISTANCE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 2291, 2293 of this title.

§ 2292a. Authorization of appropriations

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

PART X—ASSISTANCE TO PORTUGAL AND PORTUGUESE COLONIES IN AFRICA GAINING INDEPENDENCE

§ 2293. Assistance to Portugal and Portuguese colonies in Africa gaining independence

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

SUBCHAPTER II—MILITARY ASSISTANCE AND SALES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2223, 2301, 2318, 2321d, 2344, 2348c, 2349aa-5, 2352, 2383, 2385, 2392, 2393, 2395, 2396, of this title.

PART I—DECLARATION OF POLICY

§ 2301. Congressional statement of policy

REFERENCES TO SUBCHAPTER II DEEMED TO EXCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter II of this chapter are deemed to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, and references to subchapter I of this chapter are deemed to include such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2304. Human rights and security assistance

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Definitions

For the purposes of this section—

[*See main edition for text of* (*1*)]

(2) the term "security assistance" means—

(A) assistance under part II (military assistance) or part IV (economic support fund) or part V (military education and training) or part VI (peacekeeping operations) or part VIII (antiterrorism assistance) of this subchapter.

[*See main edition for text of* (*B*) *and* (*C*); (*e*) *and* (*f*)]

(As amended Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 972.)

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

CODIFICATION

The 1983 amendment by Pub. L. 98-151 is based on section 202(a) of H.R. 2992, Ninety-eighth Congress, 1st Session, as reported May 17, 1983, which was enacted into permanent law by Pub. L. 98-151.

AMENDMENTS

1983—Subsec. (d)(2)(A). Pub. L. 98-151 inserted "or part VIII (antiterrorism assistance)".

PART II—MILITARY ASSISTANCE

§ 2318. Special authority

REFERENCES TO SUBCHAPTER II DEEMED TO EXCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter II of this chapter are deemed to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, and references to subchapter I of this chapter are deemed to include such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2321d. Considerations in furnishing military assistance

REFERENCES TO SUBCHAPTER II DEEMED TO EXCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter II of this chapter are deemed to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, and references to subchapter I of this chapter are deemed to include such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2321h. Stockpiling of defense articles for foreign countries

[See main edition for text of (a)]

(b) Fiscal year limits on new stockpiles or additions to existing stockpiles located in foreign countries

[See main edition for text of (1)]

(2) The value of such additions to stockpiles in foreign countries shall not exceed $125,000,000 for the fiscal year 1984 and $248,000,000 for the fiscal year 1985.

[See main edition for text of (c) to (e)]

(As amended Pub. L. 98-473, title I, § 101(1) [title V, § 541(a)], Oct. 12, 1984, 98 Stat. 1884, 1903.)

Codification

Amendment by Pub. L. 98-473 is based on section 116(a) of H.R. 5119, Ninety-eighth Congress, as passed by the House of Representatives May 10, 1984, which was enacted into permanent law by Pub. L. 98-473.

Amendments

1984—Subsec. (b)(2). Pub. L. 98-473 substituted "$125,000,000 for the fiscal year 1984 and $248,000,000 for the fiscal year 1985" for "$130,000,000 for the fiscal year 1982 and $125,000,000 for the fiscal year 1983".

Effective Date of 1984 Amendment

Section 116(b) of H.R. 5119, as passed by the House of Representatives May 10, 1984, and enacted into permanent law by 101(1) [title V, § 541(a)], of Pub. L. 98-473 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Oct. 12, 1984]."

Part III—Foreign Military Sales

§ 2344. Reimbursements

References to Subchapter II Deemed To Exclude Certain Parts of Subchapter II

References to subchapter II of this chapter are deemed to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, and references to subchapter I of this chapter are deemed to include such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Part IV—Economic Support Fund

Part Referred to in Other Sections

This part is referred to in sections 290f, 2151c, 2151n, 2184, 2304, 2348a, 2354, 2355, 2357, 2358, 2361, 2362, 2368, 2369, 2385, 2395, 2397, 2399c, 2399d, 2413, 2421, 2427, 2429, 2429a, 3403 of this title.

§ 2346. General authorization

References to Subchapter I Deemed To Include This and Certain Other Parts of Subchapter II, and References to Subchapter II Deemed To Exclude Such Parts

Section 202(b) of Pub. L. 92-226 provided that: "Chapter 4 of part I of the Foreign Assistance Act of 1961 [part IV of subchapter I of this chapter (sections 2241 to 2243 of this title)] is hereby repealed. References to such chapter [4 of part I of the Foreign Assistance Act of 1961 (former sections 2241 to 2243 of this title)] or any sections thereof shall hereafter [on and after Feb. 7, 1972] be deemed to be references to chapter 4 of part II of the Foreign Assistance Act of 1961, as added by subsection (a) of this section [this part], or to appropriate sections thereof. All references to part I of the Foreign Assistance Act of 1961 [subchapter I of this chapter] shall hereafter be deemed to be references also to chapter 4 of part II [this part], and all references to part II of such Act [subchapter II of this chapter] shall be deemed not to include chapter 4 of such part II [this part]".

References to subchapter I of this chapter are deemed to include parts VI (§ 2348 et seq.) and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See sections 2348c and 2349aa-5 of this title.

§ 2346a. Minimum allotment of funds for Israel and Egypt

Of the funds authorized to be appropriated to carry out this part for the fiscal year 1984, not less than $910,000,000 shall be available only for Israel and not less than $750,000,000 shall be available only for Egypt.

(As amended Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 970.)

Amendments

1983—Pub. L. 98-151 amended section generally substituting provisions relating to earmarking of funds for Israel and Egypt, for provisions relating to availability, amount and purposes of grants for Egypt and Israel, regional cooperative projects and programs and procedures applicable to obligation of funds, availability of funds for Syria, and relief and rehabilitation programs for Lebanon.

Termination of Assistance Programs to Syria

Pub. L. 98-164, title X, § 1004, Nov. 22, 1983, 97 Stat. 1057, provided that:

"(a) After the enactment of this section [Nov. 22, 1983], funds available to the Agency for International Development may not be used for any payment or reimbursement of any kind to the Government of Syria or for the delivery of any goods or services of any kind to the Government of Syria.

"(b) The Administrator of the Agency for International Development shall deobligate all funds which have been obligated for Syria under the Foreign Assistance Act of 1961 [this chapter] prior to the enactment of this section [Nov. 22, 1983], except that—

"(1) such funds may continue to be used to finance the training or studies outside of Syria of students whose course of study began before the enactment of this section;

"(2) the Administrator may adopt as a contract of the United States Government any contract with a United States or third-country contractor which would otherwise be terminated pursuant to this subsection, and may assume in whole or in part any liabilities arising under such contract, except that the authority provided by this paragraph may be exercised only to the extent that budget authority is available to meet the obligations of the United States under such contracts; and

"(3) amounts certified pursuant to section 1311 of the Supplemental Appropriation Act, 1955 [31 U.S.C. 1108(c), 1501, 1502(a)], as having been obligated for Syria under chapter 4 of part II of the Foreign Assistance Act of 1961 [this part] shall continue to be available until expended to meet necessary expenses arising from the termination of assistance programs for Syria pursuant to this subsection."

Section 101(b)(1) of Pub. L. 98-151 provided that: "None of the funds heretofore appropriated or otherwise made available for Syria for the purposes of carrying out the provisions of chapter 4 of part II of the

Foreign Assistance Act of 1961 [this part] shall be expended after the date of enactment of this joint resolution [Nov. 14, 1983]. The Administrator of the Agency for International Development is directed to terminate the economic assistance program to Syria and to deobligate all funds heretofore obligated for assistance to Syria, except that such funds may continue to be available to finance the training or studies outside of Syria of students whose course of study or training program began before enactment of this joint resolution. The Administrator of the Agency for International Development is authorized to adopt as a contract of the United States Government, and assume any liabilities arising thereunder (in whole or in part), any contract with a United States contractor which had been funded by the Agency for International Development prior to the date of enactment of this joint resolution. Amounts certified pursuant to section 1311 of the Supplemental Appropriations Act, 1955 [31 U.S.C. 1108(c), 1501, 1502(a)], as having been obligated against appropriations heretofore made pursuant to chapter 4 of part II of the Foreign Assistance Act of 1961 (and predecessor legislation) for Syria are hereby continued available until expended to meet necessary expenses arising from the termination under this subsection of assistance programs for Syria authorized by such chapter: *Provided*, That this shall not be construed as permitting payments or reimbursements of any kind to the Government of Syria."

PART V—INTERNATIONAL MILITARY EDUCATION AND TRAINING

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 2304, 2314, 2321i, 2403 of this title.

PART VI—PEACEKEEPING OPERATIONS

§ 2348c. Administrative authorities

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II, AND REFERENCES TO SUBCHAPTER II DEEMED TO EXCLUDE SUCH PARTS

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.) and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and section 2349aa-5 of this title.

PART VIII—ANTITERRORISM ASSISTANCE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 2304, 2403 of this title.

§ 2349aa. General authority

Subject to the provisions of this part, the President is authorized to furnish, on such terms and conditions as the President may determine, assistance to foreign countries in order to enhance the ability of their law enforcement personnel to deter terrorists and terrorist groups from engaging in international terrorist acts such as bombing, kidnapping, assassination, hostage taking, and hijacking. Such assistance may include training services and the provision of equipment and other commodities related to bomb detection and disposal, management of hostage situations, physical security, and other matters relating to the detection, deterrence, and prevention of acts of terrorism, the resolution of terrorist incidents, and the apprehension of those involved in such acts.

(Pub. L. 87-195, pt. II, § 571, as added Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 972.)

CODIFICATION

Enactment of section by Pub. L. 98-151 is based on section 201 of H.R. 2992, Ninety-eighth Congress, 1st Session, as reported May 17, 1983, which was enacted into permanent law by Pub. L. 98-151.

EFFECTIVE DATE

Section 203 of title II of H.R. 2992, as enacted into permanent law by section 101(b)(2) of Pub. L. 98-151, provided that: "This title [enacting this part and amending sections 2304 and 2403 of this title] shall take effect on the date of enactment of this Act [Nov. 14, 1983]."

DELEGATION OF FUNCTIONS

Functions of the President under this part were delegated to the Secretary of State, to be exercised consistent with section 2349aa-2(d)(3) of this title, by section 1-201(a)(24) of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56674, set out as a note under section 2381 of this title.

§ 2349aa-1. Purposes

Activities conducted under this part shall be designed—

(1) to enhance the antiterrorism skills of friendly countries by providing training and equipment to deter and counter terrorism;

(2) to strengthen the bilateral ties of the United States with friendly governments by offering concrete assistance in this area of great mutual concern; and

(3) to increase respect for human rights by sharing with foreign civil authorities modern, humane, and effective antiterrorism techniques.

(Pub. L. 87-195, pt. II, § 572, as added Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 972.)

CODIFICATION

Enactment of section by Pub. L. 98-151 is based on section 201 of H.R. 2992, Ninety-eighth Congress, 1st Session, as reported May 17, 1983, which was enacted into permanent law by Pub. L. 98-151.

§ 2349aa-2. Specific authorities and limitations

(a) Services and commodities; reimbursement

Notwithstanding section 2420 of this title, services and commodities may be granted for the purposes of this part to eligible foreign countries, subject to reimbursement of the value thereof (within the meaning of section 2403(m) of this title) pursuant to section 2392 of this title from funds available to carry out this part.

(b) Services and commodities furnished by agency of United States Government; advance payment

Whenever the President determines it to be consistent with and in furtherance of the purposes of this part, and on such terms and conditions consistent with this chapter as he may determine, any agency of the United States Government is authorized to furnish services and commodities, without charge to funds available to carry out this part, to an eligible foreign country, subject to payment in advance of the value thereof (within the meaning of section

2403(m) of this title) in United States dollars by the foreign country. Credits and the proceeds of guaranteed loans made available to such countries pursuant to the Arms Export Control Act [22 U.S.C. 2751 et seq.] shall not be used for such payments. Collections under this part shall be credited to the currently applicable appropriation, account, or fund of the agency providing such services and commodities and shall be available for the purposes for which such appropriation, account, or fund is authorized to be used.

(c) Consultation in development and implementation of assistance

The Assistant Secretary of State for Human Rights and Humanitarian Affairs shall be consulted in the development and implementation of the antiterrorism assistance program under this part, including determinations of the foreign countries that will be furnished assistance under this part and determinations of the nature of assistance to be furnished to each such country.

(d) Location for training and advice; law enforcement personnel training; availability of items on Munition List and services, personnel, etc., involved in collection of intelligence

(1) Training services provided pursuant to this part shall not be conducted outside the United States.

(2) Personnel of the United States Government authorized to advise eligible foreign countries on antiterrorism matters shall carry out their responsibilities, to the maximum extent possible, within the United States. Such personnel may provide advice outside the United States on antiterrorism matters to eligible foreign countries for periods not to exceed thirty consecutive calendar days.

(3) Employees of the Department of State shall not engage in the training of law enforcement personnel or provision of services under this part, except that employees of the Office of Security of the Department of State may provide training and services to law enforcement personnel for the physical protection of internationally protected persons and related facilities.

(4) Equipment and commodities included on the United States Munitions List established pursuant to the Arms Export Control Act [22 U.S.C. 2751 et seq.] shall not be made available under this part.

(5) Assistance under this part shall not include provision of services, equipment, personnel, or facilities involved in the collection of intelligence as defined in Executive Order 12333 of December 4, 1981, other than limited training in the organization of intelligence for antiterrorism purposes.

(e) Information exchange activities

This part does not apply to information exchange activities conducted by agencies of the United States Government under other authority for such purposes.

(Pub. L. 87-195, pt. II, § 573, as added Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 972.)

References in Text

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, known as the Foreign Assistance Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

The Arms Export Control Act, referred to in subsecs. (b) and (d)(4), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, as amended, which is classified principally to chapter 39 (§ 2751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

Executive Order 12333 of December 4, 1981, referred to in subsec. (d)(5), is set out as a note under section 401 of Title 50, War and National Defense.

Codification

Enactment of section by Pub. L. 98-151 is based on section 201 of H.R. 2992, Ninety-eighth Congress, 1st Session, as reported May 17, 1983, which was enacted into permanent law by Pub. L. 98-151.

Delegation of Functions

Functions of the President under this part were delegated to the Secretary of State, to be exercised consistent with subsec. (d)(3) of this section, by section 1-201(a)(24) of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56674, set out as a note under section 2381 of this title.

§ 2349aa-3. Reports to Congress

(a)(1) Not less than thirty days before providing assistance to a foreign country under this part, the President shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a written notification which specifies—

(A) the country to which such assistance is to be provided;

(B) the type and value of the assistance to be provided;

(C) the terms and duration of assistance; and

(D) an explanation of how the proposed assistance will further the objectives of this part to assist eligible foreign countries in deterring terrorism.

(2) The chairman of either the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate may request, as deemed necessary, a current report on the state of observance of and respect for internationally recognized human rights in the country to which assistance is to be provided. In the event that a report is requested, no assistance under subsection (a) of this section shall be provided to the country specified prior to transmittal of the report to the requesting committee.

(b) The annual congressional presentation materials shall include—

(1) a list of the countries which received assistance under this part for the preceding fiscal year, a list of the countries which are programed to receive assistance under this part for the current fiscal year, and a list of the countries which are proposed as recipients of assistance under this part for the next fiscal year; and

(2) with respect to each country listed pursuant to paragraph (1) and for each such fiscal year, a description of the assistance under this part furnished, programed, or proposed, including—

(A) the place where training or other services under this part were or will be furnished, the duration of such training or other services, and the number of personnel from that country which were or will receive training under this part;

(B) the types of equipment or other commodities which were or will be furnished under this part; and

(C) whether the assistance was furnished on a grant basis, on an advance payment basis, or on some other basis.

Each report shall also describe the ways in which the provision of such assistance has furthered the objective of enhancing the ability of foreign law enforcement authorities to deter acts of terrorism.

(Pub. L. 87-195, pt. II, § 574, as added Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 972.)

Codification

Enactment of section by Pub. L. 98-151 is based on section 201 of H.R. 2992, Ninety-eighth Congress, 1st Session, as reported May 17, 1983, which was enacted into permanent law by Pub. L. 98-151.

Delegation of Functions

Functions of the President under this part were delegated to the Secretary of State, to be exercised consistent with section 2349aa-2(d)(3) of this title, by section 1-201(a)(24) of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56674, set out as a note under section 2381 of this title.

§ 2349aa-4. Authorization of appropriations

There is authorized to be appropriated to the President to carry out this part $5,000,000 for the fiscal year 1984. Amounts appropriated under this section are authorized to remain available until expended.

(Pub. L. 87-195, pt. II, § 575, as added Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 972.)

Allocation of Funds

Funds available to the President for carrying out this part were allocated to the Secretary of State by section 1-801(c) of Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56674, 56678, set out as a note under section 2381 of this title.

§ 2349aa-5. Administrative authorities

Except where expressly provided to the contrary, any reference in any law to subchapter I of this chapter shall be deemed to include reference to this part and any reference in any law to subchapter II of this chapter shall be deemed to exclude reference to this part.

(Pub. L. 87-195, pt. II, § 576, as added Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 972.)

References to Subchapter I Deemed To Include Certain Parts of Subchapter II, and References to Subchapter II Deemed To Exclude Such Parts

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.) and VI (§ 2348 et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and section 2348c of this title.

Codification

Enactment of section by Pub. L. 98-151 is based on section 201 of H.R. 2992, Ninety-eighth Congress, 1st Session, as reported May 17, 1983, which was enacted into permanent law by Pub. L. 98-151.

§ 2349aa-6. Expiration of authorities

The authorities of this part shall expire on September 30, 1985, except that funds obligated prior to that date may be expended after that date in accordance with this part.

(Pub. L. 87-195, pt. II, § 577, as added Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 972.)

Codification

Enactment of section by Pub. L. 98-151 is based on section 201 of H.R. 2992, Ninety-eighth Congress, 1st Session, as reported May 17, 1983, which was enacted into permanent law by Pub. L. 98-151.

SUBCHAPTER III—GENERAL AND ADMINISTRATIVE PROVISIONS

Part I—General Provisions

§ 2351. Encouragement of free enterprise and private participation

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2352. Small business

References to Subchapter II Deemed To Exclude Certain Parts of Subchapter II

References to subchapter II of this chapter are deemed to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, and references to subchapter I of this chapter are deemed to include such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2353. Shipping on United States vessels

The ocean transportation between foreign countries of commodities and defense articles purchased with foreign currencies made available or derived from funds made available under this chapter or the Agricultural Trade Development and Assistance Act of 1954, as amended [7 U.S.C. 1691 et seq.], and transfers of fresh fruit and products thereof under this chapter, shall not be governed by the provisions of section 1241(b) of title 46, Appendix, or any other law relating to the ocean transportation of commodities on United States flag vessels.

(Pub. L. 87-195, pt. III, § 603, Sept. 4, 1961, 75 Stat. 439.)

Codification

Section is set out in this supplement to reflect the transfer of section 1241 of title 46, referred to in text, to title 46, Appendix.

§ 2354. Procurement

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Section Referred to in Other Sections

This section is referred to in section 2151f of this title.

§ 2355. Retention and use of certain items and funds

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2357. Furnishing of services and commodities

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2358. Foreign and domestic excess property

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2359. Special accounts

References to Part IV of Subchapter I Deemed References to Part IV of Subchapter II

Part IV of subchapter I (§ 2241 et seq.) of this chapter has been repealed. References to part IV of subchapter I, or any sections thereof, are deemed references to part IV of subchapter II (§ 2346 et seq.) of this chapter, or to appropriate sections thereof. See section 202(b) of Pub. L. 98-226, set out as a note under section 2346 of this title.

§ 2361. Completion of plans and cost estimates

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2362. Use of foreign currencies

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2364. Special authorities

References to Part IV of Subchapter I Deemed References to Part IV of Subchapter II

Part IV of subchapter I (§ 2241 et seq.) of this chapter has been repealed. References to part IV of subchapter I, or any sections thereof, are deemed references to part IV of subchapter II (§ 2346 et seq.) of this chapter, or to appropriate sections thereof. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title.

§ 2370. Prohibitions against furnishing assistance

Restrictions on Military Assistance and Sales to El Salvador

Section 728 of Pub. L. 97-113, as amended by Pub. L. 97-233, Aug. 10, 1982, 96 Stat. 260; Pub. L. 98-53, July 15, 1983, 97 Stat. 287, provided that:

[*See main edition for text of* (*a*) *to* (*d*)]

"(e) On making the first certification under subsection (b) of this section, the President shall also certify to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that he has determined that the Government of El Salvador has made good faith efforts both to investigate the murders of the six United States citizens in El Salvador in December 1980 and January 1981 and to bring to justice those responsible for those murders. The second certification required under this section may be made only if it includes a determination by the President that the Government of El Salvador (1) has made good faith efforts since the first such certification was made to investigate the murders of those six United States citizens and to bring to justice those responsible for those murders, and (2) has taken all reasonable steps to investigate the disappearance of journalist John Sullivan in El Salvador in January 1981. The fourth certification required under this section may be made only if it includes a determination by the President that, since the third such certification was made, the Government of El Salvador (1) has made good faith efforts both to investigate the murders of the seven United States citizens in El Salvador in December 1980 and January 1981 and to bring to justice all those responsible for those murders, and (2) has taken all reasonable steps to investigate the killing of Michael Kline in El Salvador in October 1982."

Section Referred to in Other Sections

This section is referred to in sections 283*l*, 2151f, 2151v, 2293, 2312, 2373, 2878 of this title; title 7 section 1736d; title 12 section 635; title 50 App. sections 2410, 2416.

Part II—Administrative Provisions

§ 2381. Exercise of functions

Ex. Ord. No. 12163. Administration of Foreign Assistance and Related Functions

Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, as amended by Ex. Ord. No. 12226, July 22, 1980, 45 F.R. 49235; Ex. Ord. No. 12292, Feb. 23, 1981, 46 F.R. 13968; Ex. Ord. No. 12321, Sept. 14, 1981, 46 F.R. 46109; Ex. Ord. No. 12365, May 24, 1982, 47 F.R. 22933; Ex. Ord. No. 12423, May 26, 1983, 48 F.R. 24025; Ex. Ord. No. 12458, Jan. 14, 1984, 49 F.R. 1977; Ex. Ord. No. 12500, Jan. 24, 1985, 50 F.R. 3733, provided:

[*See main edition for text of first par.*]

1-1. United States International Development Cooperation Agency

[*See main edition for text of Sec. 1-101*]

1-102. *Delegation of Functions.* (a) Exclusive of the functions otherwise delegated, or reserved to the President, by this order, and subject to the provisions of this order, there are hereby delegated to the Director of IDCA (hereinafter referred to as the "Director") all functions conferred upon the President by:

[*See main edition for text of* (1) *to* (5)]

(6) Section 533 of the Foreign Assistance and Related Programs Appropriations Act, 1985 [Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 1901], which shall be exercised in consultation with the Secretary of State.

[*See main edition for text of* (b) *to* (g); *Secs. 1-103 and 1-104*]

1-2. Department of State

1-201. *Delegation of Functions.* (a) Subject to the provisions of this order, there are hereby delegated to the Secretary of State (hereafter in this Part referred to as the "Secretary") all functions conferred upon the President by:

[*See main edition for text of* (1) *to* (22)]

(23) Section 512 of the Foreign Assistance and Related Programs Appropriations Act, 1982 [Pub. L. 97-121, Dec. 29, 1981, 95 Stat. 1655];

(24) Chapter 8 of Part II of the Act [22 U.S.C. 2349aa et seq.] except that such functions shall be exercised consistent with Section 573(d)(3) [22 U.S.C. 2349aa-2(d)(3)] thereof;

(25) The functions vested in the President by Section 101(b) of the Joint Resolution "Making further continuing appropriations for the fiscal year 1984" (Public Law 98-151) [Nov. 14, 1983, 97 Stat. 964, 970, 971], insofar as they relate to unnumbered paragraphs concerning El Salvador and Haiti.

(26) title III of the Foreign Assistance and Related Programs Appropriations Act, 1985 (as enacted in Public Law 98-473) [Oct. 12, 1984, 98 Stat. 1893, 1894] under the unnumbered paragraph entitled "Military Assistance" insofar as they relate to El Savador, Turkey and Honduras;

(27) section 540 of the Foreign Assistance and Related Programs Appropriations Act, 1985 [Pub. L. 98-473, Oct. 12, 1984, 98 Stat. 1903];

(28) section 1540 of the Department of Defense Authorization Act, 1985 (Public Law 98-525) [Oct. 19, 1984, 98 Stat. 2637], which shall be exercised in consultation with the Secretary of Defense.

[*See main edition for text of* (b) *to* (d)]

1-3. Department of Defense

1-301. *Delegation of Functions.* Subject to the provisions of this order, there are hereby delegated to the Secretary of Defense:

(a) The functions conferred upon the President by Part II [22 U.S.C. 2301 et seq.] (except chapters 4, 6 and 8 thereof) of the Act [22 U.S.C. 2346 et seq., 2348 et seq., 2349aa et seq.] not otherwise delegated or reserved to the President.

(b) To the extent that they relate to other functions under the Act [this chapter] administered by the Department of Defense, the functions conferred upon the President by sections 602(a), 605(a), 625(a), 625(d)(1), 625(h), 627, 628, 630(3), 631(a), 634(B), 635(b) (except with respect to negotiation, conclusion, and termination of international agreements), 635(d), 635(g), and 636(i) of the Act [22 U.S.C. 2352(a), 2355(a), 2385(a), (d)(1), and (h), 2387, 2388, 2390(3), 2391(a), 2394-1a, 2395(b), 2395(d), 2395(g), and 2396(i)].

(c) Those functions under section 634A of the Act [22 U.S.C. 2394-1], to the extent they relate to notifications to the Congress concerning changes in programs under part II of the Act [22 U.S.C. 2301 et seq.] (except chapters 4, 6 and 8 thereof [22 U.S.C. 2346 et seq., 2348 et seq., 2349aa et seq.]), subject to prior consultation with the Secretary of State.

[*See main edition for text of* (d); *Sec. 1-302; Parts 1-4 to 1-6*]

1-7. Reserved Functions

1-701. *Reservation of Functions to the President.* There are hereby excluded from the functions delegated by the foregoing provisions of this order:

[*See main edition for text of* (a) *to* (c)]

(d) The functions conferred upon the President with respect to determinations, certifications, directives, or transfers of funds, as the case may be, by sections 303, 481(h), 505(d)(2)(A), 505(d)(3), 506(a), 604(a), 610, 614(c), 632(b), 633A, 663(a), 669(b)(1), 620E, 670(a)(2), 670(b)(2), and 670(b)(3) of the Act [22 U.S.C. 2223, 2291(h), 2314(d)(2)(A), (d)(3), 2318(a), 2354(a), 2360, 2364(c), 2392(b), 2393a, 2423(a), 2429(b)(1), 2375, and 2429a(a)(2), (b)(2), and (b)(3)].

[*See main edition for text of* (e) *to* (g); *Sec. 1-702*]

1-8. Funds

1-801. *Allocation of Funds.* Funds appropriated or otherwise made available to the President for carrying out the Act [this chapter] shall be deemed to be allocated without any further action of the President, as follows:

[*See main edition for text of* (a)]

(b) There are allocated to the Secretary of Defense funds made available for carrying out Part II of the Act [22 U.S.C. 2301 et seq.] (except chapters 4, 6 and 8 thereof) [22 U.S.C. 2346 et seq., 2348 et seq., 2349aa et seq.]).

(c) There are allocated to the Secretary of State funds made available for carrying out sections 481 and 637(b) [22 U.S.C. 2291, 2397(b)] and chapters 6 and 8 of Part II of the Act [22 U.S.C. 2348 et seq., 2349aa et seq.].

[*See main edition for text of Sec. 1-802*]

1-9. General Provisions

[*See main edition for text of Sec. 1-901*]

1-902. *References to Orders and Acts.* Except as may for any reason be inappropriate:

[*See main edition for text of* (a) *and* (b)]

(c) References in this order to provisions of any Act, and references in any other Executive order or in any memorandum delegation to provisions of any Act related to the subject of this order shall be deemed to include references to any hereafter-enacted provision of law that is the same or substantially the same as such provisions, respectively.

[See main edition for text of (d) and (e); Secs. 1-903 to 1-905]

§ 2383. Responsibilities of the Secretary of Defense; priorities in procurement, delivery, and allocation of military equipment

References to Subchapter II Deemed To Exclude Certain Parts of Subchapter II

References to subchapter II of this chapter are deemed to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, and references to subchapter I of this chapter are deemed to include such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2384. Statutory officers

[See main edition for text of (a) to (e)]

(f) Assistant Secretary of State for Human Rights and Humanitarian Affairs

[See main edition for text of (1)]

(2) The Assistant Secretary of State for Human Rights and Humanitarian Affairs shall maintain continuous observation and review of all matters pertaining to human rights and humanitarian affairs (including matters relating to refugees, prisoners of war, and members of the United States Armed Forces missing in action) in the conduct of foreign policy including—

[See main edition for text of (A) and (B)]

(C) making recommendations to the Secretary of State and the Director of the United States International Development Cooperation Agency regarding compliance with sections 2151n and 2304 of this title, and as part of the Assistant Secretary's overall policy responsibility for the creation of United States Government human rights policy, advising the Administrator of the Agency for International Development on the policy framework under which section 2151n(e) of this title projects are developed and consulting with the Administrator on the selection and implementation of such projects; and

[See main edition for text of (D)]

(As amended Pub. L. 98-164, tile X, § 1002(b), Nov. 22, 1983, 97 Stat. 1052.)

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Amendments

1983—Subsec. (f)(2)(C). Pub. L. 98-164 added provisions relating to providing advice to the Administrator of the Agency for International Development on policy framework.

Report to Speaker of the House and Congressional Committees on Office of Assistant Secretary for Human Rights and Humanitarian Affairs

Section 109(a)(7) of Pub. L. 95-105, which required the Secretary of State, not later than Jan. 31, 1978, to transmit to the Speaker of the House of Representatives and the chairmen of the Senate Committee on Foreign Relations and the Senate Committee on the Judiciary a comprehensive report on the Office of the Assistant Secretary for Human Rights and Humanitarian Affairs, including its current mandate and operations, the mandate and operations of its predecessor offices, and proposals for the reorganization of the Department of State that would strengthen human rights and humanitarian considerations in the conduct of United States foreign policy and promote the ability of the United States to participate effectively in international humanitarian efforts, was repealed by Pub. L. 97-241, title V, § 505(a)(3), Aug. 24, 1982, 96 Stat. 299, and Pub. L. 98-164, title X, § 1011(a)(5), Nov. 22, 1983, 97 Stat. 1061.

§ 2385. Employment of personnel

References to Subchapter I Deemed To Include Certain Parts of Subchapter II, and References to Subchapter II Deemed To Exclude Such Parts

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Section Referred to in Other Sections

This section is referred to in section 2396 of this title; title 37 section 306a.

§ 2385a. Unified personnel system

References in Text

The Foreign Assistance Act of 1961, referred to in subsecs. (a) and (c), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended. Part I of the Foreign Assistance Act of 1961 is classified generally to subchapter I (§ 2151 et seq.) of this chapter. For provisions deeming references to subchapter I to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, see section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

§ 2391. Missions and staffs abroad

References in Text

Section 103(a)(3) of that Act, referred to in subsecs. (b) and (c), was redesignated section 103(3) pursuant to Pub. L. 98-164, which struck out the designation "(a)" and struck out subsec. (b) of section 103.

References to Subchapter I Deemed To Include Certain Parts of Subchapter II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2392. Government agencies

References in Text

The Assignment of Claims Act of 1940, as amended, referred to in subsec. (e), is act Oct. 9, 1940, ch. 779, 54 Stat. 1029, as amended, which added the second and third pars. to section 203 of former Title 31, Money and Finance, and the second and third pars. to section 15 of Title 41, Public Contracts. Section 203 of former Title 31 was repealed by Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, and reenacted by the first section thereof as section 3727 of Title 31, Money and Finance. Such second and third pars. are restated in section 3727(b) (last sentence) and (c) of Title 31.

References to Subchapter I Deemed To Include Certain Parts of Subchapter II, and References to Subchapter II Deemed To Exclude Such Parts

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2194, 2349aa-2, 2403 of this title; title 10 section 2211.

§ 2393. Waiver of certain laws

References to Subchapter II Deemed To Exclude Certain Parts of Subchapter II

References to subchapter II of this chapter are deemed to exclude parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II, and references to subchapter I of this chapter are deemed to include such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2394. Reports and information; definitions

Section Referred to in Other Sections

This section is referred to in sections 2151q, 2765 of this title.

§ 2394-1. Notification of program changes

Section Referred to in Other Sections

This section is referred to in section 2151f of this title.

§ 2395. General authorities

References to Subchapter I Deemed To Include Certain Parts of Subchapter II, and References to Subchapter II Deemed To Exclude Such Parts

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2396. Availability of funds

References to Subchapter I Deemed To Include Certain Parts of Subchapter II, and References to Subchapter II Deemed To Exclude Such Parts

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-228, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

Delegation of Functions

Functions of the President under subsec. (i), to the extent they relate to other functions under this chapter administered by the Department of Defense, were delegated to the Secretary of Defense by section 1-301(b) of Ex. Ord. No. 12163.

§ 2399d. Shipping differential

For the purpose of facilitating implementation of section 1241(b) of title 46, Appendix, funds made available for the purposes of part I of subchapter I of this chapter or for purposes of part IV of subchapter II of this chapter may be used to make grants to recipients to pay all or any portion of such differential as is determined by the Secretary of Commerce to exist between United States and foreign-flag vessel charter or freight rates. Grants made under this section shall be paid with United States-owned foreign currencies wherever feasible.

(Pub. L. 87-195, pt. III, § 640C, as added Pub. L. 93-189, § 21, Dec. 17, 1973, 87 Stat. 726, and amended Pub. L. 96-533, title VII, § 708, Dec. 16, 1980, 94 Stat. 3159.)

Codification

Section is set out in this supplement to reflect the transfer of section 1241 of title 46, referred to in text, to title 46, Appendix.

PART III—MISCELLANEOUS PROVISIONS

§ 2403. Definitions

As used in this chapter—

[*See main edition for text of* (*a*) *to* (*l*)]

(m) "Value" means—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) with respect to military education and training or services provided under part VIII of subchapter II of this chapter, the additional costs that are incurred by the United States Government in furnishing such assistance.

Military assistance programs and orders shall be based upon the best estimates of stock status and prevailing prices; reimbursements to the supplying agency shall be made on the basis of the stock status and prices determined pursuant to this section. Notwithstanding the foregoing provisions of this section, the Secretary of Defense may prescribe regulations authorizing reimbursements to the supplying agency based on negotiated prices for aircraft, vessels, plant equipment, and such other major items as he may specify: *Provided*, That such articles are not excess at the time such prices are negotiated: *Provided further*, That such prices are negotiated at the time firm orders are placed with the supplying agency.

[*See main edition for text of* (*n*) *to* (*p*)]

(As amended Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 972.)

Codification

The 1983 amendment by Pub. L. 98-151 is based on section 202(b) of H.R. 2992, Ninety-eighth Congress, 1st Session, as reported May 17, 1983, which was enacted into permanent law by Pub. L. 98-151.

AMENDMENTS

1983—Subsec. (m)(5). Pub. L. 98-151 inserted "or services provided under part VIII of subchapter II of this chapter".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2321c, 2349aa-2, 2392, 2794, 2795 of this title.

§ 2414a. Presidential assessment of support of foreign policy of United States during preceding twelve months by foreign countries; report to Congress; support in United Nations bodies and with respect to related documents; compilation of report; funding limitations

(a) Not later than January 31 of each year, or at the time of the transmittal by the President to the Congress of the annual presentation materials on foreign assistance, whichever is earlier, the President shall transmit to the Speaker of the House of Representatives and the President of the Senate a full and complete report which assesses, with respect to each foreign country, the degree of support by the government of each such country during the preceding twelve-month period for the foreign policy of the United States. Such report shall include, with respect to each such country which is a member of the United Nations, information to be compiled and supplied by the Permanent Representative of the United States to the United Nations, consisting of a comparison of the overall voting practices in the principal bodies of the United Nations during the preceding twelve-month period of such country and the United States, with special note of the voting and speaking records of such country on issues of major importance to the United States in the General Assembly and the Security Council, and shall also include a report on actions with regard to the United States in important related documents such as the Non-Aligned Communique. A full compilation of the information supplied by the Permanent Representative of the United States to the United Nations for inclusion in such report shall be provided as an addendum to such report.

(b) None of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended to finance directly any assistance to a country which the President finds, based on the contents of the report required to be transmitted under subsection (a) of this section, is engaged in a consistent pattern of opposition to the foreign policy of the United States.

(Pub. L. 98-473, title I, § 101(1) [title V, § 530], Oct. 12, 1984, 98 Stat. 1884, 1900.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), is the Foreign Assistance and Related Programs Appropriations Act, 1985, as enacted into law by Pub. L. 98-473, title I, § 101(1), Oct. 12, 1984, 98 Stat. 1884. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Foreign Assistance and Related Programs Appropriations Act, 1985, and not as part of the Foreign Assistance Act of 1961 which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation act:

Pub. L. 98-151, § 101(b)(1), Nov. 14, 1983, 97 Stat. 967.

§ 2420. Police training prohibition

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2349aa-2 of this title.

§ 2421. Trade and development program

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

§ 2427. Operating expenses

REFERENCES TO SUBCHAPTER I DEEMED TO INCLUDE CERTAIN PARTS OF SUBCHAPTER II

References to subchapter I of this chapter are deemed to include parts IV (§ 2346 et seq.), VI (§ 2348 et seq.), and VIII (§ 2349aa et seq.) of subchapter II of this chapter, and references to subchapter II are deemed to exclude such parts. See section 202(b) of Pub. L. 92-226, set out as a note under section 2346 of this title, and sections 2348c and 2349aa-5 of this title.

CHAPTER 33—MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE PROGRAM

Sec.
2460. Bureau of Educational and Cultural Affairs.
  (a) Establishment; responsibilities.
  (b) Program requirements.
  (c) Administration of programs.

§ 2452. Authorization of activities

[*See main edition for text of* (*a*)]

(b) Other exchanges

In furtherance of the purposes of this chapter, the President is further authorized to provide for—

[*See main edition for text of* (*1*) *to* (*8*)]

(9) encouraging independent research into the problems of educational and cultural exchange;

(10) promoting studies, research, instruction, and other educational activities of citizens and nationals of foreign countries in American schools, colleges, and universities located in the United States by making available to citizens and nationals of less developed friendly foreign countries for exchange for currencies of their respective countries (other than excess foreign currencies), at United States embassies, United States dollars in such amounts as may be necessary to enable such foreign citizens or nationals who are coming temporarily to the United States as students, trainees, teachers, instructors, or

professors to meet expenses of the kind described in section 2454(e)(1) of this title; and

(11) interchanges and visits between the United States and other countries of scientists, scholars, leaders, and other experts in the fields of environmental science and environmental management.

(As amended Pub. L. 98-164, title VII, § 703(a), Nov. 22, 1983, 97 Stat. 1045.)

AMENDMENTS

1983—Subsec. (b)(11). Pub. L. 98-164 added par. (11).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2453, 2454, 2455, 2456, 2458, 2458a, 2460 of this title.

§ 2460. Bureau of Educational and Cultural Affairs

(a) Establishment; responsibilities

In order to carry out the purposes of this chapter, there is established in the United States Information Agency, or in such appropriate agency of the United States as the President shall determine, a Bureau of Educational and Cultural Affairs (hereinafter in this section referred to as the "Bureau"). The Bureau shall be responsible for managing, coordinating, and overseeing programs established pursuant to this chapter, including but not limited to—

(1) the J. William Fulbright Educational Exchange Program which, by promoting the exchange of scholars, researchers, students, trainees, teachers, instructors, and professors, between the United States and foreign countries, accomplishes the purposes of section 2452(a)(1) of this title;

(2) the Hubert H. Humphrey Fellowship Program which finances (A) study at American universities and institutions of higher learning, including study in degree granting programs, and (B) participation in fellowships, internships, or other programs in American governmental and nongovernmental institutions for public managers and other individuals from developing countries;

(3) the International Visitors Program which provides grants for short-term visits to the United States for foreign nationals who are, or have the potential to be, leaders in their respective fields in their own countries;

(4) the American Cultural Centers and Libraries which make available at selected foreign locations, books, films, sound recordings, and other materials about the United States, its people and culture, and about other topics;

(5) the American Overseas Schools Program which provides financial assistance to the operations of American-sponsored schools overseas;

(6) the American Studies Program which fosters and supports the study of the United States, and its people and culture, in foreign countries; and

(7) a program of working with private, not-for-profit groups through contracts, grants, or cooperative agreements, as authorized by section 2452 of this title, so as to provide financial assistance to nongovernmental organizations engaged in implementing and enhancing exchange-of-persons programs.

(b) Program requirements

The President shall insure that all programs under the authority of the Bureau shall maintain their nonpolitical character and shall be balanced and representative of the diversity of American political, social, and cultural life. The President shall insure that academic and cultural programs under the authority of the Bureau shall maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement.

(c) Administration of programs

The Bureau shall administer no programs except those operating under the authority of this chapter and consistent with its purposes.

(Pub. L. 87-256, § 112, as added Pub. L. 98-164, title II, § 213, Nov. 22, 1983, 97 Stat. 1034.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (c), was in the original "this Act", meaning Pub. L. 87-256, Sept. 21, 1961, 75 Stat. 527, as amended, known as the Mutual Educational and Cultural Exchange Act of 1961. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

PRIVATE SECTOR PROGRAM; RESTRICTIONS ON FUNDS FOR FOREIGN TRAVEL; WAIVER; REPORTS

Section 207 of Pub. L. 98-164 provided that:

"(a) No funds authorized to be appropriated for the Private Sector Program shall be used to pay for foreign travel by any United States citizen who, in the five years preceding the date of the proposed foreign travel, made two or more trips financed in whole or in substantial part by grants from the Private Sector Program. This limitation shall not apply to escort interpreters accompanying delegations, to artists accompanying exhibitions, to persons engaging in theatrical or musical performances, or to the full-time staff of the grantee organization. In addition, the Director of the Bureau of Educational and Cultural Affairs may waive this limitation in exceptional cases if he determines that foreign travel is essential to the successful completion of the grant program and so certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate at least fifteen days prior to the commencement of the proposed foreign travel.

"(b) Not later than January 31 of each year, the Director of the Bureau of Educational and Cultural Affairs shall submit to the Speaker of the House of Representatives and the Chairman of the Committee on Foreign Relations of the Senate a report listing all individuals, with their organization, who in the preceding five years made two or more trips involving foreign travel financed in whole or substantial part by grants from the Private Sector Program."

CHAPTER 34—THE PEACE CORPS

§ 2501. Congressional declaration of purpose

EX. ORD. NO. 12468. PRESIDENTIAL ADVISORY COUNCIL ON THE PEACE CORPS

Ex. Ord. No. 12468, Mar. 22, 1984, 49 F.R. 11139, provided:

By the authority vested in me as President by the Constitution and statutes of the United States, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered as follows:

SECTION 1. *Establishment.* (a) There is established the Presidential Advisory Council on the Peace Corps

(b) The Council shall be composed of no more than 15 persons, who shall be appointed by the President. The President shall designate a member to serve as Chairman of the Council and a member to serve as Vice Chairman. Members shall serve at the pleasure of the President.

Sec. 2. *Functions.* (a) The Council shall advise the President and the Director of the Peace Corps on initiatives needed to promote the purposes of the Peace Corps Act [this chapter] and actions of the Peace Corps which do so.

(b) The Council shall submit simultaneously to the President and the Director of the Peace Corps an annual report on its review of Peace Corps activities, its recommendations concerning those activities, and the activities of the Council.

Sec. 3. *Administration.* (a) The heads of the Executive agencies shall, to the extent permitted by law, provide the Council with such information as may be necessary for the effective performance of its functions.

(b) Members of the Council shall not receive compensation for their work on the Council. While engaged in the work of the Council, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701-5707).

(c) The Director of the Peace Corps shall, to the extent permitted by law and subject to the availability of funds, provide the Council with such administrative services, funds, facilities, and other support services as may be necessary for the effective performance of its functions.

Sec. 4. *General Provisions.* (a) Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act [5 U.S.C. App.] which are applicable to the Council, except that of reporting annually to the Congress, shall be performed by the Director of the Peace Corps, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Council shall terminate two years from the date of this Order, unless sooner extended.

RONALD REAGAN.

§ 2506. Peace Corps employees

(a) Foreign employment; compensation, allowances, and benefits; utilization of Presidential authority respecting Foreign Service; additional compensation and differentials; additional governmental employment by person receiving Foreign Service Reserve or staff appointment or assignment

[*See main edition for text of* (*1*)]

(2) The President may utilize such authority contained in the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.] relating to members of the Foreign Service and other United States Government officers and employees as the President deems necessary to carry out functions under this chapter, except that—

[*See main edition for text of* (*A*) *and* (*B*)]

Subparagraphs (A) and (B) do not apply with respect to foreign national employees. Such provisions of the Foreign Service Act of 1980 [22 U.S.C. 3901 et seq.] as the President deems appropriate shall apply to individuals appointed or assigned under this paragraph, including in all cases, the provisions of section 310 of that Act [22 U.S.C. 3950], except that (i) the President may by regulation make exceptions to the application of section 310 [22 U.S.C. 3950] in cases in which the period of the appointment or assignment exceeds thirty months, (ii) members of the Foreign Service appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe, and (iii) under such regulations as the President may prescribe, individuals who are to perform duties of a more routine nature than are generally performed by members of the Foreign Service assigned to class 9 in the Foreign Service Schedule may be appointed to an unenumerated class ranking below class 9 in the Foreign Service Schedule and be paid basic compensation at rates lower than those for class 9, except that such rates may be no less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29.

[*See main edition for text of* (*3*) *and* (*4*); (*b*) *and* (*c*)]

(As amended Pub. L. 98-473, title I, § 101(1) [title V, § 541(a)], Oct. 12, 1984, 98 Stat. 1884, 1903.)

CODIFICATION

Amendment by Pub. L. 98-473 is based on section 703 of H.R. 5119, Ninety-eighth Congress, as passed by the House of Representatives May 10, 1984, which was enacted into permanent law by Pub. L. 98-473.

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-473 added provision that subparagraphs (A) and (B) do not apply with respect to foreign national employees.

CHAPTER 35—ARMS CONTROL AND DISARMAMENT

SUBCHAPTER II—ORGANIZATION

Sec.	
2568.	Program for visiting scholars.

SUBCHAPTER IV—ADDITIONAL GENERAL PROVISIONS

2591.	Specialists fluent in Russian language.

SUBCHAPTER II—ORGANIZATION

§ 2562. Director of Agency; appointment; powers and duties

The Agency shall be headed by a Director, who shall serve as the principal adviser to the Secretary of State, the National Security Council, and the President on arms control and disarmament matters. In carrying out his duties under this chapter the Director shall, under the direction of the Secretary of State, have primary responsibility within the Government for arms control and disarmament matters, as defined in this chapter. The Director shall attend all meetings of the National Security Council involving weapons procurement, arms sales, consideration of the defense budget, and all arms control and disarmament matters. The Director shall be appointed by the President, by and with the advice and consent of the Senate. No person serving on active duty as a commissioned officer of the Armed Forces of the United States may be appointed Director.

(As amended Pub. L. 98-202, § 2, Dec. 2, 1983, 97 Stat. 1381.)

AMENDMENTS

1983—Pub. L. 98-202 required attendance of the Director at prescribed National Security Council meetings and substituted "The Director" for "He" preceding "shall be appointed".

§ 2567. Special Representatives for Arms Control and Disarmament Negotiations; appointment; powers and duties

The President may appoint, by and with the advice and consent of the Senate, two Special Representatives for Arms Control and Disarmament Negotiations who shall perform such duties and exercise such powers (under the direction of the President and the Secretary of State, acting through the Director) as the Director may prescribe with respect to international arms control and disarmament negotiations and matters relating thereto.

(As amended Pub. L. 98-202, § 6(a), Dec. 2, 1983, 97 Stat. 1382.)

AMENDMENTS

1983—Pub. L. 98-202 substituted "two Special Representatives" for "a Special Representative".

§ 2568. Program for visiting scholars

A program for visiting scholars in the field of arms control and disarmament shall be established by the Director in order to obtain the services of scholars from the faculties of recognized institutions of higher learning. The purpose of the program will be to give specialists in the physical sciences and other disciplines relevant to the Agency's activities an opportunity for active participation in the arms control and disarmament activities of the Agency and to gain for the Agency the perspective and expertise such persons can offer. Each fellow in the program shall be appointed for a term of one year, except that such term may be extended for a 1-year period. Fellows shall be chosen by a board consisting of the Director, who shall be the chairperson, and all former Directors of the Agency.

(Pub. L. 87-297, title II, § 28, as added Pub. L. 98-202, § 3, Dec. 2, 1983, 97 Stat. 1381.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2589 of this title.

SUBCHAPTER IV—ADDITIONAL GENERAL PROVISIONS

§ 2589. Appropriations

(a) Limitations and availability

To carry out the purposes of this chapter, there are authorized to be appropriated—

(1) for the fiscal year 1984, $20,888,000;

(2) for the fiscal year 1985, $21,932,000; and

(3) such additional amounts as may be necessary, for each such fiscal year, for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs, and to offset adverse fluctuations in foreign currency exchange rates.

Of the sums authorized to be appropriated for the fiscal years 1984 and 1985, not less than $200,000 shall be available in each such fiscal year only for the program for visiting scholars in the field of arms control and disarmament established under section 2568 of this title. Amounts appropriated under this subsection are authorized to remain available until expended.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-202, § 1, Dec. 2, 1983, 97 Stat. 1381.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-202 amended subsec. (a) generally, substituting par. (1) and (2) appropriations authorizations of $20,888,000 and $21,932,000 for fiscal years 1984 and 1985 for former authorizations of $18,268,000 and $19,893,852 for fiscal years 1982 and 1983, substituting in par. (3) "amounts as may be necessary, for each such fiscal year," for "amounts, for each such fiscal year, as may be necessary" and requiring minimum of $200,000 be available for fiscal years 1984 and 1985 for the program for visiting scholars in the field of arms control and disarmament.

§ 2591. Specialists fluent in Russian language

The Director is authorized to create up to eight additional permanent personnel positions at both junior and more senior levels for specialists in Soviet foreign and military policies, arms control, or strategic affairs, who also demonstrate fluency in the Russian language.

(Pub. L. 87-297, title IV, § 51, as added Pub. L. 98-202, § 4, Dec. 2, 1983, 97 Stat. 1382.)

CHAPTER 38—DEPARTMENT OF STATE

Sec.
2671. Emergency expenditures.
 (a) Delegation of authority pertaining to certification of expenditures.
 (b) Activities subject to expenditures.
 (c) Annual confidential audit and report.
 (d) Repatriation loan program.
2706. Reprograming of funds; notice requirements.
2707. International communications and information policy; assignment of responsibility; Office of the Coordinator for International Communications and Information Policy; establishment, etc.
2708. Reward; information; international terrorism.
 (a) Authorization of reward.
 (b) Reward limitation; Presidential approval.
 (c) Advice; consultation; Attorney General.
 (d) Certification; payment.
 (e) Officers or employees of government ineligible for reward.
 (f) Authorization of appropriations.

§ 2651. Establishment of Department

SHORT TITLE OF 1956 AMENDMENT

Act Aug. 1, 1956, ch. 841, title I, § 37, formerly § 33, as added Oct. 17, 1980, Pub. L. 96-465, title II, § 2201(a), 94 Stat. 2157, and renumbered § 34, Aug. 24, 1982, Pub. L. 97-241, title I, § 117, title II, § 202(a), 96 Stat. 279, 282; renumbered § 35 and § 36, Nov. 22, 1983, Pub. L. 98-164, title I, §§ 123, 124, 97 Stat. 1025; renumbered § 37, Oct. 19, 1984, Pub. L. 98-533, title I, § 102, 98 Stat. 2708, provided that: "This Act [enacting sections 2662, 2669 to 2672, 2673 to 2680a, 2684, 2687 to 2692, 2695 to 2707, and 4301 to 4313 of this title] may be cited as the 'State Department Basic Authorities Act of 1956'."

§ 2653. Appointment and rank of officers

(a) The Secretary of State and the officers referred to in section 2652 of this title, shall be appointed by the President, by and with the advice and consent of the Senate. The Legal Adviser who is required to be appointed by the President, by and with the advice and consent of the Senate, shall rank equally with the Assistant Secretaries of State. Any such officer holding office at the time the provisions of this Act, as amended, become effective shall not be required to be reappointed by reason of the enactment of this Act, as amended.

(b) Repealed. Pub. L. 92-352, title I, § 103(a)(2), July 13, 1972, 86 Stat. 490.

(As amended Nov. 22, 1983, Pub. L. 98-164, title I, § 125(a), 97 Stat. 1026.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-164 struck out reference to Counselor of the Department of State in the second sentence.

§ 2656. Management of foreign affairs

TORTURE BY FOREIGN GOVERNMENTS; UNITED STATES POLICY IN OPPOSITION; IMPLEMENTATION

Pub. L. 98-447, Oct. 4, 1984, 98 Stat. 1721, provided: "That the Congress reaffirms that it is the continuing policy of the United States Government to oppose the practice of torture by foreign governments through public and private diplomacy and, when necessary and appropriate, through the enactment and vigorous implementation of laws intended to reinforce United States policies with respect to torture. The United States Government opposes acts of torture wherever they occur, without regard to ideological or regional considerations, and will make every effort to work cooperatively with other governments and with nongovernmental organizations to combat the practice of torture worldwide.

"Sec. 2. (a) The President is requested—

"(1) to instruct the Permanent Representative of the United States to the United Nations to continue to raise the issue of torture practiced by governments; and

"(2) to continue to involve the United States Government in the formulation of international standards and effective implementing mechanisms, particularly the draft Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

"(b) In order to implement the policy expressed in the first section of this resolution, the Secretary of State is requested to issue formal instructions to each United States chief of mission regarding United States policy with respect to torture, including—

"(1) instructions—

"(A) to examine allegations of the practice of torture, particularly allegations concerning the existence of secret detention, extended incommunicado detention, and restrictions on access by family members, lawyers, and independent medical personnel to detainees; and

"(B) to forward such information as may be gathered, including information regarding any efforts made by the host government to reduce and eliminate the practice of torture, to the Assistant Secretary of State for Human Rights and Humanitarian Affairs for analysis in preparing the Department's annual country reports on human rights practices;

"(2) in the case of a chief of mission assigned to a country where torture is regularly practiced, instructions to report on a periodic basis as circumstances require to the Assistant Secretary of State for Human Rights and Humanitarian Affairs regarding efforts made by the respective United States diplomatic mission to implement United States policy with respect to combating torture;

"(3) instructions to meet with indigenous human rights monitoring groups knowledgeable about the practice of torture for the purpose of gathering information about such practice; and

"(4) instructions to express concern in individual cases of torture brought to the attention of a United States diplomatic mission including, whenever feasible, sending United States observers to trials when there is reason to believe that torture has been used against the accused.

"(c) The Secretary of Commerce should continue to enforce vigorously the current restrictions on the export of crime control equipment pursuant to the Export Administration Act of 1979 [50 App. U.S.C. 2401 et seq.].

"(d) The heads of the appropriate departments of the United States Government that furnish military and law enforcement training to foreign personnel, particularly personnel from countries where the practice of torture has been a documented concern, shall include in such training, when relevant, instruction regarding international human rights standards and the policy of the United States with respect to torture."

UNITED STATES DIPLOMATIC RELATIONS WITH THE VATICAN

Pub. L. 98-164, title I, § 134, Nov. 22, 1983, 97 Stat. 1029, provided that: "In order to provide for the establishment of United States diplomatic relations with the Vatican, the Act entitled 'An Act making Appropriations for the Consular and Diplomatic Expenses of the Government for the Year ending thirtieth June, eighteen hundred and sixty-eight, and for other purposes', approved February 28, 1867, is amended by repealing the following sentence (14 Stat. 413): 'And no money hereby or otherwise appropriated shall be paid for the support of an American legation at Rome, from and after the thirtieth day of June, eighteen hundred and sixty-seven.'."

REOPENING CERTAIN UNITED STATES CONSULATES

Pub. L. 97-241, title I, § 103(b), (c), Aug. 24, 1982, 96 Stat. 273, as amended by Pub. L. 98-164, title I, § 137, Nov. 22, 1983, 97 Stat. 1030, provided that:

"(b) None of the funds made available under this [Pub. L. 97-241] or any other Act for 'Administration of Foreign Affairs' may be used for the establishment or operation of any United States consulate that did not exist on the date of enactment of this Act [Aug. 24, 1982] (other than the consulates specified in subsection (c)) until all the United States consulates specified in subsection (c) have been reopened as required by section 108 of the Department of State Authorization Act, Fiscal Years 1980 and 1981 [section 108 of Pub. L. 96-60, set out as a note below], to the extent such reopening is authorized by the foreign government involved. A report shall be made to the Committee on Foreign Relations of the Senate and the Committtee on Foreign Affairs of the House of Representatives concerning the extent to which such foreign government authorization has been received, and the progress achieved with respect to the reopening of the specified consulates.

[*See main edition for text of* (c)]

§ 2669. Printing and binding outside continental United States; settlement and payment of claims by foreign governments; employment of aliens; official functions and courtesies; purchase of uniforms; payment of tort claims

The Secretary of State, when funds are appropriated therefor, may—

[*See main edition for text of (a) and (b)*]

(c) employ individuals or organizations, by contract, for services abroad, and individuals employed by contract to perform such services shall not by virtue of such employment be considered to be employees of the United States Government;

(d) provide for official functions and courtesies;

(e) purchase uniforms;

(f) pay tort claims, in the manner authorized in the first paragraph of section 2672, as amended, of title 28, when such claims arise in foreign countries in connection with Department of State operations abroad;

(g) obtain services as authorized by section 3109 of title 5 at a rate not to exceed the maximum rate payable for GS-18 under section 5332 of such title 5; and

(h) directly procure goods and services in the United States or abroad, solely for use by United States Foreign Service posts abroad when the Secretary of State, in accordance with guidelines established in consultation with the Administrator of General Services, determines that use of the Federal Supply Service or otherwise applicable Federal goods and services acquisition authority would not meet emergency overseas security requirements determined necessary by the Secretary, taking into account overseas delivery, installation, maintenance, or replacement requirements, except that the authority granted by this paragraph shall cease to be effective when the amendment made by section 2711 of the Competition in Contracting Act of 1984 takes effect and thereafter procurement by the Secretary of State for the purposes described in this paragraph shall be in accordance with section 253(c)(2) of title 41.

(As amended Oct. 19, 1984, Pub. L. 98-533, title III, § 303(a), 98 Stat. 2710.)

REFERENCES IN TEXT

The effective date of the amendment made by section 2711 of the Competition in Contracting Act of 1984, referred to in subsec. (h), is the effective date of section 2711 of title VII of Pub. L. 98-369, div. B, July 18, 1984, 98 Stat. 1175, 1203, which amended section 253 of Title 41, Public Contracts, applicable with respect to any solicitation for bids or proposals issued after Mar. 31, 1985. See section 2751(a) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 251 of Title 41.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-533, § 303(a)(1), substituted "individuals or organizations" for "aliens" after "employ", and ", and individuals employed by contract to perform such services shall not by virtue of such employment be considered to be employees of the United States Government".

Subsecs. (g), (h). Pub. L. 98-533, § 303(a)(2), added subsecs. (g) and (h).

§ 2671. Emergency expenditures

(a) Delegation of authority pertaining to certification of expenditures

The Secretary of State is authorized to—

(1) subject to subsection (b) of this section, make expenditures, from such amounts as may be specifically appropriated therefor, for unforeseen emergencies arising in the diplomatic and consular service and, to the extent authorized in appropriations Acts, funds expended for such purposes may be accounted for in accordance with section 3526(e) of title 31; and

(2) delegate to subordinate officials the authority vested in him by section 3526(e) of title 31 pertaining to certification of expenditures.

(b) Activities subject to expenditures

(1) Expenditures described under subsection (a) of this section shall be made only for such activities as—

(A) serve to further the realization of foreign policy objectives;

(B) are a matter of urgency to implement;

(C) with respect to activities the expenditures for which are required to be certified under subsection (a) of this section, require confidentiality in the best interests of the conduct of foreign policy by the United States; and

(D) are not otherwise prohibited by law.

(2) Activities described in paragraph (1) include—

(A) the evacuation of United States Government employees and their dependents and private United States citizens when their lives are endangered by war, civil unrest, or natural disaster;

(B) loans made to destitute citizens of the United States who are outside the United States and made to provide for the return to the United States of its citizens;

(C) visits by foreign chiefs of state or heads of government to the United States;

(D) travel of delegations representing the President at any inauguration or funeral of a foreign dignitary;

(E) travel of the President, the Vice President, or a Member of Congress to a foreign country, including advance arrangements, escort, and official entertainment;

(F) travel of the Secretary of State within the United States and outside the United States, including official entertainment;

(G) official representational functions of the Secretary of State and other principal officers of the Department of State;

(H) official functions outside the United States the expenses for which are not otherwise covered by amounts appropriated for representation allowances;

(I) investigations and apprehension of groups or individuals involved in fraudulent issuance of United States passports and visas; and

(J) gifts of nominal value given by the President, Vice President, or Secretary of State to a foreign dignitary.

(c) Annual confidential audit and report

The Inspector General of the Department of State and the Foreign Service shall conduct an annual confidential audit of the Department of State's emergency expenditures and prepare and transmit to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate an annual report indicating whether such expenditures were made in accordance with subsections (a) and (b) of this section.

(d) Repatriation loan program

With regard to the repatriation loan program, the Secretary of State shall—

(1) require the borrower to provide a verifiable address and social security number at the time of application;

(2) require a written loan agreement which includes a repayment schedule;

(3) bar passports from being issued or renewed for those individuals who are in default;

(4) refer any loan more than one year past due to the Department of Justice for litigation;

(5) obtain addresses from the Internal Revenue Service for all delinquent accounts which have social security numbers;

(6) report defaults to commercial credit bureaus as provided in section 3711(f) of title 31;

(7) be permitted to use any funds necessary to contract with commercial collection agencies, notwithstanding section 3718(c) of title 31;

(8) charge interest on all loans as of May 1, 1983, with the rate of interest to be that set forth in section 3717(a) of title 31;

(9) assess charges, in addition to the interest provided for in paragraph (8), to cover the costs of processing and handling delinquent claims, as of May 1, 1983;

(10) assess a penalty charge, in addition to the interest provided for in paragraphs (8) and (9), of 6 per centum per year for failure to pay any portion of a debt more than ninety days past due; and

(11) implement the interest and penalty provisions in paragraphs (8), (9), and (10) for all current and future loans, regardless of whether the debts were incurred before or after May 1, 1983.

(As amended Nov. 22, 1983, Pub. L. 98-164, title I, § 122(a), 97 Stat. 1023.)

CODIFICATION

"Section 3526(e) of title 31" was substituted in subsec. (a) for "section 291 of the Revised Statutes (31 U.S.C. 107)" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1983—Pub. L. 98-164 designated existing provisions as subsec. (a) and in subsec. (a), as so designated, redesignated former pars. (a) and (b) as pars. (1) and (2), respectively, and in par. (1), as so redesignated, added reference to subsec. (b), and added subsecs. (b) to (d).

§ 2675. Allocation or transfer to other agencies of funds appropriated to Department of State; authority for expenditure of funds

The Secretary of State may allocate or transfer to any department, agency, or independent establishment of the United States Government (with the consent of the head of such department, agency, or establishment) any funds appropriated to the Department of State, for direct expenditure by such department, agency, or independent establishment for the purposes for which the funds were appropriated in accordance with authority granted in this Act or under authority governing the activities of such department, agency, or independent establishment.

(As amended Nov. 22, 1983, Pub. L. 98-164, title I, § 121, 97 Stat. 1023.)

REFERENCES IN TEXT

This Act, referred to in text, is act Aug. 1, 1956, ch. 841, 70 Stat. 890, as amended, known as the State Department Basic Authorities Act of 1956, which enacted sections 2662, 2669 to 2672, 2673 to 2680a, 2684, 2687 to 2692, 2695 to 2707, and 4301 to 4313 of this title. For complete classification of this Act to the Code, see Short Title of 1956 Amendment note set out under section 2651 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98-164 amended section generally, substituting provisions relating to allocation or transfer of funds and authority for expenditure of funds for provisions relating to transfer of funds.

§ 2678. Use of Government-owned vehicles for security purposes; Deputy Secretary

Notwithstanding section 1344(a) of title 31, the Deputy Secretary of State is authorized to use Government-owned vehicles for security purposes for travel between his or her residence and places where official functions are performed.

(As amended Oct. 19, 1984, Pub. L. 98-533, title III, § 303(b), 98 Stat. 2711.)

AMENDMENTS

1984—Pub. L. 98-533 substituted provisions relating to use of Government-owned vehicles for security purposes for travel by the Deputy Secretary of State for provisions which related to use of Government-owned vehicles or taxicabs by employees in foreign countries.

§ 2691. Nonimmigrant visas

RECIPROCITY ON IMPOSITION OF TRAVEL RESTRICTIONS

Section 126 of Pub. L. 95-426, as amended by Pub. L. 98-164, title X, § 1011(a)(1), Nov. 22, 1983, 97 Stat. 1061, provided that:

[*See main edition for text of* (a) *and* (b)]

[(c) Repealed. Pub. L. 98-164, title X, § 1011(a)(1), Nov. 22, 1983, 97 Stat. 1061]

[*See main edition for text of* (d)]

§ 2704. Subsistence expenses

The Secretary of State may pay, without regard to section 5702 of title 5, subsistence expenses of (1) security officers of the Department of State who are on authorized protective missions, and (2) members of the Foreign Service and employees of the Department who are required to spend extraordinary amounts of time in travel status. The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Director of the United States Information Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies, except that the authority of clause (2) shall be available with respect to those agencies only in the case of members of the Foreign Service and employees of the agency who are performing security-related functions abroad.

(As amended Oct. 19, 1984, Pub. L. 98-533, title III, § 303(c), 98 Stat. 2711.)

Amendments

1984—Pub. L. 98-533 added "The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Director of the United States Information Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies, except that the authority of clause (2) shall be available with respect to those agencies only in the case of members of the Foreign Service and employees of the agency who are performing security-related functions abroad."

§ 2705. Documentation of citizenship

Prior Provisions

A prior section 33 of act Aug. 1, 1956, was renumbered section 34 by section 117 of Pub. L. 97-241, and subsequently renumbered, and is set out as a Short Title of 1956 Amendment note under section 2651 of this title.

§ 2706. Reprograming of funds; notice requirements

Unless the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate are notified fifteen days in advance of the proposed reprograming, funds appropriated for the Department of State shall not be available for obligation or expenditure through any reprograming of funds—

(1) which creates new programs;

(2) which eliminates a program, project, or activity;

(3) which increases funds or personnel by any means for any project or activity for which funds have been denied or restricted by the Congress;

(4) which relocates an office or employees;

(5) which reorganizes offices, programs, or activities;

(6) which involves contracting out functions which had been performed by Federal employees; or

(7) which involves a reprograming in excess of $250,000 or 10 per centum, whichever is less, and which (A) augments existing programs, projects, or activities, (B) reduces by 10 per centum or more the funding for any existing program, project, activity, or personnel approved by the Congress, or (C) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects approved by the Congress.

(Aug. 1, 1956, ch. 841, title I, § 34, as added Nov. 22, 1983, Pub. L. 98-164, title I, § 123, 97 Stat. 1025.)

Prior Provisions

A prior section 34 of act Aug. 1, 1956, was renumbered section 35 and subsequently 36 by sections 123 and 124 of Pub. L. 98-164, and is set out as a Short Title of 1956 Amendment note under section 2651 of this title.

§ 2707. International communications and information policy; assignment of responsibility; Office of the Coordinator for International Communications and Information Policy; establishment, etc.

(a) The Secretary of State shall assign responsibility for international communications and information policy matters within the Department of State to an appropriate Under Secretary of State (hereafter in this section referred to as the "Under Secretary").

(b) The Secretary of State shall establish, within the Department of State, an Office of the Coordinator for International Communications and Information Policy, headed by a Coordinator who shall be responsible to the Under Secretary. The Coordinator shall be appointed by the President, by and with the advice and consent of the Senate, and shall have the rank of ambassador. The Coordinator shall be responsible, on behalf of the Under Secretary, for formulation, coordination, and oversight of international communications and information policy assigned to the Under Secretary. On behalf of the Under Secretary, the Coordinator shall—

(1) maintain continuing liaison with the bureaus and offices of the Department of State and with other executive branch agencies concerned with international communications and information policy;

(2) in accordance with such authority as may be delegated by the President pursuant to Executive order, chair such agency and interagency meetings as may be necessary to coordinate actions on pending issues to ensure proper policy coordination;

(3) in accordance with such authority as may be delegated by the President pursuant to Executive order, supervise and coordinate the activities of the Senior Interagency Group on International Communications and Information Policy;

(4) coordinate the activities of, and assist as appropriate, interagency working level task forces and committees concerned with specific aspects of international communications and information policy;

(5) maintain liaison with the members and staffs of committees of the Congress concerned with international communications and information policy and provide testimony before such committees;

(6) maintain appropriate liaison with representatives of the private sector to keep informed of their interests and problems, meet with them, and provide such assistance as may be needed to ensure that matters of con-

cern to the private sector are promptly considered by the Department or other executive branch agencies; and

(7) assist in arranging meetings of such public sector advisory groups as may be established to advise the Department of State and other executive branch agencies in connection with international communications and information policy issues.

(Aug. 1, 1956, ch. 841, title I, § 35, as added Nov. 22, 1983, Pub. L. 98-164, title I, § 124, 97 Stat. 1025.)

PRIOR PROVISIONS

A prior section 35 of act Aug. 1, 1956, was renumbered section 36 by section 124 of Pub. L. 98-164, and subsequently renumbered, and is set out as a Short Title of 1956 Amendment note under section 2651 of this title.

§ 2708. Reward; information; international terrorism

(a) Authorization of reward

The Secretary of State may pay a reward to any individual who furnishes information—

(1) leading to the arrest or conviction, in any country, of any individual for the commission of an act of international terrorism, or

(2) leading to the arrest or conviction, in any country, of any individual for conspiring or attempting to commit an act of international terrorism, or

(3) leading to the prevention, frustration, or favorable resolution of an act of international terrorism,

if the act of international terrorism is against a United States person or United States property and is primarily outside the territorial jurisdiction of the United States.

(b) Reward limitation; Presidential approval

A reward under this section may not exceed $500,000. A reward of $100,000 or more may not be made without the approval of the President or the Secretary of State personally.

(c) Advice; consultation; Attorney General

Before making a reward under this section in a matter over which there is Federal criminal jurisdiction, the Secretary of State shall advise and consult with the Attorney General.

(d) Certification; payment

Any reward granted under this section shall be certified for payment by the Secretary of State. If the Secretary determines that the identity of the recipient of a reward or of the members of the recipient's immediate family must be protected, the Secretary may take such measures in connection with the payment of the reward as he deems necessary to effect such protection.

(e) Officers or employees of government ineligible for reward

An officer or employee of any governmental entity who, while in the performance of his or her official duties, furnishes information described in subsection (a) of this section shall not be eligible for a reward under this section.

(f) Authorization of appropriations

There are authorized to be appropriated, without fiscal year limitation, $5,000,000 for use in paying rewards under this section. Additional funds to pay rewards under this section shall be authorized to be appropriated in the annual authorizing legislation for the Department of State.

(Aug. 1, 1956, ch. 841, title I, § 36, as added Oct. 19, 1984, Pub. L. 98-533, title I, § 102, 98 Stat. 2708.)

PRIOR PROVISIONS

A prior section 36 of act Aug. 1, 1956, was renumbered section 37 by section 102 of Pub. L. 98-533, and is set out as a Short Title of 1956 Amendment note under section 2651 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3076.

CHAPTER 39—ARMS EXPORT CONTROL

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to sections 2291, 2304, 2311, 2318, 2321h, 2321i, 2349a, 2349aa-2, 2364, 2373, 2410a, 2414, 2423, 2429, 2429a, 2778a, 3402 of this title; title 10 sections 140c, 2213, 2324.

SUBCHAPTER I—FOREIGN AND NATIONAL SECURITY POLICY OBJECTIVES AND RESTRAINTS

§ 2751. Need for international defense cooperation and military export controls; Presidential waiver; report to Congress; arms sales policy

EX. ORD. NO. 11958. ADMINISTRATION OF CHAPTER

Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended by Ex. Ord. No. 12118, Feb. 6, 1979, 44 F.R. 7939; Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673; Ex. Ord. No. 12210, Apr. 16, 1980, 45 F.R. 26313; Ex. Ord. No. 12321, Sept. 14, 1981, 46 F.R. 46109; Ex. Ord. No. 12365, May 24, 1982, 47 F.R. 22933; Ex. Ord. No. 12423, May 26, 1983, 48 F.R. 24025, provided:

[*See main edition for text of first par.*]

SECTION 1. *Delegation of Functions.* The following functions conferred upon the President by the Arms Export Control Act (22 U.S.C. 2751 et seq.), hereinafter referred to as the Act, are delegated as follows:

[*See main edition for text of* (a) *to* (c)]

(d) Those under Sections 22(a), 29 and 30 of the Act [22 U.S.C. 2762(a), 2769, 2770] to the Secretary of Defense.

[*See main edition for text of* (e) *to* (p); *Secs. 2 to 4*]

§ 2753. Eligibility for defense services or defense articles

DELEGATION OF FUNCTIONS

Functions of the President under this section, except subsecs. (a)(1), (b), (c)(3), (4), and (f), were delegated to the Secretary of State, with the Secretary authorized to make certain findings under subsec. (a)(1) in implementing the functions delegated under subsecs. (a) and (d), by section 1(a) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2755. Discrimination prohibited if based on race, religion, national origin, or sex

Delegation of Functions

Functions of the President under this section were delegated to the Secretary of State by section 1(b) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SUBCHAPTER II—FOREIGN MILITARY SALES AUTHORIZATIONS

§ 2761. Sales from stocks

(a) Eligible countries or international organizations; basis of payment

The President may sell defense articles and defense services from the stocks of the Department of Defense to any eligible country or international organization if such country or international organization agrees to pay in United States dollars—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) in the case of the sale of a defense service, the full cost to the United States Government of furnishing such service, except that in the case of training, only those additional costs that are incurred by the United States Government in furnishing such training.

[*See main edition for text of* (*b*) *to* (*f*)]

(g) Repealed. Pub. L. 98-473, title I, § 101(1) [title III, § 301], Oct. 12, 1984, 98 Stat. 1884, 1895

[*See main edition for text of* (*h*) *and* (*i*)]

(As amended Pub. L. 98-473, title I, § 101(1) [title III, § 301], Oct. 12, 1984, 98 Stat. 1884, 1895.)

References in Text

The Foreign Assistance Act of 1961, referred to in subsec. (c)(2), is Pub. L. 87-195, Sept. 4, 1961, 75 Stat. 424, as amended, which is classified principally to chapter 32 (§ 2151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2151 of this title and Tables.

Codification

Amendment by Pub. L. 98-473 is based on section 102 of S. 2346, Ninety-eighth Congress, as introduced in the Senate Feb. 27, 1984, which was enacted into permanent law by Pub. L. 98-473.

Amendments

1984—Subsec. (a)(3). Pub. L. 98-473 struck out "sold to a purchaser who is concurrently receiving assistance under chapter 5 of part II of the Foreign Assistance Act of 1961" after "in the case of training".

Subsec. (g). Pub. L. 98-473 struck out subsec. (g) which related to NATO standardization agreements and similar agreements with Japan, Australia, and New Zealand.

Delegation of Functions

Functions of the President under this section, except the last sentence of subsec. (d) and subsec. (i), were delegated to the Secretary of Defense by section 1(c) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2762. Procurement for cash sales

Delegation of Functions

Functions of the President under subsec. (a) of this section were delegated to the Secretary of Defense by section 1(d) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2763. Credit sales

Delegation of Functions

Functions of the President under this section, except those functions under par. (2) relating to certifying a rate of interest to Congress, were delegated to the Secretary of Defense by section 1(e) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2764. Guaranties

Delegation of Functions

Functions of the President under this section were delegated to the Secretary of Defense by section 1(f) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2765. Annual estimate and justification for sales program

Delegation of Functions

Functions of the President under this section were delegated to the Secretary of State, with the Secretary of Defense and the Director of the Arms Control and Disarmament Agency required to assist in the preparation of materials for presentation to Congress, by section 1(g) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2767. North Atlantic Treaty Organization cooperative projects

Delegation of Functions

Functions of the President under this section were delegated to the Secretary of Defense, with the Secretary of Defense required to consult with the Secretary of State in implementing the delegated functions, by section 1(f) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2768. Reports on price and availability estimates

Delegation of Functions

Functions of the President under this section were delegated to the Secretary of Defense by section 1(f) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SUBCHAPTER II-A—FOREIGN MILITARY CONSTRUCTION SALES

§ 2769. Foreign military construction sales

Delegation of Functions

Functions of the President under this section were delegated to the Secretary of Defense by section 1(d) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SUBCHAPTER II-B—SALES TO UNITED STATES COMPANIES FOR INCORPORATION INTO END ITEMS

§ 2770. General authority

Delegation of Functions

Functions of the President under this section were delegated to the Secretary of Defense by section 1(d) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SUBCHAPTER III—MILITARY EXPORT CONTROLS

§ 2771. Military sales authorizations and ceilings

[*See main edition for text of* (*a*)]

(b) Aggregate ceiling on foreign military sales credits

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Of the aggregate total of credits (or participations in credits) extended under section 2763 of this title and of the total principal amount of loans guaranteed under section 2764(a) of this title, not less than $1,700,000,000 for the fiscal year 1984 shall be available only for Israel, of which not less than $850,000,000 shall be credits under section 2763 of this title. Of the total aggregate credit ceiling made available to Israel, up to $300,000,000 shall be made available for research and development activities in the United States and $250,000,000 shall be made available for the procurement of defense articles and defense services in Israel for the Lavi program.

[*See main edition for text of* (*4*)]

(5) The principal amount of loans guaranteed under section 2764(a) of this title for the fiscal year 1984 with respect to Egypt, Greece, Sudan, Somalia, and Turkey shall (if and to the extent each such country so desires) be repaid in not more than twenty years, following a grace period of ten years on repayment of principal.

(6) Of the total amounts of credits (or participations in credits) extended under section 2763 of this title, not less than $465,000,000 for the fiscal year 1984 shall be available only for Egypt, and Egypt shall be released from its contractual liability to repay the United States Government with respect to such credits (and participations in credits). Of the total principal amount of loans guaranteed under section 2764(a) of this title, not less than $900,000,000 for the fiscal year 1984 shall be available only for Egypt.

[*See main edition for text of* (*7*)]

(c) Funds to finance procurement of defense articles, defense services, and design and construction services by Israel; repayment period; release of Israel from contractual obligation to repay

Funds made available for the fiscal year 1984 under subsection (a) of this section shall be obligated to finance the procurement of defense articles, defense services, and design and construction services by Israel on a long-term repayment basis either by the extension of credits, without regard to the limitations contained in section 2763 of this title, or by the issuance of guaranties under section 2764 of this title. Repayment shall be in not less than twenty years, following a grace period of ten years on repayment of principal. Israel shall be released from $850,000,000 for the fiscal year 1984 of its contractual liability to repay the United States Government with respect to defense articles, defense services, and design and construction services so financed.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-151, § 101(b)(2), Nov. 14, 1983, 97 Stat. 969, 970.)

Amendments

1983—Subsec. (b)(3). Pub. L. 98-151 amended par. (3) generally, substituting provisions authorizing not less than $1,700,000,000 for fiscal year 1984 as available to Israel, of which not less than $850,000,000 shall be available as credits under section 2763 of this title, and provisions relating to availability of funds part of the total aggregate credit ceiling made available to Israel, for provisions authorizing not less than $1,400,000,000 for the fiscal years 1982 and 1983 as available to Israel, of which not less than $550,000,000 for each year shall be available as credits.

Subsec. (b)(5). Pub. L. 98-151 substituted "1984" for "1982 and for the fiscal year 1983".

Subsec. (b)(6). Pub. L. 98-151 amended par. (6) generally, adding provisions relating to availability to Egypt for fiscal year 1984 of not less than $900,000,000 of the total principal amount of loans guaranteed, and substituting provisions authorizing not less than $465,000,000 for fiscal year 1984, for provisions authorizing not less than $200,000,000 for fiscal years 1982 and 1983.

Subsec. (c). Pub. L. 98-151 substituted provisions relating to applicability to fiscal year 1984, for provisions relating to applicability to fiscal years 1982 and 1983, and substituted "$850,000,000" for "$550,000,000".

§ 2774. Foreign military sales credit standards

Delegation of Functions

Functions of the President under this section were delegated to the Secretary of State, with the prior concurrence of the Secretary of Defense and the Secretary of the Treasury required to the extent the standards and criteria for credit and guaranty transactions are based upon national security or financial policies, by section 1(h) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2775. Foreign military sales to less developed countries

Delegation of Functions

Functions of the President under subsec. (a) of this section were delegated to the Secretary of State by section 1(i) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2776. Reports and certifications to Congress on military exports

Delegation of Functions

Functions of the President under subsecs. (a) and (b)(1) of this section, except with respect to the certification of an emergency under subsec. (b)(1), were delegated to the Secretary of Defense, with the Secretary of Defense required to consult with other specific agencies in implementing certain delegated functions, by section 1(j) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

Functions of the President under subsecs. (c) and (d) of this section were delegated to the Secretary of State by section 1(k) of Ex. Ord. No. 11958.

§ 2778. Control of arms exports and imports

Delegation of Functions

Functions of the President under this section, with certain exceptions, were delegated to the Secretary of State, with the concurrence of the Secretary of Defense required for designations of items or categories of items which are considered as defense articles or services subject to export control under this section, by section 1(*l*)(1) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

Functions of the President under this section relating to the control of import of defense articles and services were transferred to the Secretary of the Treasury, with certain requirements for considering the views of the Secretary of State and for receiving the concurrence of the Secretary of State and the Secretary of Defense for designations of items or categories of items which are considered as defense articles and services subject to import control under this section, by section 1(*l*)(2) of Ex. Ord. No. 11958.

Functions of the President which involve subsec. (e) of this section and are agreed to by the Secretary of State and Secretary of Commerce were delegated to the Secretary of Commerce to be carried out on behalf of the Secretary of State by section 1(*l*)(3) of Ex. Ord. No. 11958.

Continuation of Export Control Regulations

Section 3 of Ex. Ord. No. 12444, Oct. 14, 1983, 48 F.R. 48215, set out as a note under section 1701 of Title 50, War and National Defense, provided that: "Provisions for the administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this Order also shall constitute authority for the issuance and continuation in full force and effect of rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative action issued, taken or continued in effect pursuant thereto, relating to the administration of section 38(e)." Ex. Ord. No. 12444 was revoked by Ex. Ord. No. 12451, Dec. 20, 1983, 48 F.R. 56563, set out as a note under section 1701 of Title 50, which further directed that administrative actions taken under such provisions remain in full force and effect until amended or revoked under proper authority.

Section 3 of Ex. Ord. No. 12470, Mar. 30, 1984, 49 F.R. 13099, set out as a note under section 1701 of Title 50, War and National Defense, provided that: "Provisions for the administration of section 38(e) of the Arms Export Control Act (22 U.S.C. 2778(e)) may be made and shall continue in full force and effect until amended or revoked under the authority of section 203 of the Act (50 U.S.C. 1702). To the extent permitted by law, this Order also shall constitute authority for the issuance and continuation in full force and effect of all rules and regulations by the President or his delegate, and all orders, licenses, and other forms of administrative action issued, taken or continued in effect pursuant thereto, relating to the administration of section 38(e)." The national emergency declared by Ex. Ord. No. 12470, was continued in effect beyond Mar. 31, 1985, by Notice of the President, dated Mar. 28, 1985, set out under section 1701 of Title 50.

Section Referred to in Other Sections

This section is referred to in sections 2304, 2751, 2753, 2767, 2770, 2776, 2779, 2791, 2794 of this title; title 10 section 2208; title 26 section 5847; title 50 App. sections 2410, 2416.

§ 2779. Fees of military sales agents

Delegation of Functions

Functions of the President under subsec. (b) of this section were delegated to the Secretary of State, with the Secretary of State required to consult with the Secretary of Defense to avoid interference in the application of Department of Defense regulations to sales made under section 2762 of this title, by section 1(m) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SUBCHAPTER IV—GENERAL, ADMINISTRATIVE, AND MISCELLANEOUS PROVISIONS

§ 2791. General provisions

Delegation of Functions

Functions of the President under subsecs. (c) and (f) of this section were delegated to the Secretary of Defense, with the concurrence of the Secretary of State and the Secretary of the Treasury required for any determination proposed under subsec. (c) of this section, by section 1(n) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SUBCHAPTER V—SPECIAL DEFENSE ACQUISITION FUND

§ 2795a. Use and transfer of items procured by Fund

Delegation of Functions

Functions of the President under subsec. (b) of this section were delegated to the Secretary of Defense by section 1(*o*) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2795b. Annual reports to Congress

Delegation of Functions

Functions of the President under this section were delegated to the Secretary of Defense by section 1(o) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

SUBCHAPTER VI—LEASES OF DEFENSE ARTICLES

§ 2796. Leasing authority

Delegation of Functions

Functions of the President under this section were delegated to the Secretary of Defense by section 1(p) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

§ 2796a. Reports to Congress

Delegation of Functions

Functions of the President under subsec. (a) of this section were delegated to the Secretary of Defense by section 1(p) of Ex. Ord. No. 11958, Jan. 18, 1977, 42 F.R. 4311, as amended, set out as a note under section 2751 of this title.

CHAPTER 43—INTERNATIONAL BROADCASTING

Sec.
2881. Benefits for certain retirees and surviving spouses of employees of RFE/RL.
2882. Salary of the RFE/RL President.

§ 2871. Congressional findings and declaration of purpose

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-164, title III, § 301, Nov. 22, 1983, 97 Stat. 1036, provided that: "This title [enacting sections 2881 and 2882 of this title, amending section 2877 of this title, and enacting a provision set out as a note under section 2882 of this title] may be cited as the 'Board for International Broadcasting Authorization Act, Fiscal Years 1984 and 1985'."

§ 2873. Functions of Board

ENGINEERING CONSULTANT FEES; BAR TO PAYMENT

Pub. L. 98-411, title III, § 300, Aug. 30, 1984, 98 Stat. 1568, provided in part that: "no such [engineering consultant] fees shall be paid after January 1, 1985 at any time the Board's Director of Engineering position is vacant."

§ 2877. Authorization of appropriations; foreign currency exchange rates fluctuations and overseas wage and price changes; availability and obligation of amounts; merger and availability of excess amounts

(a)(1) There are authorized to be appropriated to carry out the purposes of this chapter—

(A) $111,600,000 for the fiscal year 1983, $106,055,000 for the fiscal year 1984, and $111,251,000 for the fiscal year 1985; and

[See main edition for text of (B), (2) and (3)]

(b) Beginning with fiscal year 1983, any amount appropriated under subsection (a)(1) of this section which, because of upward fluctuations in foreign currency exchange rates, is in excess of the amount necessary to maintain the budgeted level of operation for RFE/RL, Incorporated, may be merged with and made available for the same time period and same purposes as amounts appropriated under subsection (a)(2) of this section.

(As amended Pub. L. 98-164, title III, §§ 302, 303, Nov. 22, 1983, 97 Stat. 1036.)

AMENDMENTS

1983—Subsec. (a)(1)(A). Pub. L. 98-164, § 302, amended subpar. (A) generally, substituting provisions authorizing appropriations for fiscal years 1983 to 1985 for provisions authorizing appropriations for fiscal years 1982 and 1983.

Subsec. (b). Pub. L. 98-164, § 303, amended subsec. (b) generally, substituting provisions relating to merger and availability of amounts beginning with fiscal year 1983, for provisions relating to reservation of amounts and informing Congress of such amounts in reserve.

§ 2881. Benefits for certain retirees and surviving spouses of employees of RFE/RL

The Congress hereby authorizes the Board to make available in accordance with the Supplemental Appropriations Act, 1983, $4,900,000 of the amount appropriated for the Board by that Act for enhancement of (1) the pensions and cost-of-living adjustments of individuals who retired from RFE/RL, Incorporated, before January 1, 1976, and (2) the benefits to which surviving spouses of employees of RFE/RL, Incorporated, are entitled by virtue of the creditable service of such employees rendered before January 1, 1976.

(Pub. L. 93-129, § 12, as added Pub. L. 98-164, title III, § 304, Nov. 22, 1983, 97 Stat. 1036.)

REFERENCES IN TEXT

The Supplemental Appropriations Act, 1983, referred to in text, is Pub. L. 98-63, July 30, 1983, 97 Stat. 301. Provisions of this Act relating to appropriations for the Board are not classified to the Code. For complete classification of this Act to the Code, see Tables.

§ 2882. Salary of the RFE/RL President

Funds made available under this chapter to RFE/RL, Incorporated, may not be used for the salary of the President of RFE/RL, Incorporated, at an annual rate in excess of the rate payable for level IV of the Executive Schedule under section 5315 of title 5.

(Pub. L. 93-129, § 13, as added Pub. L. 98-164, title III, § 305(a), Nov. 22, 1983, 97 Stat. 1037.)

EFFECTIVE DATE

Section 305(b) of Pub. L. 98-164 provided that: "The amendment made by this section [enacting this section] applies with respect to funds used for the salary of any President of RFE/RL, Incorporated, who is appointed after the date of enactment of this Act [Nov. 22, 1983]."

CHAPTER 46—INTERNATIONAL INVESTMENT AND TRADE IN SERVICES SURVEY

§ 3101. Congressional statement of findings and declaration of purpose

(a) Findings

The Congress finds and declares that—

[See main edition for text of (1) to (5)]

(6) accurate and comprehensive information on international investment is needed by the Congress to develop an informed United States policy on such investment;

(7) United States service industries engaged in interstate and foreign commerce account for a substantial part of the labor force and gross national product of the United States economy, and such commerce is rapidly increasing;

(8) international trade and services is an important issue for international negotiations and deserves priority in the attention of governments, international agencies, negotiators, and the private sector; and

(9) existing estimates of international investment and trade in services, collected under existing legal authority, are limited in scope and are based on outdated statistical bases, reports, and information which are insufficient for policy formulation and decisionmaking.

(b) Purpose

It is therefore the purpose of this chapter to provide clear and unambiguous authority for the President to collect information on international investment and United States foreign trade in services, whether directly or by affiliates, including related information necessary for assessing the impact of such investment and trade, and to provide analyses of such information to the Congress, the executive agencies, and the general public. It is the intent of the Congress that information which is collected from the public under this chapter be obtained with a minimum burden on business and other respondents and with no unnecessary duplication of effort, consistent with the national interest in obtaining comprehensive and reliable information on international investment and trade in services.

(c) Nonrestraint and nondeterrence of investment

Nothing in this chapter is intended to restrain or deter foreign investment in the United States, United States investment abroad, or trade in services.

(As amended Pub. L. 98-573, title III, § 306(b)(2), Oct. 30, 1984, 98 Stat. 3009.)

AMENDMENTS

1984—Subsec. (a)(7) to (9). Pub. L. 98-573, § 306(b)(2)(A), added pars. (7) and (8), redesignated former par. (7) as (9), and in par. (9), as so redesignated, inserted "and trade in services" after "international investment".

Subsec. (b). Pub. L. 98-573, § 306(b)(2)(B), substituted "international investment and United States foreign trade in services, whether directly or by affiliates, including related information necessary for assessing the impact of such investment and trade," for "international investment", and "international investment and trade in services" for "international investment".

Subsec. (c). Pub. L. 98-573, § 306(b)(2)(C), added reference to trade in services.

SHORT TITLE

Section 1 of Pub. L. 94-472, as amended by Pub. L. 98-573, title III, § 306(b)(1), Oct. 30, 1984, 98 Stat. 3009, provided that: "This Act [enacting this chapter] may be cited as the 'International Investment and Trade in Services Survey Act'."

§ 3103. Presidential authority and duties

(a) Data collection program; studies and surveys; periodic report to Congressional committees; statistical information publication

The President shall, to the extent he deems necessary and feasible—

(1) conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States;

(2) conduct such studies and surveys as may be necessary to prepare reports in a timely manner on specific aspects of international investment and trade in services which may have significant implications for the economic welfare and national security of the United States;

(3) study the adequacy of information, disclosure, and reporting requirements and procedures relating to international investment and trade in services; recommend necessary improvements in information recording, collection, and retrieval and in statistical analysis and presentation; and report periodically to the Committees on Finance [1] Foreign Relations [1] and Commerce of the Senate and the Committees on Ways and Means, Energy and Commerce, and Foreign Affairs of the House of Representatives on national and international developments with respect to laws and regulations affecting international investment and trade in services;

(4) conduct (not more frequently than once every five years and in addition to any other surveys conducted pursuant to paragraphs (1) and (2)) benchmark surveys with respect to trade in services between unaffiliated United States persons and foreign persons; and

(5) publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection and to the benchmark surveys conducted pursuant to subsections (b) and (c) of this section.

(b) Benchmark survey of United States direct investment abroad and foreign direct investment in United States

With respect to foreign direct investment in the United States, the President shall conduct a benchmark survey covering year 1980, a benchmark survey covering year 1987, and benchmark surveys covering every fifth year thereafter. With respect to United States direct investment abroad, the President shall conduct a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter. In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

[*See main edition for text of* (*1*)]

(2) obtain (A) information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade (including trade in both goods and services) between a parent and each of its affiliates and between each parent or affiliate and any other person;

[*See main edition for text of* (*3*) *to* (*5*); (*c*) *to* (*e*)]

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[1] So in original. Probably should be followed by a comma.

(f) Reporting, recordkeeping, and documentation

Activities shall be conducted so that information obtained pursuant to this chapter shall be timely and useful in the development of policy with respect to international investment and trade in services. Reporting and recordkeeping requirements imposed under this chapter shall be designed in order to minimize costs to the extent feasible, consistent with effective enforcement and the compilation of information required by this chapter. Reporting, recordkeeping, and documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

[*See main edition for text of* (*g*)]

(As amended Pub. L. 98-573, title III, § 306(b)(3), (4), Oct. 30, 1984, 98 Stat. 3010.)

AMENDMENTS

1984—Subsec. (a)(1), (2). Pub. L. 98-573, § 306(b)(4)(A)(ii), inserted "and trade in services" after "international investment" wherever appearing.

Subsec. (a)(3). Pub. L. 98-573, § 306(b)(3), (4)(A)(i)-(iii), added references to the Committee on Finance of the Senate and the Committees on Ways and Means and Energy and Commerce of the House of Representatives, and substituted "presentation" for "presentation relating to international investment", inserted "and trade in services" after "international investment" in two places, and struck out "and" at the end.

Subsec. (a)(4), (5). Pub. L. 98-573, § 306(b)(4)(A)(iv), (v), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(2)(C). Pub. L. 98-573, § 306(b)(4)(B), inserted "(including trade in both goods and services)" after "regarding trade".

Subsec. (f). Pub. L. 98-573, § 306(b)(4)(C), inserted "and trade in services" after "international investment".

§ 3104. Rules and regulations

[*See main edition for text of* (*a*)]

(b) Recordkeeping and reports

Rules or regulations issued pursuant to this chapter may require any person subject to the jurisdiction of the United States—

(1) to maintain a complete record of any information (including journals or other books of original entry, minute books, stock transfer records, lists of shareholders, or financial statements) which is essential to carrying out the surveys and studies to be conducted under this chapter; and

(2) to furnish, under oath, any report containing information which is determined to be necessary to carry out the surveys and studies conducted under this chapter.

[*See main edition for text of* (*c*) *and* (*d*)]

(As amended Pub. L. 98-573, title III, § 306(b)(5), Oct. 30, 1984, 98 Stat. 3010.)

AMENDMENTS

1984—Subsec. (b)(1), (2). Pub. L. 98-573 struck out "international investment" before "surveys".

CHAPTER 48—TAIWAN RELATIONS

§ 3311. Reporting requirements

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Repealed. Pub. L. 98-164, title X, § 1011(a)(3), Nov. 22, 1983, 97 Stat. 1061

(As amended Pub. L. 98-164, title X, § 1011(a)(3), Nov. 22, 1983, 97 Stat. 1061.)

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-164 struck out subsec. (d) which required the Secretary of State to make semi-annual reports respecting economic relations between the United States and Taiwan.

CHAPTER 50—INSTITUTE FOR SCIENTIFIC AND TECHNOLOGICAL COOPERATION

§ 3511. Repealed. Pub. L. 98-164, title X, § 1011(a)(6), Nov. 22, 1983, 97 Stat. 1061

Section, Pub. L. 96-53, title IV, § 411, Aug. 14, 1979, 93 Stat. 376, required the President to submit an annual report to Congress relating to the operations of the Institute during the preceding fiscal year, and set forth the contents of such report.

CHAPTER 51—PANAMA CANAL

SUBCHAPTER I—ADMINISTRATION AND REGULATIONS

PART 2—EMPLOYEES

SUBPART II—WAGE AND EMPLOYMENT PRACTICES

Sec.
3657a. Quarters allowances.
  (a) "Position" and "employee" defined.
  (b) Covered employees.
  (c) Determination of amount.
  (d) Inapplicability of election under section 3652(b) of this title.

SUBCHAPTER I—ADMINISTRATION AND REGULATIONS

PART 1—PANAMA CANAL COMMISSION

§ 3612. Supervisory Board

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Meetings; quorum; proxies

The Board shall hold meetings as provided in regulations adopted by the Commission and approved by the Secretary of Defense. A quorum for the transaction of business shall consist of a majority of the Board members of which a majority of those present are nationals of the United States. The Secretary of Defense, or the officer of the Department of Defense designated by the Secretary under subsection (a) of this section, may act by proxy for any other member of the Board if that other member authorizes the proxy in writing and signs the proxy. Only one proxy may be valid at any one time. The proxy may be counted to establish a quorum and may be used by the Secretary of Defense, or the officer of the Department of Defense designated by the Secretary under subsection (a) of this section, to cast the vote of the absent Board member and to act for that member with all the powers that member would possess if present.

(As amended Pub. L. 98-217, Feb. 14, 1984, 98 Stat. 9.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-217 added provisions under which the Secretary of Defense or the officer of the Department of Defense designated by the Secretary may act by proxy for other members of the Board.

PART 2—EMPLOYEES

SUBPART II—WAGE AND EMPLOYMENT PRACTICES

§ 3651. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3657a of this title.

§ 3652. Panama Canal Employment System

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3651, 3654, 3657a of this title; title 5 section 5102.

§ 3657a. Quarters allowances

(a) "Position" and "employee" defined

Notwithstanding paragraphs (2) and (3) of section 3651 of this title, as used in this section—

(1) "position" means a civilian position; and

(2) "employee" means an individual serving in a position in the Department of Defense whose permanent duty station is in the area which, before October 1, 1979, was known as the Canal Zone.

(b) Covered employees

Under regulations prescribed by or under authority of the President, the Department of Defense may grant a quarters allowance in the case of—

(1) any employee who is a citizen of the United States and who, before October 1, 1979, was employed by the Panama Canal Company, the Canal Zone Government, or any other agency, in the area then known as the Canal Zone; and

(2) any other employee who is a citizen of the United States and who (before, on, or after the effective date of this section) is or was recruited within the United States;

for whom adequate Government owned or leased quarters are not made available.

(c) Determination of amount

The amount of any quarters allowance granted to an employee under this section shall be determined in accordance with the regulations prescribed under subsection (b) of this section, except that such allowance for any period may not exceed the amount, if any, by which—

(1) the lesser of—

(A) the actual expenses for rent and utilities incurred by the employee during such period while occupying quarters other than Government owned or leased quarters; or

(B) the maximum amount which would be authorized for such employee with respect to such period under the Department of State Standardized Regulations (Government Civilians, Foreign Areas) if such employee were covered by those regulations;

exceeds

(2) the estimated total cost of rent and utilities which the employee would have been charged if Government owned or leased quarters had been provided on a rental basis during such period.

(d) Inapplicability of election under section 3652(b) of this title

The provisions of this section shall apply without regard to whether any election by the Department of Defense under section 3652(b) of this title is then in effect.

(Pub. L. 96-70, title I, § 1217a, as added Pub. L. 98-600, § 1(a), Oct. 30, 1984, 98 Stat. 3145.)

REFERENCES IN TEXT

For effective date of this section, referred to in subsec. (b)(2), see section 2 of Pub. L. 98-600, set out below.

EFFECTIVE DATE

Section 2 of Pub. L. 98-600 provided that: "The amendments made by this Act [enacting this section] shall take effect on October 1, 1984, and shall apply with respect to utility costs incurred, and rent payable for any period beginning, on or after that date."

PART 8—SHIPPING AND NAVIGATION

SUBPART II—INSPECTION OF VESSELS

§ 3823. Regulations governing inspection

CROSS REFERENCES

Marine inspection, see section 3301 et seq. of Title 46, Shipping.

CHAPTER 52—FOREIGN SERVICE

SUBCHAPTER IX—TRAVEL, LEAVE, AND OTHER BENEFITS

Sec.
4086. Entitlement to vote in a State in a Federal election; preconditions; applicability.

SUBCHAPTER I—GENERAL PROVISIONS

§ 3902. Definitions

As used in this chapter, the term—

(1) "abroad" means all areas not included within the United States;

(2) "agency" means an agency as defined in section 552(e) of title 5;

(3) "chief of mission" means the principal officer in charge of a diplomatic mission of the United States or of a United States office abroad which is designated by the Secretary of State as diplomatic in nature, including any individual assigned under section 3982(c) of this title to be temporarily in charge of such a mission or office;

(4) "Department" means the Department of State, except that with reference to the exercise of functions under this chapter with respect to another agency authorized by law to utilize the Foreign Service personnel system, such term means that other agency;

(5) "employee" (except as provided in section 4102(8) of this title) means, when used with respect to an agency or to the Government generally, an officer or employee (including a member of the Service) or a member of the Armed Forces of the United States, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration;

(6) "function" includes any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity;

(7) "Government" means the Government of the United States;

(8) "merit principles" means the principles set out in section 2301(b) of title 5;

(9) "principal officer" means the officer in charge of a diplomatic mission, consular mission (other than a consular agency), or other Foreign Service post;

(10) "Secretary" means the Secretary of State, except that (subject to section 3921 of this title) with reference to the exercise of functions under this Act with respect to any agency authorized by law to utilize the Foreign Service personnel system, such term means the head of that agency;

(11) "Service" or "Foreign Service" means the Foreign Service of the United States; and

(12) "United States", when used in a geographic sense, means the several States and the District of Columbia.

(Pub. L. 96-465, title I, § 102, Oct. 17, 1980, 94 Stat. 2075; Pub. L. 98-164, title I, § 130(a), Nov. 22, 1983, 97 Stat. 1027.)

AMENDMENTS

1983—Pub. L. 98-164 struck out "(a)" before "As used in this chapter", and struck out subsec. (b) which provided that references to Foreign Service officers in any provision be deemed to refer to, with respect to the United States Information Agency, Foreign Service Information officers.

SUBCHAPTER IV—COMPENSATION

§ 3963. Foreign Service Schedule

ADJUSTMENT OF FOREIGN SERVICE SCHEDULE EFFECTIVE FOR PAY PERIODS BEGINNING ON OR AFTER JANUARY 1, 1985

Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, set out as a note under section 5332 of Title 5, Government Organization and Employees, provided in part for an adjustment of the Foreign Service Schedule pay rates effective on the first day of the first applicable pay period beginning on or after Jan. 1, 1985. See Schedule set out as follows:

SCHEDULE 2

Foreign Service Schedule

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$52,262	$42,348	$34,315	$27,806	$22,531	$20,142	$18,006	$16,097	$14,390
2	53,830	43,618	35,344	28,640	23,207	20,746	18,546	16,580	14,822
3	55,445	44,927	36,405	29,499	23,903	21,369	19,103	17,077	15,266
4	57,108	46,275	37,497	30,384	24,620	22,010	19,676	17,590	15,724
5	58,821	47,663	38,622	31,296	25,359	22,670	20,266	18,117	16,196
6	60,586	49,093	39,780	32,235	26,120	23,350	20,874	18,661	16,682
7	62,404	50,566	40,974	33,202	26,903	24,051	21,500	19,221	17,182
8	64,276	52,083	42,203	34,198	27,710	24,772	22,145	19,797	17,698
9	66,204	53,645	43,469	35,224	28,542	25,515	22,809	20,391	18,229
10	67,940	55,255	44,773	36,281	29,398	26,281	23,494	21,003	18,776
11	67,940	56,912	46,116	37,369	30,280	27,069	24,199	21,633	19,339
12	67,940	58,620	47,500	38,490	31,188	27,881	24,925	22,282	19,919
13	67,940	60,378	48,925	39,645	32,124	28,718	25,672	22,950	20,517
14	67,940	62,189	50,393	40,834	33,088	29,579	26,442	23,639	21,132

EXECUTIVE ORDER NO. 12387

Ex. Ord. No. 12387, Oct. 8, 1982, 47 F.R. 44981, which provided for adjustments in the foreign service salary schedule, was superseded by Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493, formerly set out as a note under section 5332 of Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12456

Ex. Ord. No. 12456, Dec. 30, 1983, 49 F.R. 347, as amended by Ex. Ord. No. 12477, May 23, 1984, 49 F.R. 22041; Ex. Ord. No. 12487, Sept. 14, 1984, 49 F.R. 36493 which provided for adjustments in the foreign service salary schedule, was superseded by Ex. Ord. No. 12496, Dec. 28, 1984, 50 F.R. 211, set out as a note under section 5332 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 287, 287n, 290a, 2021, 2385, 2506, 4066, 4152 of this title; title 5 sections 5301, 5303.

§ 3968. Local compensation plans

(a) Establishment; rates of pay; leaves of absence; supplemental payments

(1) The Secretary shall establish compensation (including position classification) plans for foreign national employees of the Service, and for United States citizens employed in the Service abroad who are family members of Government employees. To the extent consistent with the public interest, each compensation plan shall be based upon prevailing wage rates and compensation practices (including participation in local social security plans) for corresponding types of positions in the locality of employment, except that such compensation plans shall provide for payment of wages to those family members of Government employees who are paid in accordance with such plans at a rate which is no less than the then applicable minimum wage rate specified in section 206(a)(1) of title 29. Any compensation plan established under this section may include provision for (A) leaves of absence with pay for foreign national employees in accordance with prevailing law

and employment practices in the locality of employment without regard to any limitation contained in section 6310 of title 5, and (B) payments by the Government and foreign national employees to a trust or other fund in a financial institution in order to finance future benefits for foreign national employees, including provision for retention in the fund of accumulated interest for the benefit of covered foreign national employees.

[*See main edition for text of* (2); (*b*) *and* (*c*)]

(As amended Pub. L. 98-164, title I, § 127(a), Nov. 22, 1983, 97 Stat. 1026.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-164 designated existing provisions as cl. (A) and added cl. (B).

SUBCHAPTER V—CLASSIFICATION OF POSITIONS AND ASSIGNMENTS

§ 3982. Assignments to Foreign Service positions

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Charge d'affaires

The President may assign a career member of the Service to serve as charge d'affaires or otherwise as the head of a mission (or as the head of a United States office abroad which is designated under section 3902(a)(3) [1] of this title by the Secretary of State as diplomatic in nature) for such period as the public interest may require.

(d) Competitive ability with respect to chief of mission positions and for assignments outside areas of specialization

The Secretary of State, in conjunction with the heads of the other agencies utilizing the Foreign Service personnel system, shall implement policies and procedures to insure that Foreign Service officers and members of the Senior Foreign Service of all agencies are able to compete for chief of mission positions and have opportunities on an equal basis to compete for assignments outside their areas of specialization.

(As amended Pub. L. 98-164, title I, § 130(b), Nov. 22, 1983, 97 Stat. 1027.)

REFERENCES IN TEXT

Section 3902(a)(3) of this title, referred to in subsec. (c), was redesignated section 3902(3) of this title pursuant to Pub. L. 98-164, which struck out the designation "(a)" and subsec. (b) of section 3902.

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-164 added subsec. (d).

REPORT RESPECTING POLICIES AND PROCEDURES ADOPTED TO IMPROVE COMPETITIVE ABILITY OF PERSONNEL

Section 130(c) of Pub. L. 98-164 provided that: "Not later than one year after the date of enactment of this section [Nov. 22, 1983], the Secretary of State shall submit a report to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate describing the policies and procedures adopted pursuant to the amendment made by subsection (b) [enacting subsec. (d) of this section]."

SUBCHAPTER VI—PROMOTION AND RETENTION

§ 4009. Retirement benefits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4007, 4008, 4047, 4060, 4153 of this title; title 5 sections 5595, 8501.

SUBCHAPTER VII—FOREIGN SERVICE INSTITUTE, CAREER DEVELOPMENT, TRAINING, AND ORIENTATION

§ 4021. Foreign Service Institute

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Training and instruction to citizens of Trust Territory of the Pacific Islands

Training and instruction may be provided at the Institute for not to exceed sixty citizens of the Trust Territory of the Pacific Islands in order to prepare them to serve as members of the foreign services of the Federated States of Micronesia, the Marshall Islands, and Palau. The authority of this subsection shall expire when the Compact of Free Association is approved by the Congress.

(As amended Pub. L. 98-164, title I, § 126, Nov. 22, 1983, 97 Stat. 1026.)

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-164 added subsec. (c).

§ 4025. Training grants

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 192.

SUBCHAPTER VIII—FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

§ 4041. Administration

TEMPORARY RETIREMENT CONTRIBUTIONS AND PROCEDURES FOR CERTAIN PARTICIPANTS

For temporary provisions providing modified contributions and procedures for members of the Service participating in the Foreign Service Retirement and Disability System who are also required to pay employment taxes relating to benefits under title II of the Social Security Act, 42 U.S.C. 401 et seq., until they are covered by a new Government retirement system or Jan. 1, 1986, whichever is earlier, see title II of Pub. L. 98-168, set out as a note under section 8331 of Title 5, Government Organization and Employees.

§ 4045. Contributions to Fund

AMENDMENT OF SECTION

Section 1(*a*) *and* (*c*) *of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that the second sentence of subsec.* (*d*)(*3*) *of this section, applicable* (*i*) *to contributions for civilian service performed on or after the first day of Nov. 1983,* (*ii*) *to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and* (*iii*) *to excess contributions under section 4055*(*h*) *of this title and voluntary contributions under section 4065*(*a*)

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[1] See References in Text note below.

of this title from the first day of Nov. 1983, is deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury.

Section 4(a) and (e) of Ex. Ord. No. 12446, provided that this section is deemed to be amended, effective Oct. 17, 1983, by redesignating subsec. (f) as (g) and by striking out subsec. (e) and substituting the following subsecs. (e) and (f) in lieu thereof:

"(e)(1) Each participant who has performed military or naval service before the date of separation on which the entitlement to any annuity under this subchapter is based may pay to the Secretary a special contribution equal to 7 percent of the amount of the basic pay paid under section 204 of title 37, to the participant for each period of military or naval service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the participant may provide or if the Secretary determines sufficient evidence has not been so provided to adequately determine basic pay for military or naval service, such payment shall be based upon estimates of such basic pay provided to the Department under paragraph (4).

"(2) Any deposit made under paragraph (1) of this subsection more than two years after the later of—

"(A) October 17, 1983, or

"(B) the date on which the participant making the deposit first became a participant in a Federal staff retirement system for civilian employees,—

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (d) of this section.

"(3) Any payment received by the Secretary under this section shall be remitted to the Fund.

"(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secetary of Health and Human Services, as appropriate, shall furnish such information to the Secretary as the Secretary may determine to be necessary for the administration of this subsection.

"(f) Contributions shall only be required to obtain credit for periods of military or naval service to the extent provided under subsection (e) of this section and section 4056(a) of this title, except that credit shall be allowed in the absence of contributions to individuals of Japanese ancestry under section 4056 of this title for periods of internment during World War II."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4043, 4046, 4055, 4056, 4061, 4062, 4063 of this title.

§ 4046. Computation of annuities

AMENDMENT OF SUBSECTION (a)

Section 1(b) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that subsec. (a) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to exclude from the computation of creditable civilian service under section 4056(a) of this title any period of civilian service for which retirement deductions or contributions have not been made under section 4045(d) of this title unless—

(1) the participant makes a contribution for such period as provided in such section 4045(d) of this title; or

(2) no contribution is required for such service as provided under section 4045(f) of this title as deemed to be amended by this Order, or under any other statute.

§ 4047. Payment of annuity

AMENDMENT OF SUBSECTION (a)

Section 3 of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that subsec. (a) of this section is deemed to be amended, effective thirty days after Oct. 17, 1983, to read as follows:

"(a)(1) Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after—

"(A) separation from the Service occurs; or

"(B) pay ceases and the service and age requirements for entitlement to annuity are met.

"(2) The annuity of—

"(A) a participant who is retired and is eligible for benefits under section 4009(a) of this title or a participant who is retired under section 4053 of this title or is otherwise involuntarily separated from the Service, except by removal for cause on charges of misconduct or delinquency,

"(B) a participant retiring under section 4048 of this title due to a disability, and

"(C) a participant who serves 3 days or less in the month of retirement—

shall commence on the day after separation from the Service or the day after pay ceases and the requirements for entitlement to annuity are met."

§ 4048. Retirement for disability or incapacity

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4047, 4056 of this title; title 26 section 104.

§ 4053. Retirement of former Presidential appointees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4047 of this title.

§ 4055. Lump-sum payments

AMENDMENT OF SUBSECTION (h)

Section 1(a) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that the first sentence of subsec. (h) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury.

§ 4056. Creditable service

AMENDMENT OF SECTION

Section 4(b) and (e) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that subsec. (a) of this section is deemed to be amended, effective Oct. 17, 1983, by adding "(1)" after "(a)" and by adding the following new paragraphs at the end thereof:

"(2) The service of an individual who first becomes a participant on or after October 17, 1983, without any credit under this section for civilian service performed prior to October 1, 1982, shall include credit for:

"(A) each period of military or naval service performed before January 1, 1957, and

"(B) each period of military or naval service performed after December 31, 1956, and before the separation on which the entitlement to annuity under this subchapter is based, only if a deposit (with interest if any is required) is made with respect to that period, as provided in section 4045(e) of this title.

"(3) The service of an individual who first became a participant on or after October 17, 1983, with credit under this section for civilian service performed prior to October 1982, shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this subchapter is based, subject, in the case of military or naval service performed after December 1956, to subsection (j) of this section, as deemed to be added by this Order [Ex. Ord. No. 12446].

"(4) The service of an individual who first became a participant before October 17, 1983, shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this subchapter is based, subject, in the case of military or naval service performed after December 1976, to subsection (j) of this section, as deemed to be added by this Order [Ex. Ord. No. 12446]."

Section 5 of Ex. Ord. No. 12446 provided:

"(a) Section 816(a) of the Act (22 U.S.C. 4056(a)) is deemed to be further amended so that the provisions of section 8332(j) of Title 5 of the United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under such Act [this chapter] on or before the date of approval of this Order [Oct. 17, 1983], or who is entitled to an annuity based on a separation from service occurring on or before such date.

"(b) Subject to subsection (c), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under chapter 8 of the Act [this subchapter] (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors insurance benefit for the determination month by a fraction—

"(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service referred to in section 210(1) of such Act [42 U.S.C. 410] (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act [42 U.S.C. 429]) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the contribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 430] (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year, and

"(2) the denominator of which is the total of all wages deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such

other amount referred to in such section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year.

"(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under chapter 8 of the Act [this subchapter] to the individual for the determination month if section 8332(j) of Title 5 of the United States Code applied to the individual for such month.

"(d) For purposes of this section, the term 'determination month' means—

"(1) the first month the individual described in subsection (a) is entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor); or

"(2) the first day of the month following the month in which this Order is issued [Oct. 1983] in the case of any individual so entitled to such benefits for such month.

"(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under chapter 8 of the Act [this subchapter] for calendar months beginning after the date of this Order [Oct. 17, 1983].

"(f) The Secretary of Health and Human Services shall furnish such information to the Secretary of State as may be necessary to carry out the preceding provisions of this section."

Section 1(b) and (c) of Ex. Ord. No. 12446 provided that subsec. (d) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to exclude from the computation of creditable civilian service under subsec. (a) of this section any period of civilian service for which retirement deductions or contributions have not been made under section 4045(d) of this title unless—

(1) the participant makes a contribution for such period as provided in such section 4045(d) of this title; or

(2) no contribution is required for such service as provided under section 4045(f) of this title as deemed to be amended by this Order, or under any other statute.

Section 4(c) and (e) of Ex. Ord. No. 12446 provided that this section is amended, effective Oct. 17, 1983, by adding a new subsection (j) at the end thereof to read as follows:

"(1) Except as otherwise provided by statute or Executive Order, section 8332(j) of title 5, relating to redetermination of credit for military and naval service, shall be applied to annuities payable under this subchapter. The Secretary of State shall redetermine service, and may request and obtain information from the Secretary of Health and Human Services, as the Office of Personnel Management is directed or authorized to do in section 8332(j).

"(2) Section 8332(j) of title 5 shall not apply with respect to:

"(A) the service of any individual who first became a participant on or after October 17, 1983, without any credit under this section for civilian service performed prior to October 1982; or

"(B) any military or naval service performed prior to 1957 by an individual who first became a participant on or after October 17, 1983, with credit under this section for civilian service performed prior to October 1982, or any period of military or naval service performed after 1956 with respect to which the participant has made a contribution (with interest if any is required) under section 4045(e) of this title; or

"(C) any military or naval service performed prior to 1977 by any individual who first became a participant before October 17, 1983, or any period of military or naval service performed after 1976 with respect to which the participant has made a contribution (with interest if any is required) under section 4045(e) of this title."

§ 4062. Unfunded liability obligations

AMENDMENT OF SUBSECTION (a)

Section 4(d) and (e) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that subsec. (a) of this section is deemed to be amended, effective Oct. 17, 1983, by striking out the period at the end thereof and inserting in lieu thereof: ", less an amount determined by the Secretary of State to be appropriate to reflect the value of the deposits made to the credit of of the Fund under section 4045(e) of this title."

§ 4065. Voluntary contribution account

AMENDMENT OF SUBSECTION (a)

Section 1(a) and (c) of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that the first sentence of subsec. (a) of this section, applicable (i) to contributions for civilian service performed on or after the first day of Nov. 1983, (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of Nov. 1983, and (iii) to excess contributions under section 4055(h) of this title and voluntary contributions under section 4065(a) of this title from the first day of Nov. 1983, is deemed to be amended to provide that interest shall be compounded at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 4059 of this title, as determined by the Secretary of the Treasury.

§ 4066. Cost-of-living adjustment of annuities

Amendment of Section

Section 2 of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, set out as a note under section 4067 of this title, provided that subsec. (e) of this section is deemed to be amended, effective with respect to any adjustment or redetermination of any annuity made on or after Oct. 17, 1983, by striking out "fixed at the nearest" and inserting in lieu thereof "rounded to the next lowest".

Section 6 of Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, provided that this section is deemed to be amended, but shall not cause any annuity to be reduced below the rate that is payable on Oct. 17, 1983, but shall apply to any adjustment occurring on or after Apr. 1, 1983 under this section to any annuity payable from the Foreign Service Retirement and Disability Fund, whether such annuity has a commencing date before, on, or after Oct. 17, 1983, by adding at end thereof the following new subsection:

"(g)(1) An annuity shall not be increased by reason of any adjustment under this section to an amount which exceeds the greater of—

"(A) the maximum pay rate payable for class FS-1 under section 3963 of this title, 30 days before the effective date of the adjustment under this section; or

"(B) the final pay (or average pay, if higher) of the former participant with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in rates of pay of the Foreign Service Schedule under such section 3963 of this title during the period—

"(i) beginning on the date the annuity commenced (or, in the case of a survivor of the retired participant, the date the participant's annuity commenced), and

"(ii) ending on the effective date of the adjustment under this section.

"(2) For the purposes of paragraph (1) of this subsection, 'pay' means the rate of salary or basic pay as payable under any provision of law, including any provision of law limiting the expenditure of appropriated funds."

§ 4067. Compatibility between Civil Service and Foreign Service Retirement Systems

Construction of Section With Civil Service Retirement Spouse Equity Act of 1984

This section not applicable with respect to either the amendments made by section 2 of Pub. L. 98-615 or the provisions of section 4 of Pub. L. 98-615 relating to equitable treatment under the Civil Service Retirement System for former spouses, see section 4(h) of Pub. L. 98-615, set out as an Effective Date of 1984 Amendment note under section 8341 of Title 5, Government Organization and Employees.

Ex. Ord. No. 12446. Conforming the Foreign Service and Civil Service Retirement and Disability Systems

Ex. Ord. No. 12446, Oct. 17, 1983, 48 F.R. 48443, provided:

By the authority vested in me as President of the United States of America by Section 827 of the Foreign Service ACt of 1980 (22 U.S.C. 4067) (hereafter referred to as "the Act" [this chapter]), and in order to conform further the Foreign Service Retirement and Disability System to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

Section 1. *Interest Rates, Deposits, Refunds, and Redeposits.* (a) The second sentence of Section 805(d)(3) of the Act (22 U.S.C. 4045(d)(3)), the first sentence of Section 815(h) (22 U.S.C. 4055(h)), and the first sentence of Section 825(a) (22 U.S.C. 4065(a)), are deemed to be amended to provide that interest shall be compounded at at the annual rate of 3 percent per annum through December 31, 1984, and thereafter at a rate equal to the overall average yield to the Fund during the preceding fiscal year from all obligations purchased by the Secretary of the Treasury during such fiscal year under section 819 [22 U.S.C. 4059], as determined by the Secretary of the Treasury.

(b) Sections 806(a) and 816(d) of the Act (22 U.S.C. 4046(a) and 4056(d)) are deemed to be amended to exclude from the computation of creditable civilian service under section 816(a) of the Act any period of civilian service for which retirement deductions or contributions have not been made under section 805(d) [22 U.S.C. 4045] of the Act unless—

(1) the participant makes a contribution for such period as provided in such section 805(d); or

(2) no contribution is required for such service as provided under section 805(f) of the Act as deemed to be amended by this Order, or under any other statute.

(c) The amendments deemed to be made by section 1 of this Order shall apply (i) to contributions for civilian service performed on or after the first day of the month following issuance of this Order [Oct. 17, 1983], (ii) to contributions for prior refunds to participants for which application is received by the employing agency on and after such first day of the month, and (iii) to excess contributions under section 815(h) [22 U.S.C. 4055(h)] and voluntary contributions under section 825(a) [22 U.S.C. 4065(a)] from the first day of the month following issuance of this Order.

Sec. 2. *Rounding Down of Annuities.* (a) Section 826(e) of the Act (22 U.S.C. 4066(e)) is deemed to be amended by striking out "fixed at the nearest" and inserting in lieu thereof "rounded to the next lowest".

(b) The amendment deemed to be made by section 2(a) of this Order shall be effective with respect to any adjustment or redetermination of any annuity made on or after the date of this Order [Oct. 17, 1983].

Sec. 3. *Later Commencement Date For Certain Annuities.*

(a) Section 807(a) of the Act (22 U.S.C. 4047(a)) is deemed to be amended to read as follows:

"(a)(1) Except as otherwise provided in paragraph (2), the annuity of a participant who has met the eligibility requirements for an annuity shall commence on the first day of the month after—

"(A) separation from the Service occurs; or

"(B) pay ceases and the service and age requirements for entitlement to annuity are met.

"(2) The annuity of—

"(A) a participant who is retired and is eligible for benefits under section 609(a) [22 U.S.C. 4009(a)] or a participant who is retired under section 813 [22 U.S.C. 4053] or is otherwise involuntarily separated from the Service, except by removal for cause on charges of misconducted or delinquency.

"(B) a participant retiring under section 808 [22 U.S.C. 4048] due to a disability, and

"(C) a participant who serves 3 days or less in the month of retirement—

shall commence on the day after separation from the Service or the day after pay ceases and the requirements for entitlement to annuity are met.".

(b) The amendment deemed to be made by paragraph 3(a) of this Order shall become effective thirty days after the effective date of this Order [Oct. 17, 1983].

SEC. 4. *Credit For Military Service.* (a) Section 805 of the Act (22 U.S.C. 4045) is deemed to be amended—

(i) by striking out subsection (e) and substituting the following subsection in lieu thereof:

"(e)(1) Each participant who has performed military or naval service before the date of separation on which the entitlement to any annuity under this chapter is based may pay to the Secretary a special contribution equal to 7 percent of the amount of the basic pay paid under section 204 of title 37 of the United States Code, to the participant for each period of military or naval service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the participant may provide or if the Secretary determines sufficient evidence has not been so provided to adequately determine basic pay for military or naval service, such payment shall be based upon estimates of such basic pay provided to the Department under paragraph (4).

"(2) Any deposit made under paragraph (1) of this subsection more than two years after the later of—

"(A) the effective date of this Order, or

"(B) the date on which the participant making the deposit first became a participant in a Federal staff retirement system for civilian employees,—

shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period. The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (d) of this section.

"(3) Any payment received by the Secretary under this section shall be remitted to the Fund.

"(4) The Secretary of Defense, the Secretary of Transportation, the Secretary of Commerce, or the Secretary of Health and Human Services, as appropriate, shall furnish such information to the Secretary as the Secretary may determine to be necessary for the administration of this subsection.

"(f) Contributions shall only be required to obtain credit for periods of military or naval service to the extent provided under section 805(e) [22 U.S.C. 4045(e)] and section 816(a) [22 U.S.C. 4056(a)], except that credit shall be allowed in the absence of contributions to individuals of Japanese ancestry under section 816 [22 U.S.C. 4056] for periods of internment during World War II."; and—

(ii) by redesignating subsection (f) as subsection (g).

(b) Section 816(a) of the Act (22 U.S.C. 4056(a)) is deemed to be amended by adding "(1)" after "(a)" and by adding the following new paragraphs at the end thereof:

"(2) The service of an individual who first becomes a participant on or after the date of this Order without any credit under section 816 for civilian service performed prior to October 1, 1982, shall include credit for:

"(A) each period of military or naval service performed before January 1, 1957, and

"(B) each period of military or naval service performed after December 31, 1956, and before the separation on which the entitlement to annuity under this chapter is based, only if a deposit (with interest if any is required) is made with respect to that period, as provided in section 805(e) [22 U.S.C. 4045(e)].

"(3) The service of an individual who first became a participant on or after the date of this Order with credit under section 816 [22 U.S.C. 4056] for civilian service performed prior to October 1982, shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this chapter is based, subject, in the case of military or naval service performed after December 1956, to section 816(j) [22 U.S.C. 4056(j)], as deemed to be added by this Order.

"(4) The service of an individual who first became a participant before the date of this Order shall include credit for each period of military or naval service performed before the date of the separation on which the entitlement to an annuity under this chapter is based, subject, in the case of military or naval service performed after December 1976, to section 816(j) [22 U.S.C. 4056(j)], as deemed to be added by this Order";

(c) Section 816 of the Act (22 U.S.C. 4056) is deemed to be further amended by adding a new subsection (j) at the end thereof to read as follows:

"(1) Except as otherwise provided by statute or Executive Order, Section 8332(j) of Title 5, United States Code, relating to redetermination of credit for military and naval service, shall be applied to annuities payable under this chapter. The Secretary of State shall redetermine service, and may request and obtain information from the Secretary of Health and Human Services, as the Office of Personnel Management is directed or authorized to do in Section 8332(j).

"(2) Section 8332(j) of Title 5, United States Code, shall not apply with respect to:

"(A) the service of any individual who first became a participant on or after the date of this Order without any credit under section 816 [22 U.S.C. 4056] for civilian service performed prior to October 1982; or

"(B) any military or naval service performed prior to 1957 by an individual who first became a participant on or after the date of this Order with credit under section 816 [22 U.S.C. 4056] for civilian service performed prior to October 1982, or any period of military or naval service performed after 1956 with respect to which the participant has made a contribution (with interest if any is required) under section 805(e) [22 U.S.C. 4045(e)]; or

"(C) any military or naval service performed prior to 1977 by any individual who first became a participant before the date of this Order or any period of military or naval service performed after 1976 with respect to which the participant has made a contribution (with interest if any is required) under section 805(e) [22 U.S.C. 4045(e)]."

(d) Section 822(a) of the Act (22 U.S.C. 4062(a)) is deemed to be amended by striking out the period at the end thereof and inserting in lieu thereof: ", less an amount determined by the Secretary of State to be appropriate to reflect the value of the deposits made to the credit of the Fund under section 805(e).".

(e) The amendments deemed to be made by Section 4 of this Order shall be effective on the date of this Order [Oct. 17, 1983].

SEC. 5. *Recomputation at Age 62 of Credit for Military Service of Current Annuitants.* (a) Section 816(a) of the Act (22 U.S.C. 4056(a)) is deemed to be further amended so that the provisions of section 8332(j) of Title 5 of the United States Code, relating to credit for military service, shall not apply with respect to any individual who is entitled to an annuity under such Act [this chapter] on or before the date of approval of this order [Oct. 17, 1983], or who is entitled to an annuity based on a separation from service occurring on or before such date.

(b) Subject to subsection (c), in any case in which an individual described in subsection (a) is also entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor), the amount of the annuity to which such individual is entitled under chapter 8 of the Act [this subchapter] (after taking into account subsection (a)) which is payable for any month shall be reduced by an amount determined by multiplying the amount of such old-age or survivors insurance benefit for the determination month by a fraction—

(1) the numerator of which is the total of the wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) for service referred to in section 210(1) of such Act [42 U.S.C. 410] (relating to service in the uniformed services) and deemed additional wages (within the meaning of section 229 of such Act [42 U.S.C. 429]) of such individual credited for years after 1956 and before the calendar year in which the determination month occurs, up to the con-

tribution and benefit base determined under section 230 of the Social Security Act [42 U.S.C. 415(e)(1)]) (or other applicable maximum annual amount referred to in section 215(e)(1) of such Act [42 U.S.C. 409]) for each such year, and

(2) the denominator of which is the total of all wages deemed additional wages described in paragraph (1) of this subsection plus all other wages (within the meaning of section 209 of the Social Security Act [42 U.S.C. 409]) and all self-employment income (within the meaning of section 211(b) of such Act [42 U.S.C. 411(b)]) of such individual credited for years after 1936 and before the calendar year in which the determination month occurs, up to the contribution and benefit base (or such other amount referred to in such section 215(e)(1) of such Act [42 U.S.C. 415(e)(1)]) for each such year.

(c) Subsection (b) shall not reduce the annuity of any individual below the amount of the annuity which would be payable under chapter 8 of the Act [this subchapter] to the individual for the determination month if section 8332(j) of Title 5 of the United States Code applied to the individual for such month.

(d) For purposes of this section, the term "determination month" means—

(1) the first month the individual described in subsection (a) is entitled to old-age or survivors insurance benefits under section 202 of the Social Security Act [42 U.S.C. 402] (or would be entitled to such benefits upon filing application therefor); or

(2) the first day of the month following the month in which this Order is issued [Oct. 17, 1983] in the case of any individual so entitled to such benefits for such month.

(e) The preceding provisions of this section shall take effect with respect to any annuity payment payable under chapter 8 of the Act [this subchapter] for calendar months beginning after the date of this Order [Oct. 17, 1983].

(f) The Secretary of Health and Human Services shall furnish such information to the Secretary of State as may be necessary to carry out the preceding provisions of this section.

SEC. 6. *General Limitation on Cost-of-Living Adjustment for Annuities.* (a) Section 826 of the Act (22 U.S.C. 4066) is deemed to be amended to add at the end thereof the following new subsection:

"(g)(1) An annuity shall not be increased by reason of any adjustment under this section to an amount which exceeds the greater of—

"(A) the maximum pay rate payable for class FS-1 under section 403, 30 days before the effective date of the adjustment under this section; or

"(B) the final pay (or average pay, if higher) of the former participant with respect to whom the annuity is paid, increased by the overall annual average percentage adjustments (compounded) in rates of pay of the Foreign Service Schedule under such section 403 during the period—

"(i) beginning on the date the annuity commenced (or, in the case of a survivor of the retired participant, the date the participant's annuity commenced), and

"(ii) ending on the effective date of the adjustment under this section.

"(2) For the purposes of paragraph (1) of this subsection, 'pay' means the rate of salary or basic pay as payable under any provision of law, including any provision of law limiting the expenditure of appropriated funds.".

(b) The amendment made by subsection (a) of this Section shall not cause any annuity to be reduced below the rate that is payable on the date of approval of this Order [Oct. 17, 1983], but shall apply to any adjustment occurring on or after April 1, 1983 under Section 826 of the Act [22 U.S.C. 4066] to any annuity payable from the Foreign Service Retirement and Disability Fund, whether such annuity has a commencing date before, on, or after the date of this Order.

RONALD REAGAN.

SUBCHAPTER IX—TRAVEL, LEAVE, AND OTHER BENEFITS

§ 4081. Travel and related expenses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 2 section 143a; title 10 section 192.

§ 4083. Required leave

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 192; title 38 section 235.

§ 4086. Entitlement to vote in a State in a Federal election; preconditions; applicability

(a) Except as provided in subsection (b) of this section and in such manner as shall be otherwise authorized by a State or other jurisdiction within the territory of the United States, a member of the Service residing outside the United States shall, in addition to any entitlement to vote in a State in a Federal election under section 3 of the Overseas Citizens Voting Rights Act (42 U.S.C. 1973dd-1), be entitled to vote in a Federal election in the State in which such member was last domiciled immediately before entering the Service if such member—

(1) makes an election of that State;

(2) notifies that State of such election and notifies any other States in which he or she is entitled to vote of such election; and

(3) otherwise meets the requirements of such Act [42 U.S.C. 1973dd et seq.].

(b) The provisions of subsection (a) of this section shall apply only to an individual who becomes a member of the Service on or after November 22, 1983, and shall not apply to an individual who registers to vote in a State in which he is entitled to vote under section 3 of Overseas Citizens Voting Rights Act [42 U.S.C. 1973dd-1].

(Pub. L. 96-465, title I, § 906, as added Pub. L. 98-164, title I, § 129(a), Nov. 22, 1983, 97 Stat. 1027.)

REFERENCES IN TEXT

The Overseas Citizens Voting Rights Act, referred to in text, probably means the Overseas Citizens Voting Rights Act of 1975, Pub. L. 94-203, Jan. 2, 1976, 89 Stat. 1142, as amended, which is classified generally to subchapter I-E (§ 1973dd et seq.) of chapter 20 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 1973dd of Title 42 and Tables.

SUBCHAPTER XII—TRANSITION

§ 4153. Conversion to Senior Foreign Service

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Forced conversion

Any officer of the Foreign Service who is eligible to submit a request under subsection (a) of this section and—

[*See main edition for text of* (*1*) *and* (*2*)]

may not remain in the Foreign Service for more than 3 years after February 15, 1981. During such period, the officer shall be subject to the provisions of subchapters I to XI of this chapter applicable to members of the Senior Foreign Service, except that such officer shall not be eligible to compete for performance pay under section 3965 of this title, and shall not be eligible for a limited career extension as described in section 4007(b) of this title. Upon separation from the Service, any such officer who is a participant in the Foreign Service Retirement and Disability System shall be entitled to retirement benefits on the same basis as a member retired from the Senior Foreign Service under section 4007(c)(1) of this title, and section 4009(a)(2)(B) of this title shall be deemed to apply to such officer.

(As amended Pub. L. 98-164, title I, § 128, Nov. 22, 1983, 97 Stat. 1027.)

AMENDMENTS

1983—Subsec. (f). Pub. L. 98-164 substituted provisions relating to applicability of sections 4007(c)(1) and 4009(a)(2)(B) of this title, for provisions relating to applicability of subchapter VIII of this chapter.

§ 4154. Conversion from Foreign Service

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Department of State security officers

The three-year period referred to in subsection (a) of this section shall be extended for an additional period not to exceed one year from November 22, 1983, in the case of Department of State security officers who are members of the Service and who were initially ineligible for conversion under that subsection because they were available for worldwide assignment and there was a need for their services in the Service, but as to whom subsequent events require the services of these members (and of those later employed who are similarly situated) only or primarily for domestic functions.

(As amended Pub. L. 98-164, title I, § 132, Nov. 22, 1983, 97 Stat. 1028.)

CODIFICATION

In subsec. (c), "November 22, 1983" was in the original "the date of enactment of this section" which was translated as meaning the date of enactment of this subsection, as the probable intent of Congress.

AMENDMENTS

1983—Subsec. (c). Pub. L. 98-164 added subsec. (c).

SUBCHAPTER XIV—POWERS, DUTIES AND LIABILITIES OF CONSULAR OFFICERS GENERALLY

§ 4194. Lists and returns of seamen and vessels, etc.

CROSS REFERENCES

Other powers and duties of consular officers as to merchant seamen, see sections 10308, 10309, 10318, 10703-10705, 10902, 10905, 10906, and 11104 of Title 46, Shipping.

§ 4195. Estates of decedents generally; General Accounting Office as conservator

CROSS REFERENCES

Duties of consular officers where seaman, dying out of United States, leaves money or effects not on board of his vessel, see sections 10704 and 10705 of Title 46, Shipping.

§ 4205. Retention of papers of American vessels until payment of demands and wages

CROSS REFERENCES

Deposit of ships' papers with consular officers by masters of vessels, see section 354 of Title 46, Appendix, Shipping.

§ 4207. Profits from dealings with discharged seamen; prohibition

CROSS REFERENCES

Discharge and return by consular officers of seamen, see sections 10318, 10906, 11106, and 11503 of Title 46, Shipping.

§ 4211. Returns as to fees by officers compensated by fees

All consular agents, as are allowed for their compensation the whole or any part of the fees which they may collect, shall make returns in such manner as the General Accounting Office shall prescribe, of all such fees as they or any person in their behalf so collect.

(R.S. § 1725; July 31, 1894, ch. 174, § 5, 28 Stat. 206; Apr. 5, 1906, ch. 1366, § 3, 34 Stat. 100; June 10, 1921, ch. 18, title III, § 304, 42 Stat. 24.)

TRANSFER OF FUNCTIONS

"General Accounting Office" was substituted in text for "Comptroller of the Treasury" pursuant to act June 10, 1921, which transferred all powers and duties conferred upon the Comptroller, six auditors, and certain other officers of the Treasury to the General Accounting Office. See section 701 et seq. of Title 31, Money and Finance.

Previously, functions of the Secretary of State under this section were transferred to the Comptroller of the Treasury by act July 31, 1894.

CHAPTER 53—AUTHORITIES RELATING TO THE REGULATION OF FOREIGN MISSIONS

Sec.
4304a. Enforcement of compliance with liability insurance requirements.
  (a) Notice to Director by head of foreign mission of lapse or termination of coverage; report to Director by head of foreign mission respecting motor vehicles, vessels and aircraft registered in United States.
  (b) Surcharge or fee covering unsatisfied part of judgment; preconditions for imposition.
  (c) Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 302, 2684 of this title.

§ 4301. Congressional declaration of findings and policy

CODIFICATION

Section is also set out in D.C. Code § 5-1201.

SHORT TITLE OF 1983 AMENDMENT

Pub. L. 98-164, title VI, § 601, Nov. 22, 1983, 97 Stat. 1042, provided that: "This title [enacting section 4304a of this title, amending sections 254e and 4303 of this title, and enacting a provision set out as a note under section 4303 of this title] may be cited as the 'Foreign Missions Amendments Act of 1983'."

§ 4302. Definitions

CODIFICATION

Section is also set out in D.C. Code § 5-1202.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 302, 4307 of this title.

§ 4303. Office of Foreign Missions

(a) Establishment; Director; authority over Director; rank of Director

The Secretary shall establish an Office of Foreign Missions as an office within the Department of State. The Office shall be headed by a Director, appointed by the President by and with the advice and consent of the Senate, who shall perform his or her functions under the supervision and direction of the Secretary. The Secretary may delegate this authority for supervision and direction of the Director only to the Deputy Secretary of State or an Under Secretary of State. The Director shall have the rank of ambassador.

(b) Deputy Director; experience of Director and Deputy Director

There shall also be a Deputy Director of the Office of Foreign Missions. Either the Director or the Deputy Director of such Office shall be an individual who has served in the United States Foreign Service, while the other of the two shall be an individual who has served in the United States Intelligence Community.

(c) Functions of Director

The Secretary may authorize the Director to—

(1) assist agencies of Federal, State, and municipal government with regard to ascertaining and according benefits, privileges, and immunities to which a foreign mission may be entitled;

(2) provide or assist in the provision of benefits for or on behalf of a foreign mission in accordance with section 4304 of this title; and

(3) perform such other functions as the Secretary may determine necessary in furtherance of the policy of this chapter.

(As amended Nov. 22, 1983, Pub. L. 98-164, title VI, § 604(a), (b), 97 Stat. 1043, 1044; Nov. 8, 1984, Pub. L. 98-618, title VI, § 601(c), 98 Stat. 3303.)

CODIFICATION

Section is also set out in D.C. Code § 5-1203.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-618, § 601(c)(1), struck out requirements that Director be an individual with: minimum of ten years service in the Foreign Service, significant administrative experience, and service in countries wherein the United States has had significant problems in assuring secure and efficient operations of its missions as result of the actions of other countries.

Subsec. (b). Pub. L. 98-618, § 601(c)(2), substituted requirement of prior complementary service of the Director and Deputy Director in the Foreign Service and the Intelligence Community for requirement that Deputy Director must have served in the Intelligence Community.

1983—Subsec. (a). Pub. L. 98-164, § 604(a), added provisions respecting rank, and experience required of the Director, and substituted provision requiring appointment by the President by and with the advice and consent of the Senate, for provision requiring appointment by the Secretary.

Subsecs. (b), (c). Pub. L. 98-164, § 604(b), added subsec. (b) and redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 601(d) of Pub. L. 98-618 provided that: "The amendments made by subsection (c) [amending this section] shall apply only with respect to any appointment of a Director of Deputy Director of the Office of Foreign Missions, as the case may be, after the date of the enactment of this section [Nov. 8, 1984]."

EFFECTIVE DATE OF 1983 AMENDMENT

Section 604(c) of Pub. L. 98-164 provided that: "The amendments made by this section [amending this section] shall apply with respect to any Director of the Office of Foreign Missions, and to any Deputy Director of the Office of Foreign Missions, appointed after the date of enactment of this Act [Nov. 22, 1983]."

§ 4304. Provision of benefits

CODIFICATION

Section is also set out in D.C. Code § 5-1204.

§ 4304a. Enforcement of compliance with liability insurance requirements

(a) Notice to Director by head of foreign mission of lapse or termination of coverage; report to Director by head of foreign mission respecting motor vehicles, vessels and aircraft registered in United States

(1) The head of a foreign mission shall notify promptly the Director of the lapse or termination of any liability insurance coverage held by a member of the mission, by a member of the family of such member, or by an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946.

(2) Not later than February 1 of each year, the head of each foreign mission shall prepare and transmit to the Director a report including a list of motor vehicles, vessels, and aircraft registered in the United States by members of the mission, members of the families of such members, individuals described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946, and by the mission itself. Such list shall set forth for each such motor vehicle, vessel, or aircraft—

(A) the jurisdiction in which it is registered;

(B) the name of the insured;

(C) the name of the insurance company;

(D) the insurance policy number and the extent of insurance coverage; and

(E) such other information as the Director may prescribe.

(b) Surcharge or fee covering unsatisfied part of judgment; preconditions for imposition

Whenever the Director finds that a member of a foreign mission, a member of the family of such member, or an individual described in section 19 of the Convention on Privileges and Immunities of the United Nations of February 13, 1946—

(1) is at fault for personal injury, death, or property damage arising out of the operation of a motor vehicle, vessel, or aircraft in the United States,

(2) is not covered by liability insurance, and

(3) has not satisfied a court-rendered judgment against him or is not legally liable,

the Director shall impose a surcharge or fee on the foreign mission of which such member or individual is a part, amounting to the unsatisfied portion of the judgment rendered against such member or individual or, if there is no court-rendered judgment, an estimated amount of damages incurred by the victim. The payment of any such surcharge or fee shall be available only for compensation of the victim or his estate.

(c) Definitions

For purposes of this section—

(1) the term "head of a foreign mission" has the same meaning as is ascribed to the term "head of a mission" in Article 1 of the Vienna Convention on Diplomatic Relations of April 18, 1961 (T.I.A.S. numbered 7502; 23 U.S.T. 3227); and

(2) the terms "members of a mission" and "family" have the same meanings as is ascribed to them by paragraphs (1) and (2) of section 254a of this title.

(Aug. 1, 1956, ch. 841, title II, § 204A, as added Nov. 22, 1983, Pub. L. 98-164, title VI, § 603, 97 Stat. 1042.)

CODIFICATION

Section is also set out in D.C. Code § 5-1204.1.

§ 4305. Property of foreign missions

CODIFICATION

Section is also set out in D.C. Code § 5-1205.

§ 4306. Location of foreign missions in the District of Columbia

CODIFICATION

Section is also set out in D.C. Code § 5-1206.

§ 4307. Preemption

CODIFICATION

Section is also set out in D.C. Code § 5-1207.

§ 4308. General provisions

CODIFICATION

Section is also set out in D.C. Code § 5-1208.

§ 4309. Application to public international organizations and official missions to such organizations

CODIFICATION

Section is also set out in D.C. Code § 5-1209.

§ 4310. Privileges and immunities

CODIFICATION

Section is also set out in D.C. Code § 5-1210.

§ 4311. Enforcement

CODIFICATION

Section is also set out in D.C. Code § 5-1211.

§ 4312. Presidential guidelines

CODIFICATION

Section is also set out in D.C. Code § 5-1212.

§ 4313. Severability

CODIFICATION

Section is also set out as a note under D.C. Code § 5-1201.

CHAPTER 54—PRIVATE ORGANIZATION ASSISTANCE

SUBCHAPTER I—THE ASIA FOUNDATION

Sec.
4401. Findings.
4402. Grants; authorization; purposes; terms and conditions; deposit of interest.
4403. Funding.

SUBCHAPTER II—NATIONAL ENDOWMENT FOR DEMOCRACY

4411. Findings; statement of purposes.
4412. Grants to the Endowment.
    (a) Authorization; funding; grant agreement.
    (b) Implementation of purposes.
    (c) Status of Endowment.
    (d) Oversight procedures applicable.
    (e) Amounts to Free Trade Union Institute and National Chamber Foundation.
4413. Eligibility of the Endowment for grants.
    (a) Compliance with statutory requirements.
    (b) Funding for private sector groups and covered programs only.
    (c) Compensation, etc., for officers and employees of the Endowment.
    (d) Prohibitions respecting financial matters.
    (e) Audit of accounts; reporting requirements.
    (f) Audit of financial transactions; reporting requirements.
    (g) Recordkeeping requirements; audit and examination of books, etc.
    (h) Annual report; contents; testimony respecting report.

SUBCHAPTER I—THE ASIA FOUNDATION

§ 4401. Findings

The Congress finds that—

(1) The Asia Foundation, a private nonprofit corporation incorporated in 1954 in the State of California, has long been active in promoting Asian-American friendship and cooperation and in lending encouragement and assistance to Asians in their own efforts to develop more open, more just, and more democratic societies;

(2) The Asia Foundation's commitment to strengthening indigenous Asian institutions which further stable national development, constructive social change, equitable economic growth, and cooperative international relationships is fully consistent with and support-

ive of long-term United States interests in Asia;

(3) The Asia Foundation, as a private organization, is able to conduct programs in response to Asian initiatives that would be difficult or impossible for an official United States instrumentality, and it is in a position in Asia to respond quickly and flexibly to meet new opportunities;

(4) in recognition of the valuable contributions of The Asia Foundation to long-range United States foreign policy interests, the United States Government has, through a variety of agencies, provided financial support for The Asia Foundation; and

(5) it is in the interest of the United States, and the further strengthening of Asian-American friendship and cooperation, to establish a more permanent mechanism for United States Government financial support for the ongoing activities of The Asia Foundation, while preserving the independent character of the Foundation.

(Pub. L. 98-164, title IV, § 402, Nov. 22, 1983, 97 Stat. 1038.)

SHORT TITLE

Section 401 of title IV of Pub. L. 98-164 provided that: "This title [enacting this subchapter] may be cited as 'The Asia Foundation Act'."

For short title of title V of Pub. L. 98-164, which enacted subchapter II of this chapter, as the "National Endowment for Democracy Act", see section 501 of Pub. L. 98-164, set out as a Short Title note under section 4411 of this title.

§ 4402. Grants; authorization; purposes; terms and conditions; deposit of interest

(a) The Secretary of State shall make an annual grant to The Asia Foundation with the funds made available under section 4403 of this title. Such grants shall be in general support of the Foundation's programs and operations. The terms and conditions of grants pursuant to this section shall be set forth in a grant agreement between the Secretary of State and The Asia Foundation.

(b) If funds made available to The Asia Foundation pursuant to this subchapter or pursuant to any other provision of law are, with the permission of the head of the Federal agency making the funds available, invested by the Foundation or any of its subgrantees pending disbursement, the resulting interest is not required to be deposited in the United States Treasury if that interest is used for the purposes for which the funds were made available.

(Pub. L. 98-164, title IV, § 403, Nov. 22, 1983, 97 Stat. 1038.)

§ 4403. Funding

There are authorized to be appropriated to the Secretary of State $5,000,000 for the fiscal year 1983, $10,000,000 for the fiscal year 1984, and $10,000,000 for the fiscal year 1985 for grants to The Asia Foundation pursuant to this subchapter.

(Pub. L. 98-164, title IV, § 404, Nov. 22, 1983, 97 Stat. 1039.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4402 of this title.

SUBCHAPTER II—NATIONAL ENDOWMENT FOR DEMOCRACY

§ 4411. Findings; statement of purposes

(a) The Congress finds that there has been established in the District of Columbia a private, nonprofit corporation known as the National Endowment for Democracy (hereafter in this subchapter referred to as the "Endowment") which is not an agency or establishment of the United States Government.

(b) The purposes of the Endowment, as set forth in its articles of incorporation, are—

(1) to encourage free and democratic institutions throughout the world through private sector initiatives, including activities which promote the individual rights and freedoms (including internationally recognized human rights) which are essential to the functioning of democratic institutions;

(2) to facilitate exchanges between United States private sector groups (especially the two major American political parties, labor, and business) and democratic groups abroad;

(3) to promote United States nongovernmental participation (especially through the two major American political parties, labor, business, and other private sector groups) in democratic training programs and democratic institution-building abroad;

(4) to strengthen democratic electoral processes abroad through timely measures in cooperation with indigenous democratic forces;

(5) to support the participation of the two major American political parties, labor, business, and other United States private sector groups in fostering cooperation with those abroad dedicated to the cultural values, institutions, and organizations of democratic pluralism; and

(6) to encourage the establishment and growth of democratic development in a manner consistent both with the broad concerns of United States national interests and with the specific requirements of the democratic groups in other countries which are aided by programs funded by the Endowment.

(Pub. L. 98-164, title V, § 502, Nov. 22, 1983, 97 Stat. 1039.)

SHORT TITLE

Section 501 of title V of Pub. L. 98-164 provided that: "This title [enacting this subchapter] may be cited as the 'National Endowment for Democracy Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4412, 4413 of this title.

§ 4412. Grants to the Endowment

(a) Authorization; funding; grant agreement

The Director of the United States Information Agency shall make an annual grant to the

Endowment to enable the Endowment to carry out its purposes as specified in section 4411(b) of this title. Such grants shall be made with funds specifically appropriated for grants to the Endowment or with funds appropriated to the Agency for the "Salaries and Expenses" account. Such grants shall be made pursuant to a grant agreement between the Director and the Endowment which requires that grant funds will only be used for activities which the Board of Directors of the Endowment determines are consistent with the purposes described in section 4411(b) of this title, that the Endowment will allocate funds in accordance with subsection (e) of this section, and that the Endowment will otherwise comply with the requirements of this subchapter. The grant agreement may not require the Endowment to comply with requirements other than those specified in this subchapter.

(b) Implementation of purposes

Funds so granted may be used by the Endowment to carry out the purposes described in section 4411(b) of this title, and otherwise applicable limitations on the purposes for which funds appropriated to the United States Information Agency may be used shall not apply to funds granted to the Endowment.

(c) Status of Endowment

Nothing in this subchapter shall be construed to make the Endowment an agency or establishment of the United States Government or to make the members of the Board of Directors of the Endowment, or the officers or employees of the Endowment, officers or employees of the United States.

(d) Oversight procedures applicable

The Endowment and its grantees shall be subject to the appropriate oversight procedures of the Congress.

(e) Amounts to Free Trade Union Institute and National Chamber Foundation

Of the amounts made available to the Endowment for each of the fiscal years 1984 and 1985 to carry out programs in furtherance of the purposes of this Act—

(1) not less than $13,800,000 shall be for the Free Trade Union Institute; and

(2) not less than $2,500,000 shall be to support private enterprise development programs of the National Chamber Foundation.

(Pub. L. 98-164, title V, § 503, Nov. 22, 1983, 97 Stat. 1040.)

References in Text

This Act, referred to in subsec. (e), is Pub. L. 98-164, Nov. 22, 1983, 97 Stat. 1017. For complete classification of this Act to the Code, see Tables.

§ 4413. Eligibility of the Endowment for grants

(a) Compliance with statutory requirements

Grants may be made to the Endowment under this subchapter only if the Endowment agrees to comply with the requirements specified in this section and elsewhere in this subchapter.

(b) Funding for private sector groups and covered programs only

(1) The Endowment may only provide funding for programs of private sector groups and may not carry out programs directly.

(2) The Endowment may provide funding only for programs which are consistent with the purposes set forth in section 4411(b) of this title.

(c) Compensation, etc., for officers and employees of Endowment

(1) Officers of the Endowment may not receive any salary or other compensation from any source, other than the Endowment, for services rendered during the period of their employment by the Endowment.

(2) If an individual who is an officer or employee of the United States Government serves as a member of the Board of Directors or as an officer or employee of the Endowment, that individual may not receive any compensation or travel expenses in connection with services performed for the Endowment.

(d) Prohibitions respecting financial matters

(1) The Endowment shall not issue any shares of stock or declare or pay any dividends.

(2) No part of the assets of the Endowment shall inure to the benefit of any member of the Board, any officer or employee of the Endowment, or any other individual, except as salary or reasonable compensation for services.

(e) Audit of accounts; reporting requirements

(1) The accounts of the Endowment shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the Endowment are normally kept. All books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Endowment and necessary to facilitate the audits shall be made available to the person or persons conducting the audits; and full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(2) The report of each such independent audit shall be included in the annual report required by subsection (h) of this section. The audit report shall set forth the scope of the audit and include such statements as are necessary to present fairly the Endowment's assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the Endowment's income and expenses during the year, and a statement of the application of funds, together with the independent auditor's opinion of those statements.

(f) Audit of financial transactions; reporting requirements

(1) The financial transactions of the Endowment for each fiscal year may be audited by the General Accounting Office in accordance with such principles and procedures and under such rules and regulations as may be prescribed by the Comptroller General of the United States. Any such audit shall be conducted at the place or places where accounts of the Endowment are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Endowment pertaining to its financial transactions and necessary to facilitate the audit; and they shall be afforded full facilities for verifying transactions with any assets held by depositories, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Endowment shall remain in the possession and custody of the Endowment.

(2) A report of each such audit shall be made by the Comptroller General to the Congress. The report to the Congress shall contain such comments and information as the Comptroller General may deem necessary to inform the Congress of the financial operations and condition of the Endowment, together with such recommendations with respect thereto as he may deem advisable. The report shall also show specifically any program, expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made contrary to the requirements of this subchapter. A copy of each report shall be furnished to the President and to the Endowment at the time submitted to the Congress.

(g) Recordkeeping requirements; audit and examination of books, etc.

(1) The Endowment shall ensure that each recipient of assistance provided through the Endowment under this subchapter keeps such records as may be reasonably necessary to fully disclose the amount and the disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Endowment shall ensure that it, or any of its duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that are pertinent to assistance provided through the Endowment under this subchapter. The Comptroller General of the United States or any of his duly authorized representatives shall also have access thereto for such purpose.

(h) Annual report; contents; testimony respecting report

Not later than December 31 of each year, the Endowment shall submit an annual report for the preceding fiscal year to the President for transmittal to the Congress. The report shall include a comprehensive and detailed report of the Endowment's operations, activities, financial condition, and accomplishments under this subchapter and may include such recommendations as the Endowment deems appropriate. The Board members and officers of the Endowment shall be available to testify before appropriate committees of the Congress with respect to such report, the report of any audit made by the Comptroller General pursuant to subsection (f) of this section, or any other matter which any such committee may determine.

(Pub. L. 98-164, title V, § 504, Nov. 22, 1983, 97 Stat. 1040.)

CHAPTER 55—SOVIET-EASTERN EUROPEAN RESEARCH AND TRAINING

Sec.
4501. Findings and declarations.
4502. "Institution of higher education" and "Advisory Committee" defined.
4503. Establishment of the Soviet-Eastern European Studies Advisory Committee.
  (a) Establishment; composition; Chairman.
  (b) Meetings; quorum.
  (c) Technical and clerical assistance.
  (d) Functions.
4504. Authority to make payments; purposes.
4505. Applications; payments to eligible institutions.
4506. Reporting requirements.
4507. Federal control of education prohibited.
4508. Allocation of funds.
4509. Termination.

§ 4501. Findings and declarations

The Congress finds and declares that—

(1) factual knowledge, independently verified, about the Soviet Union and Eastern European countries is of the utmost importance for the national security of the United States, for the furtherance of our national interests in the conduct of foreign relations, and for the prudent management of our domestic affairs;

(2) the development and maintenance of knowledge about the Soviet Union and Eastern European countries depends upon the national capability for advanced research by highly trained and experienced specialists, available for service in and out of Government;

(3) certain essential functions are necessary to ensure the existence of that knowledge and the capability to sustain it, including—

(A) graduate training;

(B) advanced research;

(C) public dissemination of research data, methods, and findings;

(D) contact and collaboration among Government and private specialists; and

(E) firsthand experience of the Soviet Union and Eastern European countries by American specialists, including on site conduct of advanced training and research to the extent practicable; and

(4) it is in the national interest for the United States Government to provide a stable

source of financial support for the functions described in this section and to supplement the financial support for those functions which is currently being furnished by Federal, State, local, regional, and private agencies, organizations, and individuals, and thereby to stabilize the conduct of these functions on a national scale, consistently, and on a long range unclassified basis.

(Pub. L. 98-164, title VIII, § 802, Nov. 22, 1983, 97 Stat. 1047.)

SHORT TITLE

Section 801 of title VIII of Pub. L. 98-164 provided that: "This title [enacting this chapter] may be cited as the 'Soviet-Eastern European Research and Training Act of 1983'."

§ 4502. "Institution of higher education" and "Advisory Committee" defined

As used in this chapter—

(1) the term "institution of higher education" has the same meaning given such term in section 1141(a) of title 20; and

(2) the term "Advisory Committee" means the Soviet-Eastern European Studies Advisory Committee established by section 4503(a) of this title.

(Pub. L. 98-164, title VIII, § 803, Nov. 22, 1983, 97 Stat. 1048.)

§ 4503. Establishment of the Soviet-Eastern European Studies Advisory Committee

(a) Establishment; composition; Chairman

There is established within the Department of State the Soviet-Eastern European Studies Advisory Committee which shall be composed of the Secretary of State, the Secretary of Defense, the Secretary of Education, the Librarian of Congress, the President of the American Association for the Advancement of Slavic Studies, and the President of the Association of American Universities. The Secretary of State shall be the Chairman.

(b) Meetings; quorum

The Advisory Committee shall meet at the call of the Chairman and shall hold at least one meeting each year. Three members of the Advisory Committee shall constitute a quorum.

(c) Technical and clerical assistance

The Secretary of State may detail personnel of the Department of State to provide technical and clerical assistance to the Advisory Committee in carrying out its functions under this chapter.

(d) Functions

The Advisory Committee shall recommend grant policies for the advancement of the objectives of this chapter. In proposing recipients for grants under this chapter, the Advisory Committee shall give the highest priority to national organizations with an interest and expertise in conducting research and training concerning Soviet and Eastern European countries and in disseminating the results of such research. In making its recommendations, the Advisory Committee shall emphasize the development of a stable, long-term research program.

(Pub. L. 98-164, title VIII, § 804, Nov. 22, 1983, 97 Stat. 1048.)

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4502 of this title.

§ 4504. Authority to make payments; purposes

(a) The Secretary of State, after consultation with the Advisory Committee, shall make payments, in accordance with the provisions of this section, out of funds made available to carry out this chapter.

(b)(1) One part of the payments made in each fiscal year shall be used to conduct a national research program at the postdoctoral or equivalent level, such program to include—

(A) the dissemination of information about the research program and the solicitation of proposals for research contracts from American institutions of higher education and not-for-profit corporations, such contracts to contain shared-cost provisions; and

(B) the awarding of contracts for such research projects as the respective institution determines will best serve to carry out the purposes of this chapter after reviewing proposals submitted under subparagraph (A).

(2) One part of the payments made in each fiscal year shall be used—

(A) to establish and carry out a program of graduate, postdoctoral, and teaching fellowships for advanced training in Soviet and Eastern European studies and related studies, such program—

(i) to be coordinated with the research program described in paragraph (1);

(ii) to be conducted, on a shared-cost basis, at American institutions of higher education; and

(iii) to include—

(I) the dissemination of information on the fellowship program and the solicitation of applications for fellowships from qualified institutions of higher education and qualified individuals; and

(II) the awarding of such fellowships as the respective institution determines will best serve to carry out the purposes of this chapter after reviewing applications submitted under subclause (I); and

(B) to disseminate research, data, and findings on Soviet and Eastern European studies and related fields in such a manner and to such extent as the respective institution determines will best serve to carry out the purposes of this chapter.

(3) One part of the payments made in each fiscal year shall be used—

(A) to provide fellowship and research support for American specialists in the fields of Soviet and Eastern European studies and related studies to conduct advanced research with particular emphasis upon the use of data on the Soviet Union and Eastern European countries; and

(B) to conduct seminars, conferences, and other similar workshops designed to facilitate research collaboration between Government and private specialists in the fields of Soviet and East European studies and related studies.

(4) One part of the payments made in each fiscal year shall be used to conduct specialized programs in advanced training and research on a reciprocal basis in the Union of Soviet Socialist Republics and the countries of Eastern Europe designed to facilitate access for American specialists to research institutes, personnel, archives, documentation, and other research and training resources located in the Union of Soviet Socialist Republics and Eastern European countries.

(5) One part of the payments made in each fiscal year shall be used to support language training in Russian and Eastern European languages. Such payments shall include grants to individuals to pursue such training and to summer language institutes operated by institutions of higher education. Preference shall be given for Russian language studies.

(6) Payments may be made to carry out other research and training in Soviet and Eastern European studies not otherwise described in this section.

(Pub. L. 98-164, title VIII, § 805, Nov. 22, 1983, 97 Stat. 1048.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4505 of this title.

§ 4505. Applications; payments to eligible institutions

(a) Any institution seeking funding under this chapter shall prepare and submit an application to the Secretary of State once each fiscal year. Each such application shall—

(1) provide a description of the purposes for which the payments will be used in accordance with section 4504 of this title; and

(2) provide such fiscal control and such accounting procedures as may be necessary (A) to ensure a proper accounting of Federal funds paid under this chapter, and (B) to ensure the verification of the costs of the continuing education and research programs conducted under this chapter.

(b) Payments under this chapter may be made in installments, in advance, or by way of reimbursement, with necessary adjustments on account of overpayments and underpayments.

(Pub. L. 98-164, title VIII, § 806, Nov. 22, 1983, 97 Stat. 1050.)

§ 4506. Reporting requirements

The Secretary of State shall prepare and submit to the President and the Congress at the end of each fiscal year in which an institution receives assistance under this chapter a report of the activities of such institution supported by such assistance, if the administrative expenses of such institution which are covered by such assistance represent more than 10 per centum of such assistance, together with such recommendations as the Advisory Committee deems advisable.

(Pub. L. 98-164, title VIII, § 807, Nov. 22, 1983, 97 Stat. 1050.)

§ 4507. Federal control of education prohibited

Nothing contained in this chapter may be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the curriculum, program of instruction or research, administration, or personnel of any educational institution.

(Pub. L. 98-164, title VIII, § 808, Nov. 22, 1983, 97 Stat. 1050.)

§ 4508. Allocation of funds

Of the funds authorized to be appropriated by section 102(1) of this Act—

(1) up to $5,000,000 for the fiscal year 1984 shall be available to carry out this chapter; and

(2) $5,000,000 for the fiscal year 1985 shall be available only to carry out this chapter.

(Pub. L. 98-164, title VIII, § 809, Nov. 22, 1983, 97 Stat. 1050.)

REFERENCES IN TEXT

Section 102(1) of this Act, referred to in text, is section 102(1) of Pub. L. 98-164, title I, Nov. 22, 1983, 97 Stat. 1017, which is not classifed to the Code.

§ 4509. Termination

The provisions of this chapter shall cease to be effective at the end of the ten-year period beginning on November 22, 1983.

(Pub. L. 98-164, title VIII, § 810, Nov. 22, 1983, 97 Stat. 1051.)

CHAPTER 56—UNITED STATES INSTITUTE OF PEACE

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§ 4601. Congressional declaration of findings and purposes

(a) The Congress finds and declares that—

(1) a living institution embodying the heritage, ideals, and concerns of the American people for peace would be a significant response to the deep public need for the Nation to develop fully a range of effective options, in addition to armed capacity, that can leash international violence and manage international conflict;

(2) people throughout the world are fearful of nuclear war, are divided by war and threats of war, are experiencing social and cultural hostilities from rapid international change and real and perceived conflicts over interests, and are diverted from peace by the lack of problem-solving skills for dealing with such conflicts;

(3) many potentially destructive conflicts among nations and peoples have been resolved constructively and with cost efficiency at the international, national, and community levels through proper use of such techniques as negotiation, conciliation, mediation, and arbitration;

(4) there is a national need to examine the disciplines in the social, behavioral, and physical sciences and the arts and humanities with regard to the history, nature, elements, and future of peace processes, and to bring together and develop new and tested techniques to promote peaceful economic, political, social, and cultural relations in the world;

(5) existing institutions providing programs in international affairs, diplomacy, conflict resolution, and peace studies are essential to further development of techniques to promote peaceful resolution of international conflict, and the peacemaking activities of people in such institutions, government, private enterprise, and voluntary associations can be strengthened by a national institution devoted to international peace research, education and training, and information services;

(6) there is a need for Federal leadership to expand and support the existing international peace and conflict resolution efforts of the Nation and to develop new comprehensive peace education and training programs, basic and applied research projects, and programs providing peace information;

(7) the Commission on Proposals for the National Academy of Peace and Conflict Resolution, created by the Education Amendments of 1978, recommended establishing an academy as a highly desirable investment to further the Nation's interest in promoting international peace;

(8) an institute strengthening and symbolizing the fruitful relation between the world of learning and the world of public affairs, would be the most efficient and immediate means for the Nation to enlarge its capacity to promote the peaceful resolution of international conflicts; and

(9) the establishment of such an institute is an appropriate investment by the people of this Nation to advance the history, science, art, and practice of international peace and

the resolution of conflicts among nations without the use of violence.

(b) It is the purpose of this chapter to establish an independent, nonprofit, national institute to serve the people and the Government through the widest possible range of education and training, basic and applied research opportunities, and peace information services on the means to promote international peace and the resolution of conflicts among the nations and peoples of the world without recourse to violence.

(Pub. L. 98-525, title XVII, § 1702, Oct. 19, 1984, 98 Stat. 2649.)

References in Text

The Education Amendments of 1978, referred to in subsec. (a)(7), is Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended. Part B (§§ 1511-1519) of title XV of Pub. L. 95-561, which provided for the Commission on Proposals for the National Academy of Peace and Conflict Resolution, was set out as a note under section 1123 of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note under section 2701 of Title 20 and Tables.

Short Title

Section 1701 of title XVII of Pub. L. 98-525, provided that: "This title [enacting this chapter] may be cited as the 'United States Institute of Peace Act'."

§ 4602. Definitions

As used in this chapter, the term—

(1) "Institute" means the United States Institute of Peace established by this chapter; and

(2) "Board" means the Board of Directors of the Institute.

(Pub. L. 98-525, title XVII, § 1703, Oct. 19, 1984, 98 Stat. 2651.)

§ 4603. United States Institute of Peace

(a) Establishment

There is hereby established the United States Institute of Peace.

(b) Status; restrictions

The Institute is an independent nonprofit corporation and an organization described in section 170(c)(2)(B) of title 26. The Institute does not have the power to issue any shares of stock or to declare or pay any dividends.

(c) Establishment and functions of an "Endowment of the United States Institute of Peace"

As determined by the Board, the Institute may establish, under the laws of the District of Columbia, a legal entity which is capable of receiving, holding, and investing public funds for purposes in furtherance of the Institute under this chapter. The Institute may designate such legal entity as the "Endowment of the United States Institute for Peace".

(d) Liability for acts within scope of authority

The Institute is liable for the acts of its directors, officers, employees, and agents when acting within the scope of their authority.

(e) Trade name and trademark rights; vested rights protected; condition for use of Federal identity

(1) The Institute has the sole and exclusive right to use and to allow or refuse others the use of the terms "United States Institute of Peace", "Jennings Randolph Program for International Peace", and "Endowment of the United States Institute of Peace" and the use of any official United States Institute of Peace emblem, badge, seal, and other mark of recognition or any colorable simulation thereof. No powers or privileges hereby granted shall interfere or conflict with established or vested rights secured as of September 1, 1981.

(2) Notwithstanding any other provision of this chapter, the Institute may use "United States" or "U.S." or any other reference to the United States Government or Nation in its title or in its corporate seal, emblem, badge, or other mark of recognition or colorable simulation thereof in any fiscal year only if there is an authorization of appropriations for the Institute for such fiscal year provided by law.

(Pub. L. 98-525, title XVII, § 1704, Oct. 19, 1984, 98 Stat. 2651.)

Section Referred to in Other Sections

This section is referred to in sections 4604, 4609 of this title.

§ 4604. Powers and duties

(a) District of Columbia nonprofit-corporative powers

The Institute may exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act [D.C. Code, § 29-501 et seq.] consistent with this chapter, except for section 5(*o*) of the District of Columbia Nonprofit Corporation Act [D.C. Code, § 29-505(15)].

(b) Description of specific activities

The Institute, acting through the Board, may—

(1) establish a Jennings Randolph Program for International Peace and appoint, for periods up to two years, scholars and leaders in peace from the United States and abroad to pursue scholarly inquiry and other appropriate forms of communication on international peace and conflict resolution and, as appropriate, provide stipends, grants, fellowships, and other support to the leaders and scholars;

(2) enter into formal and informal relationships with other institutions, public and private, for purposes not inconsistent with this chapter;

(3) conduct research and make studies, particularly of an interdisciplinary or of a multidisciplinary nature, into the causes of war and other international conflicts and the elements of peace among the nations and peoples of the world, including peace theories, methods, techniques, programs, and systems, and into the experiences of the United States and other nations in resolving conflicts with justice and dignity and without violence as they pertain to the advancement of international peace and conflict resolution, placing particular emphasis on realistic approaches to

past successes and failures in the quest for peace and arms control and utilizing to the maximum extent possible United States Government documents and classified materials from the Department of State, the Department of Defense, the Arms Control and Disarmament Agency, and the intelligence community;

(4) develop programs to make international peace and conflict resolution research, education, and training more available and useful to persons in government, private enterprise, and voluntary associations, including the creation of handbooks and other practical materials;

(5) provide, promote, and support peace education and research programs at graduate and postgraduate levels;

(6) conduct training, symposia, and continuing education programs for practitioners, policymakers, policy implementers, and citizens and noncitizens directed to developing their skills in international peace and conflict resolution;

(7) develop, for publication or other public communication, and disseminate, the carefully selected products of the Institute;

(8) establish a clearinghouse and other means for disseminating information, including classified information that is properly safeguarded, from the field of peace learning to the public and to government personnel with appropriate security clearances;

(9) recommend to the Congress the establishment of a United States Medal of Peace to be awarded under such procedures as the Congress may determine, except that no person associated with the Institute may receive the United States Medal of Peace; and

(10) secure directly, upon request of the president of the Institute to the head of any Federal department or agency and in accordance with section 552 of title 5 (relating to freedom of information), information necessary to enable the Institute to carry out the purposes of this chapter if such release of the information would not unduly interfere with the proper functioning of a department or agency, including classified information if the Institute staff and members of the Board who have access to such classified information obtain appropriate security clearances from the Department of Defense and the Department of State.

(c) Description of extension and outreach activities

The Institute may undertake extension and outreach activities under this chapter by making grants and entering into contracts with institutions of postsecondary, community, secondary, and elementary education (including combinations of such institutions), with public and private educational, training, or research institutions (including the American Federation of Labor-the Congress of Industrial Organizations) and libraries, and with public departments and agencies (including State and territorial departments of education and of commerce). No grant may be made to an institution unless it is a nonprofit or official public institution, and at least one-fourth of the Institute's annual appropriations shall be paid to such nonprofit and official public institutions. A grant or contract may be made to—

(1) initiate, strengthen, and support basic and applied research on international peace and conflict resolution;

(2) promote and advance the study of international peace and conflict resolution by educational, training, and research institutions, departments, and agencies;

(3) educate the Nation about and educate and train individuals in peace and conflict resolution theories, methods, techniques, programs, and systems;

(4) assist the Institute in its publication, clearinghouse, and other information services programs;

(5) assist the Institute in the study of conflict resolution between free trade unions and Communist-dominated organizations in the context of the global struggle for the protection of human rights; and

(6) promote the other purposes of this chapter.

(d) Services for Federal agencies

The Institute may respond to the request of a department or agency of the United States Government to investigate, examine, study, and report on any issue within the Institute's competence, including the study of past negotiating histories and the use of classified materials.

(e) Contracts for operation of Institute

The Institute may enter into contracts for the proper operation of the Institute.

(f) Personnel; administrative assistance

The Institute may fix the duties of its officers, employees, and agents, and establish such advisory committees, councils, or other bodies, as the efficient administration of the business and purposes of the Institute may require.

(g) Grants and contracts; gifts and contributions; domestic and foreign restrictions

(1) Except as provided in paragraphs (2) and (3), the Institute may obtain grants and contracts, including contracts for classified research for the Department of State, the Department of Defense, the Arms Control and Disarmament Agency, and the intelligence community, and receive gifts and contributions from government at all levels.

(2) The Institute may not accept any gift, contribution, or grant from, or enter into any contract with, a foreign government, any agency or instrumentality of such government, any international organization, or any foreign national, except that the Institute may accept the payment of tuition by foreign nationals for instruction provided by the Institute. For purposes of this paragraph, the term—

(A) "foreign national" means—

(i) a natural person who is a citizen of a foreign country or who owes permanent allegiance to a foreign country; and

(ii) a corporation or other legal entity in which natural persons who are nationals of a foreign country own, directly or indirectly, more than 50 percent of the outstanding capital stock or other beneficial interest in such legal entity; and

(B) "person" means a natural person, partnership, association, other unincorporated body, or corporation.

(3) Notwithstanding any other provision of this chapter, the Institute and the legal entity described in section 4603(c) of this title may not obtain any grant or contract or receive any gift or contribution from any private agency, organization, corporation or other legal entity, institution, or individual.

(h) Fees for periodicals and other materials

The Institute may charge and collect subscription fees and develop, for publication or other public communication, and disseminate, periodicals and other materials.

(i) Participation fees and costs

The Institute may charge and collect fees and other participation costs from persons and institutions participating in the Institute's direct activities authorized in subsection (b) of this section.

(j) Civil actions

The Institute may sue and be sued, complain, and defend in any court of competent jurisdiction.

(k) Corporate mark of recognition and colorable simulations

The Institute may adopt, alter, use, and display a corporate seal, emblem, badge, and other mark of recognition and colorable simulations thereof.

(*l*) General authority

The Institute may do any and all lawful acts and things necessary or desirable to carry out the objectives and purposes of this chapter.

(m) Legislative influencing-activity prohibition; communications or testimony of personnel

The Institute shall not itself undertake to influence the passage or defeat of any legislation by the Congress of the United States or by any State or local legislative bodies, or by the United Nations, except that personnel of the Institute may testify or make other appropriate communication when formally requested to do so by a legislative body, a committee, or a member thereof.

(n) Administrative services from General Services Administration

The Institute may obtain administrative support services from the Administrator of General Services on a reimbursable basis.

(Pub. L. 98-525, title XVII, § 1705, Oct. 19, 1984, 98 Stat. 2651.)

References in Text

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a), is Pub. L. 87-569, Aug. 6, 1962, 76 Stat. 265, as amended, which appears in chapter 5 (§ 29-501 et seq.) of Title 29, Corporations, of the District of Columbia Code. Section 5(o) of the District of Columbia Nonprofit Corporation Act now appears in section 29-505(15) of such Title 29.

Section Referred to in Other Sections

This section is referred to in sections 4606, 4609 of this title.

§ 4605. Board of Directors

(a) Vested powers

The powers of the Institute shall be vested in a Board of Directors unless otherwise specified in this chapter.

(b) Membership

The Board shall consist of fifteen voting members as follows:

(1) The Secretary of State (or if the Secretary so designates, another officer of the Department of State who was appointed with the advice and consent of the Senate).

(2) The Secretary of Defense (or if the Secretary so designates, another officer of the Department of Defense who was appointed with the advice and consent of the Senate).

(3) The Director of the Arms Control and Disarmament Agency (or if the Director so designates, another officer of that Agency who was appointed with the advice and consent of the Senate).

(4) The president of the National Defense University (or if the president so designates, the vice president of the National Defense University).

(5) Eleven individuals appointed by the President, by and with the advice and consent of the Senate.

(c) Political affiliation

Not more than eight voting members of the Board (including members described in paragraphs (1) through (4) of subsection (b) of this section) may be members of the same political party.

(d) Qualifications

(1) Each individual appointed to the Board under subsection (b)(5) of this section shall have appropriate practical or academic experience in peace and conflict resolution efforts of the United States.

(2) Officers and employees of the United States Government may not be appointed to the Board under subsection (b)(5) of this section.

(e) Term of office: commencement and termination, interim and remainder service, limitation

(1) Members of the Board appointed under subsection (b)(5) of this section shall be appointed to four year terms, except that—

(A) the term of six of the members initially appointed shall be two years, as designated by the President at the time of their nomination;

(B) a member may continue to serve until his or her successor is appointed; and

(C) a member appointed to replace a member whose term has not expired shall be appointed to serve the remainder of that term.

(2) The terms of the members of the Board initially appointed under subsection (b)(5) of this section shall begin on January 20, 1985, and subsequent terms shall begin upon the ex-

piration of the preceding term, regardless of when a member is appointed to fill that term.

(3) The President may not nominate an individual for appointment to the Board under subsection (b)(5) of this section prior to January 20, 1985, but shall submit the names of eleven nominees for initial Board membership under subsection (b)(5) of this section not later than ninety days after that date. If the Senate rejects such a nomination or if such a nomination is withdrawn, the President shall submit the name of a new nominee within fifteen days.

(4) An individual appointed as a member of the Board under subsection (b)(5) of this section may not be appointed to more than two terms on the Board.

(f) Removal from office

A member of the Board appointed under subsection (b)(5) of this section may be removed by the President—

(1) in consultation with the Board, for conviction of a felony, malfeasance in office, persistent neglect of duties, or inability to discharge duties;

(2) upon the recommendation of eight voting members of the Board; or

(3) upon the recommendation of a majority of the members of the Committee on Foreign Affairs and the Committee on Education and Labor of the House of Representatives and a majority of the members of the Committee on Foreign Relations and the Committee on Labor and Human Resources of the Senate.

A recommendation made in accordance with paragraph (2) may be made only pursuant to action taken at a meeting of the Board, which may be closed pursuant to the procedures of subsection (h)(3) of this section. Only members who are present may vote. A record of the vote shall be maintained. The President shall be informed immediately by the Board of the recommendation.

(g) Conflict of interests

No member of the Board may participate in any decision, action, or recommendation with respect to any matter which directly and financially benefits the member or pertains specifically to any public body or any private or nonprofit firm or organization with which the member is then formally associated or has been formally associated within a period of two years, except that this subsection shall not be construed to prohibit an ex officio member of the Board from participation in actions of the Board which pertain specifically to the public body of which that member is an officer.

(h) Meetings; Chairman; Vice Chairman; quorum; notice in Federal Register; closure

Meetings of the Board shall be conducted as follows:

(1) The President shall stipulate by name the nominee who shall be the first Chairman of the Board. The first Chairman shall serve for a term of three years. Thereafter, the Board shall elect a Chairman every three years from among the directors appointed by the President under subsection (b)(5) of this section and may elect a Vice Chairman if so provided by the Institute's bylaws.

(2) The Board shall meet at least semiannually, at any time pursuant to the call of the Chairman or as requested in writing to the Chairman by at least five members of the Board. A majority of the members of the Board shall constitute a quorum for any Board meeting.

(3) All meetings of the Board shall be open to public observation and shall be preceded by reasonable public notice. Notice in the Federal Register shall be deemed to be reasonable public notice for purposes of the preceding sentence. In exceptional circumstances, the Board may close those portions of a meeting, upon a majority vote of its members present and with the vote taken in public session, which are likely to disclose information likely to affect adversely any ongoing peace proceeding or activity or to disclose information or matters exempted from public disclosure pursuant to subsection (c) of section 552b of title 5.

(i) Compensation

A director appointed by the President under subsection (b)(5) of this section shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule under section 5332 of title 5 for each day during which the director is engaged in the performance of duties as a member of the Board.

(j) Travel expenses

While away from his home or regular place of business in the performance of duties for the Institute, a director shall be allowed travel expenses, including a per diem in lieu of subsistence, not to exceed the expenses allowed persons employed intermittently in Government service under section 5703(b)[1] of title 5.

(Pub. L. 98-525, title XVII, § 1706, Oct. 19, 1984, 98 Stat. 2654.)

REFERENCES IN TEXT

Section 5703 of title 5, referred to in subsec. (j), was amended generally by Pub. L. 94-22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain a subsec. (b).

§ 4606. Officers and employees

(a) Appointment, compensation and status of president of Institute and other officers

The Board shall appoint the president of the Institute and such other officers as the Board determines to be necessary. The president of the Institute shall be a nonvoting ex officio member of the Board. All officers shall serve at the pleasure of the Board. The president shall be appointed for an explicit term of years. Notwithstanding any other provision of law limiting the payment of compensation, the president and other officers appointed by the Board shall be compensated at rates determined by the Board, but no greater than that payable for level I of the Executive Schedule under chapter 53 of title 5.

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[1] See References in Text note below.

(b) Authorization of activities

Subject to the provisions of section 4604(g)(3) of this title, the Board shall authorize the president and any other officials or employees it designates to receive and disburse public moneys, obtain and make grants, enter into contracts, establish and collect fees, and undertake all other activities necessary for the efficient and proper functioning of the Institute.

(c) Appointment, compensation and status of personnel

The president, subject to Institute's bylaws and general policies established by the Board, may appoint, fix the compensation of, and remove such employees of the Institute as the president determines necessary to carry out the purposes of the Institute. In determining employee rates of compensation, the president shall be governed by the provisions of title 5 relating to classification and General Schedule pay rates.

(d) Assignment of Federal officers or employees to the Institute

(1) The president may request the assignment of any Federal officer or employee to the Institute by an appropriate department, agency, or congressional official or Member of Congress and may enter into an agreement for such assignment, if the affected officer or employee agrees to such assignment and such assignment causes no prejudice to the salary, benefits, status, or advancement within the department, agency, or congressional staff of such officer or employee.

(2) The Secretary of State, the Secretary of Defense, the Director of the Arms Control and Disarmament Agency, and the Director of Central Intelligence each may assign officers and employees of his respective department or agency, on a rotating basis to be determined by the Board, to the Institute if the affected officer or employee agrees to such assignment and such assignment causes no prejudice to the salary, benefits, status, or advancement within the respective department or agency of such officer or employee.

(e) Dual compensation resriction

No officer or full-time employee of the Institute may receive any salary or other compensation for services from any source other than the Institute during the officer's or employee's period of employment by the Institute, except as authorized by the Board.

(f) Federal employment status only for stated purposes

(1) Officers and employees of the Institute shall not be considered officers and employees of the Federal Government except for purposes of the provisions of title 28, which relate to Federal tort claims liability, and the provisions of title 5, which relate to compensation and benefits, including the following provisions: chapter 51 (relating to classification); subchapters I and III of chapter 53 (relating to pay rates); subchapter I of chapter 81 (relating to compensation for work injuries); chapter 83 (relating to civil service retirement); chapter 87 (relating to life insurance); and chapter 89 (relating to health insurance). The Institute shall make contributions at the same rates applicable to agencies of the Federal Government under the provisions of title 5 referred to in this section.

(2) No Federal funds shall be used to pay for private fringe benefit programs. The Institute shall not make long-term commitments to employees that are inconsistent with rules and regulations applicable to Federal employees.

(g) Distributions prohibited during life or upon dissolution or liquidation of Institute or legal entity; compensation for services or expenses

No part of the financial resources, income, or assets of the Institute or of any legal entity created by the Institute shall inure to any agent, employee, officer, or director or be distributable to any such person during the life of the corporation or upon dissolution or final liquidation. Nothing in this section may be construed to prevent the payment of reasonable compensation for services or expenses to the directors, officers, employees, and agents of the Institute in amounts approved in accordance with the provisions of this chapter.

(h) Loans prohibition; joint and several liability

The Institute shall not make loans to its directors, officers, employees, or agents, or to any legal entity created by the Institute. A director, officer, employee, or agent who votes for or assents to the making of a loan or who participates in the making of a loan shall be jointly and severally liable to the Institute for the amount of the loan until repayment thereof.

(Pub. L. 98-525, title XVII, § 1707, Oct. 19, 1984, 98 Stat. 2656.)

REFERENCES IN TEXT

Level I of the Executive Schedule, referred to in subsec. (a), is set out in section 5312 of Title 5, Government Organization and Employees.

The provisions of title 5 relating to classification and General Schedule pay rates, referred to in subsec. (c), are set out in chapter 51 (§ 5101 et seq.) and subchapter III (§ 5331 et seq.) of chapter 53 of Title 5.

The provisions of title 28 which relate to Federal tort claims liability, referred to in subsec. (f)(1), are the provisions of the Federal Tort Claims Act, which is classified generally to section 1346(b) and to chapter 171 (§ 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

§ 4607. Procedures and records

(a) Monitoring and evaluation of programs

The Institute shall monitor and evaluate and provide for independent evaluation if necessary of programs supported in whole or in part under this chapter to ensure that the provisions of this chapter and the bylaws, rules, regulations, and guidelines promulgated pursuant to this chapter are adhered to.

(b) Suspension procedures

The Institute shall prescribe procedures to ensure that grants, contracts, and financial support under this chapter are not suspended unless the grantee, contractor, or person or entity receiving financial support has been given reasonable notice and opportunity to show cause why the action should not be taken.

(c) Selection considerations

In selecting persons to participate in Institute activities, the Institute may consider a person's practical experience or equivalency in peace study and activity as well as other formal requirements.

(d) Accounts of receipts and disbursements; financial reports

The Institute shall keep correct and complete books and records of account, including separate and distinct accounts of receipts and disbursements of Federal funds. The Institute's annual financial report shall identify the use of such funding and shall present a clear description of the full financial situation of the Institute.

(e) Minutes of proceedings

The Institute shall keep minutes of the proceedings of its Board and of any committees having authority under the Board.

(f) Record and inspection of required items

The Institute shall keep a record of the names and addresses of its Board members; copies of this chapter, of any other Acts relating to the Institute, and of all Institute bylaws, rules, regulations, and guidelines; required minutes of proceedings; a record of all applications and proposals and issued or received contracts and grants; and financial records of the Institute. All items required by this subsection may be inspected by any Board member or the member's agent or attorney for any proper purpose at any reasonable time.

(g) Audits

The accounts of the Institute shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants, certified or licensed by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. The audit shall be conducted at the place or places where the accounts of the Institute are normally kept. All books, accounts, financial records, files, and other papers, things, and property belonging to or in use by the Institute and necessary to facilitate the audit shall be made available to the person or persons conducting the audit, and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents, and custodians shall be afforded to such person or persons.

(h) Report of audit to Congress; copies for public

The Institute shall provide a report of the audit to the President and to each House of Congress no later than six months following the close of the fiscal year for which the audit is made. The report shall set forth the scope of the audit and include such statements, together with the independent auditor's opinion of those statements, as are necessary to present fairly the Institute's assets and liabilities, surplus or deficit, with reasonable detail, including a statement of the Institute's income and expenses during the year, including a schedule of all contracts and grants requiring payments in excess of $5,000 and any payments of compensation, salaries, or fees at a rate in excess of $5,000 per year. The report shall be produced in sufficient copies for the public.

(i) Freedom of information provisions applicable

The Institute and its directors, officers, employees, and agents shall be subject to the provisions of section 552 of title 5 (relating to freedom of information).

(Pub. L. 98-525, title XVII, § 1708, Oct. 19, 1984, 98 Stat. 2657.)

§ 4608. Independence and limitations

(a) Nothing in this chapter may be construed as limiting the authority of the Office of Management and Budget to review and submit comments on the Institute's budget request at the time it is transmitted to the Congress.

(b) No political test or political qualification may be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, employee, agent, or recipient of Institute funds or services or in selecting or monitoring any grantee, contractor, person, or entity receiving financial assistance under this chapter.

(Pub. L. 98-525, title XVII, § 1709, Oct. 19, 1984, 98 Stat. 2659.)

§ 4609. Funding

(a) Authorization of appropriations

For the purpose of carrying out this chapter (except for paragraph (9) of section 4604(b) of this title), there are authorized to be appropriated $6,000,000 for the fiscal year 1985 and $10,000,000 for the fiscal year 1986. Moneys appropriated for the fiscal year 1985 shall remain available to the Institute through the fiscal year 1986.

(b) Transfer of unobligated funds; reports of use of funds to Congress and President

The Board of Directors may transfer to the legal entity authorized to be established under section 4603(c) of this title any funds not obligated or expended from appropriations to the Institute for a fiscal year, and such funds shall remain available for obligation or expenditure for the purposes of such legal entity without regard to fiscal year limitations. Any use by such legal entity of appropriated funds shall be reported to each House of the Congress and to the President of the United States.

(c) Contractual authority

Any authority provided by this chapter to enter into contracts shall be effective for a fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

(Pub. L. 98-525, title XVII, § 1710, Oct. 19, 1984, 98 Stat. 2659.)

§ 4610. Dissolution or liquidation

Upon dissolution or final liquidation of the Institute or of any legal entity created pursuant to this chapter, all income and assets of the Institute or other legal entity shall revert to the United States Treasury.

(Pub. L. 98-525, title XVII, § 1711, Oct. 19, 1984, 98 Stat. 2659.)

§ 4611. Biennial reports to President and Congress; comments, findings, and recommendations; Congressional Committee hearings

Beginning two years after October 19, 1984, and at intervals of two years thereafter, the Chairman of the Board shall prepare and transmit to the Congress and the President a report detailing the progress the Institute has made in carrying out the purposes of this chapter during the preceding two-year period. The President shall prepare and transmit to the Congress within a reasonable time after the receipt of such report the written comments and recommendations of the appropriate agencies of the United States with respect to the contents of such report and their recommendations with respect to any legislation which may be required concerning the Institute. After receipt of such report by the Congress, the Committee on Foreign Affairs and the Committee on Education and Labor of the House of Representatives and the Committee on Foreign Relations and the Committee on Labor and Human Resources of the Senate shall hold hearings to review the findings and recommendations of such report and the written comments received from the President.

(Pub. L. 98-525, title XVII, § 1712, Oct. 19, 1984, 98 Stat. 2659.)

TITLE 23—HIGHWAYS

This title was enacted by Pub. L. 85-767, § 1, Aug. 27, 1958, 72 Stat. 885

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 16 section 3172; title 40 sections 345c, 818; title 40 App. 201; title 42 section 7506.

CHAPTER 1—FEDERAL-AID HIGHWAYS

Sec.	
158.	National minimum drinking age.

AMENDMENTS

1984—Pub. L. 98-363, § 6(b), July 17, 1984, 98 Stat. 437, added item 158.

§ 101. Definitions and declaration of policy

BUY AMERICA

Section 165(a)-(d) of Pub. L. 97-424, as amended by Pub. L. 98-229, § 10, Mar. 9, 1984, 98 Stat. 57, provided that:

"(a) Notwithstanding any other provision of law, the Secretary of Transportation shall not obligate any funds authorized to be appropriated by this Act or by any Act amended by this Act [see Short Title of 1983 Amendment note above] or, after the date of enactment of this Act [Jan. 6, 1983], any funds authorized to be appropriated to carry out this Act, title 23, United States Code, the Urban Mass Transportation Act of 1964 [see Short Title note set out under section 1601 of Title 49, Appendix, Transportation], or the Surface Transportation Assistance Act of 1978 [see Short Title of 1978 Amendment note above] and administered by the Department of Transportation, unless steel and manufactured products used in such project are produced in the United States.

[*See main edition for text of* (*b*) *to* (*d*)]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 157, 204 of this title; title 16 section 460*l*-6a; title 49 App. section 101.

§ 103. Federal-aid systems

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 104, 115, 118, 119, 120, 122, 124, 129, 139, 157 of this title; title 16 section 1761; title 49 App. sections 1602a, 1603.

§ 104. Apportionment

FEDERAL-AID HIGHWAYS AND HIGHWAY SAFETY CONSTRUCTION PROGRAMS; MAXIMUM LIMITS ON TOTAL OBLIGATIONS; EXCEPTIONS; STATE ALLOCATIONS

Pub. L. 98-473, title I, § 101(i) [title I, § 101], Oct. 12, 1984, 98 Stat. 1944, 1951, provided: "That none of the funds in this Act [Department of Transportation and Related Agencies Appropriation Act, 1985, as enacted by section 101(i) of title I of Pub. L. 98-473] shall be available for the implementation or execution of programs the obligations for which are in excess of $13,250,000,000 for Federal-aid highways and highway safety construction programs for fiscal year 1985, except that this limitation shall not apply to obligations for emergency relief under section 125 of title 23, United States Code, obligations under section 157 of title 23, United States Code, projects covered under section 147 of the Surface Transportation Assistance Act of 1978 [Pub. L. 95-599, title I, § 147, Nov. 6, 1978, 92 Stat. 2714, set out as a note under section 144 of this title], section 9 of the Federal-Aid Highway Act of 1981 [section 9 of Pub. L. 97-134, which is not classified to the Code], subsections 131(b) and (j) of Public Law 97-424 [which are not classified to the Code], section 118 of the National Visitors Center Facilities Act of 1968 [section 818 of Title 40, Public Buildings, Property, and Works], section 320 of title 23, United States Code, or completion of the Zilwaukee Bridge required because of construction failure."

Pub. L. 98-473, title I, § 101(i) [title III, § 315], Oct. 12, 1984, 98 Stat. 1944, 1962, provided that:

"(a) For fiscal year 1985 the Secretary of Transportation shall distribute the obligation limitation for Federal-aid highways by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to each State for such fiscal year bear to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year.

"(b) During the period October 1 through December 31, 1984, no State shall obligate more than 40 per centum of the amount distributed to such State under subsection (a), and the total of all State obligations during such period shall not exceed 25 per centum of the total amount distributed to all States under such subsection.

"(c) Notwithstanding subsections (a) and (b), the Secretary shall—

"(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned to a State, except in those instances in which a State indicates its intention to lapse sums apportioned under section 104(b)(5)(A) of title 23, United States Code.

"(2) after August 1, 1985, revise a distribution of the funds made available under subsection (a) if a State will not obligate the amount distributed during that fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year giving priority to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 [Pub. L. 97-424, see Short Title of 1983 Amendment note set out under section 101 of this title] and the Federal-Aid Highway Act of 1981 [Pub. L. 97-134, see Short Title of 1981 Amendment note set out under section 101 of this title], have experienced substantial proportional reductions in their apportionments and allocations.

"(3) not distribute amounts authorized for administrative expenses and the Federal Lands Highway Programs."

Pub. L. 98-78, title I, § 101, Aug. 15, 1983, 97 Stat. 460, provided that:

"(a) Notwithstanding any other provision of law, the total of all obligations for Federal-aid highways and highway safety construction programs for fiscal year 1984 shall not exceed $12,600,000,000, except that this limitation shall not apply to obligations for emergency relief under section 125 of title 23, United States Code, projects covered under section 147 of the Surface Transportation Assistance Act of 1978 [Pub. L. 95-599, title I, 147, Nov. 6, 1978, 92 Stat. 2714, set out as a note under section 144 of this title], section 9 of the Federal-Aid Highway Act of 1981 [section 9 of Pub. L. 97-134, which is not classified to the Code], subsections 131 (b) and (j) of Public Law 97-424 [which are note classified to the Code], section 118 of the National Visitors Center Facilities Act of 1968 [section 818 of Title 40, Public Buildings, Property, and Works], section 320 of title 23, United States Code, or section 157 of title 23, United States Code.

"(b) For fiscal year 1984 the Secretary of Transportation shall distribute the limitation imposed by subsection (a) by allocation in the ratio which sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to each State for such fiscal year bears to the total of the sums authorized to be appropriated for Federal-aid highways and highway safety construction which are apportioned or allocated to all the States for such fiscal year.

"(c) During the period October 1 through December 31, 1983, no State shall obligate more than 35 per centum of the amount distributed to such State under subsection (b), and the total of all State obligations during such period shall not exceed 25 per centum of the total amount distributed to all States under such subsection.

"(d) Notwithstanding subsections (b) and (c), the Secretary shall—

"(1) provide all States with authority sufficient to prevent lapses of sums authorized to be appropriated for Federal-aid highways and highway safety construction which have been apportioned to a State, except in those instances in which a State indicates its intention to lapse sums apportioned under section 104(b)(5)(A) of title 23, United States Code;

"(2) after August 1, 1984, revise a distribution of the funds made available under subsection (b) if a State will not obligate the amount distributed during the fiscal year and redistribute sufficient amounts to those States able to obligate amounts in addition to those previously distributed during that fiscal year giving priority to those States having large unobligated balances of funds apportioned under section 104 of title 23, United States Code, and giving priority to those States which, because of statutory changes made by the Surface Transportation Assistance Act of 1982 [Pub. L. 97-424, see Short Title of 1983 Amendment note set out under section 101 of this title] and the Federal-Aid Highway Act of 1981 [Pub. L. 97-134, see Short Title of 1981 Amendment note set out under section 101 of this title], have experienced substantial proportional reductions in their apportionments and allocations; and

"(3) not distribute amounts authorized for administrative expenses and the Federal Lands Highway Programs."

Pub. L. 98-78, title III, § 322, Aug. 15, 1983, 97 Stat. 474, provided that: "Notwithstanding any other provision of law, the limitation on total obligations for Federal-aid highways and highway safety construction programs for fiscal year 1984 contained in title I of this Act [see section 101 of Pub. L. 98-78, set out above] shall be reduced by $80,000,000."

Pub. L. 98-8, title I, § 100, Mar. 24, 1983, 97 Stat. 14, provided in part that: "Notwithstanding any other provision of law, the total of all obligations for Federal-aid highways and Highway safety construction programs for fiscal year 1983 shall not exceed $12,375,000,000: *Provided further*, That this limitation shall be administered in accordance with section 104 of Public Law 97-424 [set out above]."

Similar provisions for prior fiscal years were contained in the following acts:

1982—Section 3 of Pub. L. 97-134, as amended by Pub. L. 97-216, title I, § 101, July 19, 1982, 96 Stat. 187.

Pub. L. 97-35, title XI, § 1106, Aug. 13, 1981, 95 Stat. 624, as amended by Pub. L. 97-424, title I, § 104(e), Jan. 6, 1983, 96 Stat. 2099.

APPORTIONMENT FACTORS FOR EXPENDITURES ON NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

Provisions requiring the Secretary of Transportation to apportion for specific fiscal years sums authorized to be appropriated for such fiscal years by section 108(b) of the Federal-Aid Highway Act of 1956, set out as a note under section 101 of this title, for expenditures on the National System of Interstate and Defense Highways using the apportionment factors contained in certain tables in particular committee prints of the Committee on Public Works and Transportation of the House of Representatives were contained in the following acts:

Pub. L. 98-229, § 1, Mar. 9, 1984, 98 Stat. 55.

MINIMUM APPORTIONMENT TO EACH STATE; EXPENDITURE OF EXCESS AMOUNTS

Provisions entitling each State, for specific fiscal years, to receive at least one-half of 1 per centum of the total apportionment for the Interstate System under section 104(b)(5)(A) of this title, and authorizing States to expend amounts available under these provisions which are in excess of the estimated cost of completing and of necessary resurfacing, restoring, and rehabilitating the State's portion of the Interstate System for the purposes for which funds apportioned under section 104(b)(1), (2), and (6) of this title may be expended or for carrying out section 152 of this title were contained in the following acts:

Pub. L. 97-424, title I, § 103(a), Jan. 6, 1983, 96 Stat. 2097.

Pub. L. 97-327, § 4(b), Oct. 15, 1982, 96 Stat. 1612; repealed Pub. L. 97-424, title I, § 103(b), Jan. 6, 1983, 96 Stat. 2098.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 115, 116, 118, 119, 120, 126, 129, 130, 131, 136, 137, 139, 140, 141, 142, 146, 150, 152, 154, 157, 158, 204, 217, 307, 309, 311, 321 of this title.

§ 114. Construction

AMENDMENT OF SUBSECTION (b)

Pub. L. 98-473, title II, §§ 226, 235(a)(1), Oct. 12, 1984, 98 Stat. 2030, 2031, provided that, effective on the first day of the first calendar month beginning twenty-four months after Oct. 12, 1984 (Nov. 1, 1986), subsection (b) of this section is amended by adding ", supervised release," after "parole".

MATERIALS PRODUCED BY CONVICT LABOR

Pub. L. 98-411, title II, § 202, Aug. 30, 1984, 98 Stat. 1558, provided that: "Notwithstanding any other provision of law or this Act, materials produced by convict labor may be used in the construction of any highways or portion of highways located on Federal-aid systems, as described in section 103 of title 23, United States Code."

Similar provisions were contained in the following prior appropriation act:

Pub. L. 98-166, title II, § 202, Nov. 28, 1983, 97 Stat. 1085.

§ 119. Interstate System resurfacing

(a) The Secretary may approve projects for resurfacing, restoring, rehabilitating, and reconstructing routes on the Interstate System designated under sections 103 and 139(c) of this title and routes on the Interstate System designated before the date of enactment of this sentence under section 139(a) and (b) of this title; except that the Secretary may only approve a project pursuant to this subsection on a toll road if such road is subject to a Secretarial agreement provided for in section 105 of the Federal-Aid Highway Act of 1978. Sums authorized to be appropriated for this section shall be out of the Highway Trust Fund and shall be apportioned in accordance with section 104(b)(5)(B) of this title. The Federal share for any project under this subsection shall be that set forth in section 120(c) of this title.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-229, § 8(b), Mar. 9, 1984, 98 Stat. 56.)

REFERENCES IN TEXT

The date of enactment of this sentence, referred to in subsec. (a), means the date of enactment of Pub. L. 98-229, which was approved Mar. 9, 1984.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-229 substituted provision authorizing the Secretary to approve projects designated under sections 103 and 139(c) of this title and routes on the Interstate System designated before Mar. 9, 1984, under section 139(a) and (b) of this title for provision authorizing the Secretary, beginning with funds apportioned for the fiscal year 1980, to approve projects under sections 103 and 139(c) of this title and, beginning with funds apportioned for fiscal year 1984, to approve routes or portions thereof on the Interstate System designated before Jan. 6, 1983, under section 139(a) of this title, which routes or portions were so designated in conjunction with the withdrawal of approval of another route or portion on the Interstate System under section 103(e)(4) of this title and provision that the Federal share be that as set forth in section 120(c) of this title for provision that the Federal share be that as set forth in section 120(a) of this title and that effective on or after Dec. 29, 1981, the Federal share be that as set forth in section 120(c) of this title.

§ 120. Federal share payable

[*See main edition for text of* (*a*) *to* (*i*)]

(j) Nothwithstanding [7] any other provision of this section (other than subsection (i)), of this title, or of any other law, in any case where a State elects to use funds apportioned to it for any Federal-aid system for any project under sections 143, 148, and 155, of this title and for those priority primary routes under section 147 of this title designated in Committee Print Numbered 97-61 of the Committee on Public Works and Transportation of the House of Representatives, and for funds allocated under the provisions of section 155 of this title and obligated subsequent to January 6, 1983,,[7] the Federal share payable on account of such project shall be 95 per centum of the cost thereof, unless—

[*See main edition for text of* (*1*) *and* (*2*); (*k*)]

(As amended Pub. L. 98-78, title III, § 318, Aug. 15, 1983, 97 Stat. 473.)

AMENDMENTS

1983—Subsec. (j). Pub. L. 98-78 inserted ", and for funds allocated under the provisions of section 155 of this title and obligated subsequent to January 6, 1983," after "Representatives".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 107, 108, 119, 121, 122, 125, 130, 142, 147, 148, 154, 307 of this title; title 42 section 3338.

§ 127. Vehicle weight limitations—Interstate System

STATE-IMPOSED VEHICLE WIDTH LIMITATIONS

Pub. L. 97-369, title III, § 321, Dec. 18, 1982, 96 Stat. 1784, which related to State-imposed vehicle width limitations, was repealed by Pub. L. 98-17, § 2, Apr. 5, 1983, 97 Stat. 60. See section 2316 of Title 49, Appendix, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 141 of this title; title 49 App. section 2315.

§ 139. Additions to Interstate System

(a) Whenever the Secretary determines that a highway on the Federal-aid primary system meets all of the standards of a highway on the Interstate System and that such highway is a logical addition or connection to the Interstate System, he may, upon the affirmative recommendation of the State or States involved, designate such highway as a part of the Interstate System. The mileage of any highway designated as part of the Interstate System under this section shall not be charged against the limitation established by the first sentence of section 103(e) of this title. The designation of a highway as part of the Interstate System under this subsection shall create no Federal financial responsibility with respect to such highway; except that any State may use funds available to it under sections 104(b)(1) and 104(b)(5)(B) of this title for the resurfacing, restoring, rehabilitating, and reconstructing of any highway designated as a route on the Interstate System under this subsection before the date of enactment of this sentence.

(b) Whenever the Secretary determines that a highway on the Federal-aid primary system would be a logical addition or connection to the Interstate System and would qualify for designation as a route on that system in the same manner as set forth in paragraph 1 of subsection (e) of section 103 of this title, he may upon the affirmative recommendation of the State or States involved designate such highway as a future part of the Interstate System. Such designation shall be made only upon the written agreement of the State or States involved that such highway will be constructed to meet all the standards of a highway on the Interstate System within twelve years of the date of the agreement between the Secretary and the State or States involved. The mileage of any highway designated as a future part of the Interstate System under this subsection shall not be charged against the limitations established by the first sentence of section 103(e) of this title. The designation of a highway as part of the Interstate System under this subsection shall create no Federal financial responsibility with respect to such highway; except that any State may use funds available to it under sections 104(b)(1) and 104(b)(5)(B) of this title for the resurfacing, restoring, rehabilitating, and reconstructing of any highway designated as a route on the Interstate System under this subsection before the date of enactment of this sentence. In the event that the State or States involved have not substantially completed the construction of any highway designated under this subsection within the time provided for in the agreement between the Secretary and State or States involved, the Secretary shall remove the designation of such highway as a future part of the Interstate System. Removal of such designation as result of failure to comply with the agreement provided for in this subsection shall in no way prohibit the Secretary from designating such route as part of the Interstate System pursuant to subsection (a) of this section or under any other provision of law providing for addition to the Interstate System. No law, rule, regulation, map, document, or other record of the United States, or of any State or political subdivision thereof, shall refer to any highway under this section, nor shall any such highway be signed or marked, as a highway on the Interstate System until such time as such highway is constructed to the geometric and construction standards for the Interstate System and has been designated as a part of the Interstate System.

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[7] So in orginal.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-229, § 8(a), Mar. 9, 1984, 98 Stat. 56.)

References in Text

The date of enactment of this sentence, referred to in subsecs. (a) and (b), means the date of enactment of Pub. L. 98-229, which was approved Mar. 9, 1984.

Amendments

1984—Subsec. (a). Pub. L. 98-229 substituted "under this subsection" for "under this section", "highway; except" for "highway, except", "sections 104(b)(1) and 104(b)(5)(B) of this title" for "section 104(b)(1) of this title and, beginning with funds apportioned for fiscal year 1984, under section 104(b)(5)(B) of this title", and "highway designated as a route on the Interstate System under this subsection before the date of enactment of this sentence" for "route or any portion thereof on the Interstate System on which a project may be approved under the second sentence of section 119(a) of this title".

Subsec. (b). Pub. L. 98-229 substituted provision that designation of a highway as part of the Interstate System under this subsection create no Federal financial responsibility with respect to such highway, except that any State may use funds available to it under sections 104(b)(1) and 104(b)(5)(B) of this title for resurfacing, restoring, rehabilitating, and reconstructing any highway designated as a route on the Interstate System under this subsection before the date of enactment of this sentence for provision that designation of a highway as a future part of the Interstate System under this subsection create no Federal financial responsibility, except that Federal-aid highway funds otherwise available to States for the construction of Federal-aid primary system highways be used for reconstruction of a highway designated as a route on the Interstate System under this subsection.

§ 158. National minimum drinking age

(a)(1) The Secretary shall withhold 5 per centum of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this title on the first day of the fiscal year succeeding the fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

(2) The Secretary shall withhold 10 per centum of the amount required to be apportioned to any State under each of sections 104(b)(1), 104(b)(2), 104(b)(5), and 104(b)(6) of this title on the first day of the fiscal year succeeding the second fiscal year beginning after September 30, 1985, in which the purchase or public possession in such State of any alcoholic beverage by a person who is less than twenty-one years of age is lawful.

(b) The Secretary shall promptly apportion to a State any funds which have been withheld from apportionment under subsection (a) of this section in [1] fiscal year if in any succeeding fiscal year such State makes unlawful the purchase or public possession of any alcoholic beverage by a person who is less than twenty-one years of age.

(c) As used in this section, the term "alcoholic beverage" means—

(1) beer as defined in section 5052(a) of the Internal Revenue Code of 1954,

(2) wine of not less than one-half of 1 per centum of alcohol by volume, or

(3) distilled spirits as defined in section 5002(a)(8) of such Code.

(Added Pub. L. 98-363, § 6(a), July 17, 1984, 98 Stat. 437.)

References in Text

The Internal Revenue Code of 1954, referred to in subsec. (c), is set out in Title 26, Internal Revenue Code.

CHAPTER 3—GENERAL PROVISIONS

§ 307. Research and planning

Access Control Demonstration Projects; Report to Congress; Appropriations Authorization

Pub. L. 95-599, title I, § 150, Nov. 6, 1978, 92 Stat. 2715, as amended by Pub. L. 97-424, title I, § 140, Jan. 6, 1983, 96 Stat. 2128; Pub. L. 98-78, title I, § 101, Aug. 15, 1983, 97 Stat. 459, provided that:

[*See main edition for text of* (*a*) *to* (*c*)]

"(d) Funds authorized by this section shall be available for obligation in the same manner and to the same extent as if such funds were apportioned under chapter 1 of title 23, United States Code: *Provided, however,* That sums shall not lapse until September 30, 1985."

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[1] So in original. Probably should be "in a".

CHAPTER 4—HIGHWAY SAFETY

§ 401. Authority of the Secretary

The Secretary is authorized and directed to assist and cooperate with other Federal departments and agencies, State and local governments, private industry, and other interested parties, to increase highway safety. For the purposes of this chapter, the term "State" means any one of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(As amended Pub. L. 98-363, § 3(b), July 17, 1984, 98 Stat. 436.)

AMENDMENTS

1984—Pub. L. 98-363 struck out ", except that all expenditures for carrying out this chapter in the Virgin Islands, Guam, and American Samoa shall be paid out of money in the Treasury not otherwise appropriated" after "and American Samoa".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 3(c) of Pub. L. 98-363 provided that: "The amendments made by subsections (a) and (b) [amending sections 401 and 402 of this title] shall apply to fiscal years beginning after the date of enactment of this Act [July 17, 1984]."

§ 402. Highway safety programs

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Funds authorized to be appropriated to carry out this section shall be used to aid the States to conduct the highway safety programs approved in accordance with subsection (a), including development and implementation of manpower training programs, and of demonstration programs that the Secretary determines will contribute directly to the reduction of accidents, and deaths and injuries resulting therefrom. Such funds shall be subject to a deduction not to exceed 5 per centum for the necessary costs of administering the provisions of this section, and the remainder shall be apportioned among the several States. For the fiscal years ending June 30, 1967, June 30, 1968, and June 30, 1969, such funds shall be apportioned 75 per centum on the basis of population and 25 per centum as the Secretary in his administrative discretion may deem appropriate and thereafter such funds shall be apportioned 75 per centum in the ratio which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 25 per centum in the ratio which the public road mileage in each State bears to the total public road mileage in all States. For the purposes of this subsection, a "public road" means any road under the jurisdiction of and maintained by a public authority and open to public travel. Public road mileage as used in this subsection shall be determined as of the end of the calendar year preceding the year in which the funds are apportioned and shall be certified to by the Governor of the State and subject to approval by the Secretary. The annual apportionment to each State shall not be less than one-half of 1 per centum of the total apportionment, except that the apportionments to the Virgin Islands, Guam, and American Samoa shall not be less than one-quarter of 1 per centum of the total apportionment. After December 31, 1969, the Secretary shall not apportion any funds under the subsection to any State which is not implementing a highway safety program approved by the secretary in accordance with this section. For the purpose of the seventh sentence of this subsection, a highway safety program approved by the Secretary shall not include any requirement that a State implement such a program by adopting or enforcing any law, rule, or regulation based on a standard promulgated by the Secretary under this section requiring any motorcycle operator eighteen years of age or older or passenger eighteen years of age or older to wear a safety helmet when operating or riding a motorcycle on the streets and highways of that State. Implementation of a highway safety program under this section shall not be construed to require the Secretary to require compliance with every uniform standard, or with every element of every uniform standard, in every State. Funds apportioned under this section to any State, that does not have a highway safety program approved by the Secretary or that is not implementing an approved program, shall be reduced by amounts equal to not less than 50 per centum of the amounts that would otherwise be apportioned to the State under this section, until such time as the Secretary approves such program or determines that the State is implementing an approved program, as appropriate. The Secretary shall consider the gravity of the State's failure to have or implement an approved program in determining the amount of the reduction. The Secretary shall promptly apportion to the State the funds withheld from its apportionment if he approves the State's highway safety program or determines that the State has begun implementing an approved program, as appropriate, prior to the end of the fiscal year for which the funds were withheld. If the Secretary determines that the State did not correct its failure within such period, the Secretary shall reapportion the withheld funds to the other States in accordance with the formula specified in this subsection not later than 30 days after such determination.

[*See main edition for text of* (*d*) *to* (*j*)]

(k)(1) Subject to the provisions of this subsection, the Secretary shall make a grant to any State which includes, as part of its highway safety program under section 402 of this title, the use of a comprehensive computerized safety recordkeeping system designed to correlate data regarding traffic accidents, drivers, motor vehicles, and roadways. Any such grant may only be used by such State to establish and maintain a comprehensive computerized traffic safety recordkeeping system or to obtain and operate components to support highway safety priority programs identified by the Secretary under this section. Notwithstanding any other provision of law, if a report, list, schedule, or survey is prepared by or for a State or political subdivision thereof under this subsection, such report, list, schedule, or survey shall not be admitted as evidence or used in any suit or action for damages arising out of any matter mentioned in such report, list, schedule, or survey.

(2) No State may receive a grant under this subsection in more than two fiscal years.

(3) The amount of the grant to any State under this subsection for the first fiscal year such State is eligible for a grant under this subsection shall equal 10 per centum of the amount apportioned to such State for fiscal year 1985 under this section. The amount of a grant to any State under this subsection for the second fiscal year such State is eligible for a grant under this subsection shall equal 10 per centum of the amount apportioned to such State for fiscal year 1986 under this section.

(4) A State is eligible for a grant under this subsection if—

(A) it certifies to the Secretary that it has in operation a computerized traffic safety recordkeeping system and identifies proposed means of upgrading the system acceptable to the Secretary; or

(B) it provides to the Secretary a plan acceptable to the Secretary for establishing and maintaining a computerized traffic safety recordkeeping system.

(5) The Secretary, after making the deduction authorized by the second sentence of subsection (c) of this section for fiscal years 1985 and 1986, shall set aside 10 per centum of the remaining funds authorized to be appropriated to carry out this section for the purpose of making grants under this subsection. Funds set aside under this subsection shall remain available for the fiscal year authorized and for the succeeding fiscal year and any amounts remaining unexpended at the end of such period shall be apportioned in accordance with the provisions of subsection (c) of this section.

(As amended Pub. L. 98-363, §§ 3(a), 5, July 17, 1984, 98 Stat. 436.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-363, § 3(a), added ", except that the apportionments to the Virgin Islands, Guam, and American Samoa shall be not less than one-quarter of 1 per centum of the total apportionment" in sixth sentence.

Subsec. (k). Pub. L. 98-363, § 5, added subsec. (k).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 3(a) of Pub. L. 98-363 applicable to fiscal years beginning after July 17, 1984, see section 3(c) of Pub. L. 98-363, set out as a note under section 401 of this title.

SPECIAL PARKING PRIVILEGES FOR HANDICAPPED PERSONS

Pub. L. 98-78, title III, § 321, Aug. 15, 1983, 97 Stat. 473, provided that:

"(a) The Congress finds that—

"(1) in this Nation there exist millions of handicapped people with severe physical impairments including partial paralysis, limb amputation, chronic heart condition, emphysema, arthritis, rheumatism, and other debilitating conditions which greatly limit their personal mobility;

"(2) these people reside in each of the several States and have need and reason to travel from one State to another for business and recreational purposes;

"(3) each State maintains the right to establish and enforce its own code of regulations regarding the appropriate use of motor vehicles operating within its jurisdiction;

"(4) within a given State handicapped individuals are oftentimes granted special parking privileges to help offset the limitations imposed by their physical impairment;

"(5) these special parking privileges vary from State to State as do the methods and means of identifying vehicles used by disabled individuals, all of which serve to impede both the enforcement of special parking privileges and the handicapped individual's freedom to properly utilize such privileges;

"(6) there are many efforts currently underway to help alleviate these problems through public awareness and administrative change as encouraged by concerned individuals and national associations directly involved in matters relating to the issue of special parking privileges for disabled individuals; and

"(7) despite these efforts the fact remains that many States may need to give the matter legislative consideration to ensure a proper resolution of this issue, especially as it relates to law enforcement and placard responsibility.

"(b) The Congress encourages each of the several States working through the National Governors Conference to—

"(1) adopt the International Symbol of Access as the only recognized and adopted symbol to be used to identify vehicles carrying those citizens with acknowledged physical impairments;

"(2) grant to vehicles displaying this symbol the special parking privileges which a State may provide; and

"(3) permit the International Symbol of Access to appear either on a specialized license plate, or on a specialized placard placed in the vehicles so as to be clearly visible through the front windshield, or on both such places.

"(c) It is the sense of the Congress that agreements of reciprocity relating to the special parking privileges granted handicapped individuals should be developed and entered into by and between the several States so as to—

"(1) facilitate the free and unencumbered use between the several States, of the special parking privileges afforded those people with acknowledged handicapped conditions, without regard to the State of residence of the handicapped person utilizing such privilege;

"(2) improve the ease of law enforcement in each State of its special parking privileges and to facilitate the handling of violators; and

"(3) ensure that motor vehicles carrying individuals with acknowledged handicapped conditions be given fair and predictable treatment throughout the Nation.

"(d) As used in this section the term 'State' means the several States and the District of Columbia.

"(e) The Secretary of Transportation shall provide a copy of this section to the Governor of each State and the Mayor of the District of Columbia."

§ 408. Alcohol traffic safety programs

(a) Subject to the provisions of this section, the Secretary shall make grants to those States which adopt and implement effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol or a controlled substance. Such grants may only be used by recipient States to implement and enforce such programs.

[*See main edition for text of* (*b*)]

(c) No State may receive grants under this section in more than three fiscal years. The Federal share payable for any grant under this section shall not exceed—

(1) in the first fiscal year the State receives a grant under this section, 75 per centum of the cost of implementing and enforcing in such fiscal year the alcohol and controlled substance traffic safety program adopted by the State pursuant to subsection (a);

[*See main edition for text of* (*2*) *and* (*3*)]

(d) [*See main edition for text of* (*1*) *and* (*2*)]

(3) Subject to subsection (c), the amount of a special grant made under this section for any fiscal year to any State which is eligible for such a grant under subsection (e)(3) shall not exceed 5 per centum of the amount apportioned to such State for fiscal year 1984 under sections 402 and 408 of this title. Such grant shall be in addition to any basic or supplemental grant received by such State.

(e) [*See main edition for text of* (*1*) *and* (*2*)]

(3) For the purposes of this section, a State is eligible for a special grant if the State enacts a statute which provides that—

(A) any person convicted of a first violation of driving under the influence of alcohol shall receive—

(i) a mandatory license suspension for a period of not less than ninety days; and either

(ii)(I) an assignment of one hundred hours of community service; or

(II) a minimum sentence of imprisonment for forty-eight consecutive hours;

(B) any person convicted of a second violation of driving under the influence of alcohol within five years after a conviction for the same offense, shall receive a mandatory minimum sentence of imprisonment for ten days and license revocation for not less than one year;

(C) any person convicted of a third or subsequent violation of driving under the influence of alcohol within five years after a prior conviction for the same offense shall—

(i) receive a mandatory minimum sentence of imprisonment for one hundred and twenty days; and

(ii) have his license revoked for not less than three years; and

(D) any person convicted of driving with a suspended or revoked license or in violation of a restriction due to driving under the influence of alcohol conviction shall receive a mandatory sentence of imprisonment for at least thirty days, and shall upon release from imprisonment, receive an additional period of license suspension or revocation of not less than the period of suspension or revocation remaining in effect at the time of commission of the offense of driving with a suspended or revoked license.

(f) The Secretary shall, by rule, establish criteria for effective programs to reduce traffic safety problems resulting from persons driving while under the influence of alcohol, which criteria shall be in addition to those required for a basic grant under subsection (e)(1). The Secretary shall establish such criteria in cooperation with the States and political subdivisions thereof, appropriate Federal departments and agencies, and such other public and nonprofit organizations as the Secretary may deem appropriate. Such criteria may include, but need not be limited to, requirements—

[*See main edition for text of* (*1*) *to* (*6*)]

(7) for the consideration of and, where consistent with other provisions of State law and constitution the adoption of, recommendations that the Presidential Commission on Drunk Driving may issue during the period in which rules are being made to carry out this section; and

(8) for the creation and operation of rehabilitation and treatment programs for those arrested and convicted of driving while under the influence of a controlled substance or for the establishment of research programs to develop effective means of detecting use of controlled substances by drivers.

[*See main edition for text of* (*g*)]

(As amended Pub. L. 98-363, §§ 4, 7, July 17, 1984, 98 Stat. 436, 438.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-363, §§ 4(a), 7(a), struck out "basic and supplemental" after "Secretary shall make" and added "or a controlled substance" after "alcohol".

Subsec. (c)(1). Pub. L. 98-363, § 4(b), added "and controlled substance" after "alcohol".

Subsec. (d)(3). Pub. L. 98-363, § 7(b), added par. (3).

Subsec. (e)(3). Pub. L. 98-363, § 7(c), added par. (3).

Subsec. (f)(8). Pub. L. 98-363, § 4(c), added par. (8).

TITLE 24—HOSPITALS AND ASYLUMS

CHAPTER 4—SAINT ELIZABETHS HOSPITAL

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SUBCHAPTER I—ESTABLISHMENT AND MANAGEMENT; PENSIONS, MONEYS, AND APPROPRIATIONS

§ 161. Establishment

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(a), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 164. Omitted

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(a), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 165. Superintendent; disbursing agent; pension money of inmates

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(a), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 165a, 168 of this title.

§ 165a. Superintendent; authority to reside off premises

On and after October 1, 1983, the superintendent of Saint Elizabeths Hospital may reside off the premises of the hospital, notwithstanding section 165 of this title.

(Pub. L. 98-139, title II, § 200, Oct. 31, 1983, 97 Stat. 881.)

CODIFICATION

"On and after October 1, 1983" was substituted in text for "during fiscal year 1984 and thereafter".

§ 166. Deputy disbursing agent; appointment; powers

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(b), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 168. Readjustment of salaries; credit to accounts of disbursing agent

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(c), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 168a. Payment by executive departments for care of patients for whom responsible

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(d)(1), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 168b. Collection of costs of services from individuals, District of Columbia, Executive agencies, and other entities

The Secretary of Health and Human Services may set rates for inpatient and outpatient services provided through Saint Elizabeths Hospital that in the aggregate do not exceed the estimated total cost of providing such services, and may bill and collect from (prospectively or otherwise) individuals, the District of Columbia, Executive agencies and other entities for any services so provided. Amounts so collected shall be credited to the appropriation for Saint Elizabeths Hospital and shall remain available until expended.

(Pub. L. 98-619, title II, § 200, Nov. 8, 1984, 98 Stat. 3314.)

CODIFICATION

Section is from the appropriation act cited as the credit to this section.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior appropriation acts:

Pub. L. 98-139, title II, § 200, Oct. 31, 1983, 97 Stat. 881.

Pub. L. 97-377, title I, § 101(e)(1) [title II, § 200], Dec. 21, 1982, 96 Stat. 1878, 1887.

§ 169. Disposition of money paid for care of patients

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(d)(1), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 169a. Facilities for feeding employees and others; disposition of proceeds

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(d)(1), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 170. Disbursement of appropriations for insane

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(a), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 171. Determining per capita cost of patients

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(e), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 172. Sale of surplus products and waste materials

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(f)(1), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 175. Telephone system

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(g), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 176. Disposition of articles made by patients

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(c), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 177. Disposition of moneys belonging to deceased inmates; claims thereto

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(h), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 180. American Red Cross buildings on hospital reservation

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(i), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 181. Gifts; acceptance by Secretary of Health and Human Services

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(j), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 182. Gifts of money; deposit, investment, and expenditure of income

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(j), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 183. Intangible personalty; deposit, liquidation, and expenditure of income

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(j), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 184. Realty or tangible personalty; use, lease, liquidation, etc.

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(j), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 185. Appropriations, availability for various expenditures

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(d)(1), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

SUBCHAPTER II—INMATES; BURDEN OF EXPENSES THEREOF; DETENTION OF INSANE

§ 191. Admission; insane persons of Army, Navy, Air Force, Marine Corps, and Coast Guard

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(a), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 192. Admission; insane prisoners of war and interned persons

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(k), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 194. Admission of insane inmates of Soldiers' and Airmen's Home

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(l), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 195. Admission of insane inmates of National Home for Disabled Volunteer Soldiers

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(f)(2), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 195a. Admission of beneficiaries of Bureau of Indian Affairs

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(d)(1), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 196. Transfer of American citizens adjudged insane in Canal Zone

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(m), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 196b. Transfer of persons adjudged insane in Virgin Islands

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(n), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 197. Contracts for care, maintenance, and treatment of insane members of Army

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(o), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 198. Care of insane natives of Philippine Islands serving in Army

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(p), 11(b), Nov. 8, 1984, 98 Stat. 3381, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 199. Transfer of insane from military hospitals to nearest public hospitals

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(k)(2), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 200. Transfer of part of appropriations to public hospitals for support of patients

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(k)(2), 11(b), Nov. 8, 1984, 98 Stat. 3380, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§§ 201 to 204. Omitted

REPEAL OF SECTIONS

Pub. L. 98-621, §§ 10(a), (u), (v), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3381, 3382, provided that, effective Oct. 1, 1987, sections 201 to 204 are repealed.

§ 206. Omitted

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(a), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

CODIFICATION

Section, R.S. § 4850, related to admission of nonresidents of District of Columbia.

§ 207. Omitted

CODIFICATION

Section, acts Jan. 31, 1899, ch. 78, § 7, 30 Stat. 811; July 1, 1916, ch. 209, § 1, 39 Stat. 309, related to return of nonresident indigent insane in District of Columbia.

Section, which had been set out as section 17 of Title 16 of the 1929 edition of the D.C. Code, was omitted from the 1940 edition of the D.C. Code as superseded by section 8 of Act Aug. 9, 1939, ch. 620, 53 Stat. 1297 (D.C. Code, § 21-317). The Act of Aug. 9, 1939, was repealed by Pub. L. 88-597, § 19(a), Sept. 15, 1964, 78 Stat. 953.

§ 211. Admission of insane persons accused of crime

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(a), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 211a. Admission of insane convicts

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(a), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 211b. Insane persons accused of crime; delivery to court on restoration to sanity

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(a), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 212. Transfer of insane convicts

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(f)(2), (q), 11(b), Nov. 8, 1984, 98 Stat. 3380-3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 213. Accommodation of insane convict in State asylums; compensation

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(q), 11(b), Nov. 8, 1984, 98 Stat. 3381, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 214. Return to prison on restoration to sanity

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(q), 11(b), Nov. 8, 1984, 98 Stat. 3381, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 221. Discharge of patients on bond

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(a), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

§ 222. Omitted

REPEAL OF SECTION

Pub. L. 98-621, §§ 10(a), 11(b), Nov. 8, 1984, 98 Stat. 3379, 3382, provided that, effective Oct. 1, 1987, this section is repealed.

SUBCHAPTER III—MENTAL HEALTH SERVICE FOR DISTRICT OF COLUMBIA

§ 225. Findings and purposes

(a) The Congress makes the following findings:

(1) Governmentally administered mental health services in the District of Columbia are currently provided through two separate public entities, the federally administered Saint Elizabeths Hospital and the Mental Health Services Administration of the District of Columbia Department of Human Resources.

(2) The District of Columbia has a continuing responsibility to provide mental health services to its residents.

(3) The Federal Government, through its operation of a national mental health program at Saint Elizabeths Hospital, has for over 100 years assisted the District of Columbia in carrying out that responsibility.

(4) Since its establishment by Congress in 1855, Saint Elizabeths Hospital has developed into a respected national mental health hospital and study, training, and treatment center, providing a range of quality mental health and related services, including—

(i) acute and chronic inpatient psychiatric care;

(ii) outpatient psychiatric and substance abuse clinical and related services;

(iii) Federal court system forensic psychiatry referral, evaluation, and patient treatment services for prisoners, and for individuals awaiting trial or requiring post-trial or post-sentence psychiatric evaluation;

(iv) patient care and related services for designated classes of individuals entitled to mental health benefits under Federal law, such as certain members and employees of the United States Armed Forces and the Foreign Service, and residents of American overseas dependencies;

(v) District of Columbia court system forensic psychiatry referral, evaluation, and patient treatment services for prisoners, and for individuals awaiting trial or requiring post-trial or postsentence psychiatric evaluation;

(vi) programs for special populations such as the mentally ill deaf;

(vii) support for basic and applied clinical psychiatric research and related patient services conducted by the National Institute of Mental Health and other institutions; and

(viii) professional and paraprofessional training in the major mental health disciplines.

(5) The continuation of the range of services currently provided by federally administered Saint Elizabeths Hospital must be assured, as these services are integrally related to—

(i) the availability of adequate mental health services to District of Columbia residents, nonresidents who require mental health services while in the District of Columbia, individuals entitled to mental health services under Federal law, and individuals referred by both Federal and local court systems; and

(ii) the Nation's capacity to increase our knowledge and understanding about mental illness and to facilitate and continue the development and broad availability of sound and modern methods and approaches for the treatment of mental illness.

(6) The assumption of all or selected functions, programs, and resources of Saint Elizabeths Hospital from the Federal Government by the District of Columbia, and the integration of those functions, resources, and programs into a comprehensive mental health care system administered solely by the District of Columbia, will improve the efficiency and effectiveness of the services currently provided through those two separate entities by shifting the primary focus of care to an integrated community-based system.

(7) Such assumption of all or selected functions, programs, and resources of Saint Elizabeths Hospital by the District of Columbia would further the principle of home rule for the District of Columbia.

(b) It is the intent of Congress that—

(1) the District of Columbia have in operation no later than October 1, 1991, an integrated coordinated mental health system in the District which provides—

(A) high quality, cost-effective, and community-based programs and facilities;

(B) a continuum of inpatient and outpatient mental health care, residential treatment, and support services through an appropriate balance of public and private resources; and

(C) assurances that patient rights and medical needs are protected;

(2) the comprehensive District mental health care system be in full compliance with the Federal court consent decree in Dixon v. Heckler;

(3) the District and Federal Governments bear equitable shares of the costs of a transition from the present system to a comprehensive District mental health system;

(4) the transition to a comprehensive District mental health system provided for by this subchapter be carried out with maximum consideration for the interests of employees of the Hospital and provide a right-of-first-refusal to such employees for employment at comparable levels in positions created under the system implementation plan;

(5) the Federal Government have the responsibility for the retraining of Hospital employees to prepare such employees for the requirements of employment in a comprehensive District mental health system;

(6) the Federal Government continue high quality mental health research, training, and demonstration programs at Saint Elizabeths Hospital;

(7) the District government establish and maintain accreditation and licensing standards for all services provided in District mental health facilities which assure quality care consistent with appropriate Federal regulations and comparable with standards of the Joint Commission on Accreditation of Hospitals; and

(8) the comprehensive mental health system plan include a component for direct services for the homeless mentally ill.

(Pub. L. 98-621, § 2, Nov. 8, 1984, 98 Stat. 3369.)

REFERENCES IN TEXT

This subchapter "referred to in subsec. (b)(4), was in the original, "this Act", meaning Pub. L. 98-621, Nov. 8, 1984, 98 Stat. 3369, known as the Saint Elizabeths Hospital and District of Columbia Mental Health Services Act. For complete classification of this Act to the Code, see Short Title note below and Tables.

EFFECTIVE DATE

Section 11 of Pub. L. 98-621 provided that:

"(a) Except as provided in subsection (b), this Act [see Short Title note below] shall take effect on October 1, 1985."

"(b) Section 10 [amending section 324 of this title and repealing sections 161, 164 to 166, 168, 168a, 169, 169a, 170 to 172, 175 to 177, 180 to 185, 191, 192, 194, 195, 195a, 196, 196b, 197 to 204, 206, 211 to 214, 221, and 222 of this title and section 300aa-3 of Title 42, The Public Health and Welfare] shall take effect on October 1, 1987."

SHORT TITLE

Section 1 of Pub. L. 98-621 provided that: "This Act [enacting this subchapter, amending section 324 of this title, repealing sections 161, 164 to 166, 168, 168a, 169, 169a, 170 to 172, 175 to 177, 180 to 185, 191, 192, 194, 195, 195a, 196, 196b, 197 to 204, 206, 211 to 214, 221, and 222 of this title and section 300aa-3 of Title 42, The Public Health and Welfare] may be cited as the 'Saint Elizabeths Hospital and District of Columbia Mental Health Services Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 225c, 225f of this title.

§ 225a. Definitions

For the purpose of this subchapter:

(1) The term "Hospital" means the institution in the District of Columbia known as Saint Elizabeths Hospital operated on November 8, 1984, by the Secretary of Health and Human Services.

(2) The term "Secretary" means the Secretary of Health and Human Services.

(3) The term "Mayor" means the Mayor of the District of Columbia.

(4) The term "District" means the District of Columbia.

(5) The term "Federal court consent decree" means the consent decree in Dixon v. Heckler, Civil Action No. 74-285.

(6) The term "service coordination period" means a period beginning on October 1, 1985, and terminating on October 1, 1987.

(7) The term "financial transition period" means a period beginning on October 1, 1985, and terminating on October 1, 1991.

(8) The term "system implementation plan" means the plan for a comprehensive mental health system for the District of Columbia to be developed pursuant to this subchapter.

(9) The term "Council" means the Council of the District of Columbia.

(Pub. L. 98-621, § 3, Nov. 8, 1984, 98 Stat. 3371.)

§ 225b. Development of plan for mental health system for the District

(a) Responsibility for mental health services; effective date; final system implementation plan; comprehensive mental health program

(1) Subject to subsection (g) of this section and section 225g(b)(1) of this title, effective October 1, 1987, the District shall be responsible for the provision of mental health services to residents of the District.

(2) Not later than October 1, 1991, the Mayor shall complete the implementation of the final system implementation plan reviewed by the Congress and the Council in accordance with the provisions of this subchapter for the establishment of a comprehensive District mental health system to provide mental health services and programs through community mental health facilities to individuals in the District of Columbia.

(b) Mayor; preliminary system implementation plan; final implementation plan; submission to and review by Council and Congressional committees

(1) The Mayor shall prepare a preliminary system implementation plan for a comprehensive mental health system no later than 3 months from October 1, 1985, and a final implementation plan no later than 12 months from October 1, 1985.

(2) The Mayor shall submit the preliminary system implementation plan to the Council no later than 3 months from October 1, 1985. The Council shall review such plan and transmit written recommendations to the Mayor regarding any revisions to such plan no later than 60 days after such submission. The Mayor shall submit the revised preliminary plan to the Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate for review and comment in accordance with the provisions of this subchapter.

(3) The final system implementation plan shall be considered by the Council consistent with the provisions of section 422(12) of the District of Columbia Self-Government and Governmental Reorganization Act [D.C. Code, § 1-242(12)].

(4) After the review of the Council pursuant to paragraph (3), the Mayor shall submit the final implementation plan to the Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate for review and comment in accordance with the provisions of this subchapter.

(c) Contents of system implementation plan

The system implementation plan shall—

(1) propose and describe an integrated, comprehensive, and coordinated mental health system for the District of Columbia;

(2) identify the types of treatment to be offered, staffing patterns, and the proposed sites for service delivery within the District of Columbia comprehensive mental health system;

(3) identify mechanisms to attract and retain personnel of appropriate number and quality to meet the objectives of the comprehensive mental health system;

(4) be in full compliance with the Federal court consent decree in Dixon v. Heckler and all applicable District of Columbia statutes and court decrees;

(5) identify those positions, programs, and functions at Saint Elizabeths Hospital which are proposed for assumption by the District, those facilities at Saint Elizabeths Hospital which are proposed for utilization by the District under a comprehensive District mental health system, and the staffing patterns and programs at community facilities to which the assumed functions are to be integrated;

(6) identify any capital improvements to facilities at Saint Elizabeths Hospital and elsewhere in the District of Columbia proposed for delivery of mental health services, which are necessary for the safe and cost effective delivery of mental health services; and

(7) identify the specific real property, buildings, improvements, and personal property to be transferred pursuant to section 225f(a)(1) of this title needed to provide mental health and other services provided by the Department of Human Services under the final system implementation plan.

(d) Consultation; labor-management advisory committee; public comments

(1) The Mayor shall develop the system implementation plan in close consultation with officials of Saint Elizabeths Hospital, through working groups to be established by the Secretary and the Mayor for that purpose.

(2) The Mayor and the Secretary shall establish a labor-management advisory committee, requesting the participation of Federal and District employee organizations affected by this subchapter, to make recommendations on the system implementation plan. The committee shall consider staffing patterns under a comprehensive District mental health care system, retention of Hospital employees under such system, Federal retraining for such employees, and any other areas of concern related to the establishment of a comprehensive District system. In developing the system implementation plan the Mayor shall carefully consider the recommendations of the committee. Such advisory committee shall not be subject to the Federal Advisory Committee Act.

(3) The Mayor and such working groups shall, in developing the plan, solicit comments from the public, which shall include professional organizations, provider agencies and individuals, and mental health advocacy groups in the District of Columbia.

(e) Shift of selected program responsibilities and staff resources; commercial activity proposals; exemption of certain studies

(1) The Mayor and the Secretary may, during the service coordination period, by mutual agreement and consistent with the require-

ments of the system implementation plan direct the shift of selected program responsibilities and staff resources from Saint Elizabeths Hospital to the District. The Secretary may assign staff occupying positions in affected programs to work under the supervision of the District. The Mayor shall notify the Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate in writing of any planned shift in program responsibilites or staff resources not less than 30 days prior to the implementation of such shift.

(2)(A) Except as provided in subparagraph (B), after October 1, 1984, and during the service coordination period, no request for proposals may be issued by the Secretary for any areas of commercial activity at the Hospital pursuant to Office of Management and Budget circular A-76.

(B) The limitation under subparagraph (A) shall not apply to studies initiated pursuant to such circular prior to October 1, 1984.

(f) Financial and physical audits; repairs and renovation; maintenance of facilities and infrastructure

(1) To assist the Mayor in the development of the system implementation plan, the Secretary shall contract for a financial audit and a physical plant audit of all existing facilities at the Hospital to be completed by January 1, 1986. The financial audit shall be conducted according to generally accepted accounting principles. The physical plant audit shall recognize any relevant national and District codes and estimate the useful life of existing facility support systems.

(2)(A) Pursuant to such physical plant audit, the Secretary shall initiate not later than October 1, 1987, and complete not later than October 1, 1991, such repairs and renovations to such physical plant and facility support systems of the Hospital as are to be utilized by the District under the system implementation plan as part of a comprehensive District mental health system, as are necessary to meet any applicable code requirements or standards.

(B) At a minimum until October 1, 1987, the Secretary shall maintain all other facilities and infrastructure of the Hospital not assumed by the District in the condition described in such audit.

(g) Service coordination period; responsibility for providing services

During the service coordination period, the District of Columbia and the Secretary, to the extent provided in the Federal court consent decree, shall be jointly responsible for providing citizens with the full range and scope of mental health services set forth in such decree and the system implementation plan. No provision of this subchapter or any action or agreement during the service coordination period may be so construed as to absolve or relieve the District or the Federal Government of their joint or respective responsibilities to implement fully the mandates of the Federal court consent decree.

(Pub. L. 98-621, § 4, Nov. 8, 1984, 98 Stat. 3371.)

References in Text

The Federal Advisory Committee Act, referred to in subsec. (d)(2), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in sections 225c, 225f, 225g of this title.

§ 225c. Congressional review of system implementation plan

(a) The Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate shall review the preliminary system implementation plan transmitted by the Mayor pursuant to section 225b of this title to determine the extent of its compliance with the provisions of section 225(b) of this title and section 225b of this title, and transmit written recommendations regarding any revisions to the preliminary plan to the Mayor not later than 60 days after receipt of such plan.

(b) The Committee on the District of Columbia of the House of Representatives and the Committee on Labor and Human Resources and the Committee on Governmental Affairs of the Senate shall, within 90 days of submission of the final system implementation plan by the Mayor pursuant to section 225b of this title, review such plan to determine the extent to which it is in compliance with the provisions of section 225(b) of this title and section 225b of this title.

(Pub. L. 98-621, § 5, Nov. 8, 1984, 98 Stat. 3374.)

§ 225d. Transition provisions for employees of Hospital

(a) Retirement opportunity

Employees of the Hospital directly affected by the assumption of programs and functions by the District government who meet the requirements for immediate retirement under the provisions of section 8336(d) of title 5 shall be accorded the opportunity to retire during the 30-day period prior to the assumption of such programs and functions.

(b) Specific number and types of positions; transfer to District employment

(1) The system implementation plan shall prescribe the specific number and types of positions needed by the District government at the end of the service coordination period.

(2) Notwithstanding section 3503 of title 5, employees of the Hospital shall only be transferred to District employment under the provisions of this section.

(c) Retention list; reemployment priority list; right-of-first-refusal; retention registers; employee appeals

(1) While on the retention list or the District or Federal agency reemployment priority list, the system implementation plan shall provide to Hospital employees a right-of-first-refusal to District employment in positions for which such employees may qualify, (A) created under

the system implementation plan in the comprehensive District mental health system, (B) available under the Department of Human Services of the District, and (C) available at the District of Columbia General Hospital.

(2) In accordance with Federal regulations, the Secretary shall establish retention registers of Hospital employees and provide such retention registers to the District government. Employment in positions identified in the system implementation plan under subsection (b) of this section shall be offered to Hospital employees by the District government according to each such employee's relative standing on the retention registers.

(3) Employee appeals concerning the retention registers established by the Secretary shall be in accordance with Federal regulations.

(4) Employee appeals concerning employment offers by the District shall be in accordance with the District of Columbia Government Comprehensive Merit Personnel Act of 1978 [D.C. Code, § 1-601 et seq.].

(d) Federal agency reemployment priority list; right-of-first-refusal; Department of Health and Human Services; separation; maintenance of lists; District agency reemployment priority list; refusal of employment offer; acceptance of nontemporary employment

(1) Notwithstanding any other provision of law, employees of the Hospital, while on the Federal agency reemployment priority list, shall have a right-of-first-refusal to employment in comparable available positions for which they qualify within the Department of Health and Human Services in the Washington metropolitan area.

(2) If necessary to separate employees of the Hospital from Federal employment, such employees may be separated only under Federal reduction-in-force procedures.

(3) A Federal agency reemployment priority list and a displaced employees program shall be maintained for employees of the Hospital by the Secretary and the Office of Personnel Management in accordance with Federal regulations for Federal employees separated by reduction-in-force procedures.

(4) The Mayor shall create and maintain, in consultation with the Secretary, a District agency reemployment priority list of those employees of the Hospital on the retention registers who are not offered employment under subsection (c) of this section. Individuals who refuse an offer of employment under subsection (c) of this section shall be ineligible for inclusion on the District agency reemployment priority list. Such reemployment priority list shall be administered in accordance with procedures established pursuant to the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139) [D.C. Code, § 1-601.1 et seq.].

(5) Acceptance of nontemporary employment as a result of referral from any retention list or agency reemployment priority list shall automatically terminate an individual's severance pay as of the effective date of such employment.

(e) Contracts; mental health services; preferences

Any contract entered into by the District of Columbia for the provision of mental health services formerly provided by or at the Hospital shall require the contractor or provider, in filling new positions created to perform under the contract, to give preference to qualified candidates on the District agency reemployment priority list created pursuant to subsection (d) of this section. An individual who is offered nontemporary employment with a contractor shall have his or her name remain on the District agency reemployment priority list under subsection (d) of this section for not more than 24 months from the date of acceptance of such employment.

(Pub. L. 98-621, § 6, Nov. 8, 1984, 98 Stat. 3374.)

REFERENCES IN TEXT

The District of Columbia Government Comprehensive Merit Personnel Act of 1978, referred to in subsecs. (c)(4) and (d)(4), is D.C. Law 2-139, Mar. 3, 1979, which appears in chapter 6 (§ 1-601.1 et seq.) of Title 1, Administration, of the District of Columbia Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 225e of this title.

§ 225e. Conditions of employment for former employees of Hospital

(a) Individuals accepting employment; without service breaks

Each individual accepting employment without a break in service with the District government pursuant to section 225d of this title shall—

(1) except as specifically provided in this subchapter, be required to meet all District qualifications other than licensure requirements for appointment required of other candidates, and shall become District employees in the comparable District service subject to the provisions of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 [D.C. Code, § 1-601.1 et seq.], and all other statutes and regulations governing District personnel;

(2) meet all licensure requirements within 18 months of appointment by the District government;

(3) notwithstanding chapter 63 of title 5, transfer accrued annual and sick leave balances pursuant to title XII of the District of Columbia Comprehensive Merit Personnel Act of 1978 [D.C. Code, § 1-613.1 et seq.];

(4) have the grade and rate of pay determined in accordance with regulations established pursuant to title XI of the District of Columbia Comprehensive Merit Personnel Act of 1978 [D.C. Code, § 1.612.1 et seq.], except that no employee shall suffer a loss in the basic rate of pay or in seniority;

(5) if applicable, retain a rate of pay including the physician's comparability allowance under the provisions of section 5948 of title 5, and continue to receive such allowance under the terms of the then prevailing agreement until its expiration or for a period of 2 years

from the date of appointment by the District government, whichever occurs later;

(6) be entitled to the same health and life insurance benefits as are available to District employees in the applicable service;

(7) if employed by the Federal Government before January 1, 1984, continue to be covered by the United States Civil Service Retirement System, under chapter 83 of title 5, to the same extent that such retirement system covers District Government [1] employees; and

(8) if employed by the Federal Government on or after January 1, 1984, be subject to the retirement system applicable to District government employees pursuant to title XXVI, Retirement, of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 [D.C. Code, § 1-627.1 et seq.].

(b) Exemption from residency requirements

An individual appointed to a position in the District government without a break in service, from the retention list, or from the District or Federal agency reemployment priority lists shall be exempt from the residency requirements of title VIII of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 [D.C. Code, § 1-608.1 et seq.].

(c) Compensation; work related injuries

An individual receiving compensation for work injuries pursuant to chapter 81 of title 5 shall—

(1) continue to have the claims adjudicated and the related costs paid by the Federal Government until such individual recovers and returns to duty;

(2) if medically recovered and returned to duty, have any subsequent claim for the recurrence of the disability determined and paid under the provisions of title XXIII of the District of Columbia Comprehensive Merit Personnel Act of 1978 [D.C. Code, § 1-624.1 et seq.].

(d) Actions by District against individuals accepting employment

The District government may initiate or continue an action against an individual who accepts employment under section 225d(c) of this title for cause related to events that occur prior to the end of the service coordination period. Any such action shall be conducted in accordance with such Federal laws and regulations under which action would have been conducted had the assumption of function by the District not occurred.

(e) Commissioned public health service officers

Commissioned public health service officers detailed to the District of Columbia mental health system shall not be considered employees for purposes of any full-time employee equivalency total of the Department of Health and Human Services.

(f) Former patient employees

For purposes of this section, Hospital employees shall include former patient employees occupying career positions at the Hospital.

(Pub. L. 98-621, § 7, Nov. 8, 1984, 98 Stat. 3375.)

REFERENCES IN TEXT

The District of Columbia Government Comprehensive Merit Personnel Act of 1978, referred to in subsecs. (a)(1), (3), (4), (8), (b) and (c), is D.C. Law 2-139, Mar. 3, 1979, appears in chapter 6 (§ 1-601.1 et seq.) of Title 1, Administration, of the District of Columbia Code. Titles XII, XI, XXVI, and VIII and XXIII of the District of Columbia Comprehensive Merit Personnel Act of 1978 appear in subchapters XIII (§ 1-613.1 et seq.), XII (§ 1-612.1 et seq.), XXVII (§ 1-627.1 et seq.), VIII (§ 1-608.1), and XXIV (§ 1-624.1 et seq.), respectively, of chapter 6 of Title 1.

§ 225f. Property transfer

(a) Authority of Secretary, exclusion of certain real property

(1) Except as provided in paragraph (2), on October 1, 1987, the Secretary shall transfer to the District, without compensation, all right, title, and interest of the United States in all real property at Saint Elizabeths Hospital in the District of Columbia together with any buildings, improvements, and personal property used in connection with such property needed to provide mental health and other services provided by the Department of Human Services indentified [2] pursuant to section 225b(c)(7) of this title.

(2) Such real property as is identified by the Secretary by September 30, 1987, as necessary to Federal mental health programs at Saint Elizabeths Hospital under section 225(b)(5) of this title shall not be transferred under this subsection.

(b) Preparation of master plan; consultation; approval; property transfer; exclusion of Oxon Park Cove

On or before October 1, 1991, the Mayor shall prepare, and submit to the Committee on the District of Columbia of the House of Representatives and the Committees on Governmental Affairs and Labor and Human Resources of the Senate, a master plan, not inconsistent with the comprehensive plan for the National Capital, for the use of all real property, buildings, improvements, and personal property comprising Saint Elizabeths Hospital in the District of Columbia not transferred or excluded pursuant to subsection (a) of this section. In developing such plan, the Mayor shall consult with, and provide an opportunity for review by, appropriate Federal, regional, and local agencies. Such master plan submitted by the Mayor shall be approved by a law enacted by the Congress within the twelve-month period following the date such plan is submitted to the Committee on the District of Columbia of the House of Representatives and the Committees on Governmental Affairs and Labor and Human Resources of the Senate. Immediately upon the approval of any such law, the Secretary shall transfer to the District, without compensation, all right, title, and interest of the United States in and to such property in accordance with such approved plan. The real property, together with the buildings and other improvements thereon, including personal property used in connection therewith, known as the Oxon Cove

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[1] So in original. Probably should be "government".

[2] So in original. Probably should be "identified".

Park and operated by the National Park Service, Department of the Interior, shall not be transferred under this subchapter.

(c) Transfer of J.B. Johnson Building and grounds

On October 1, 1985, the Secretary shall transfer to the District, without compensation, all right, title, and interest of the United States to lot 87, square 622, in the subdivision made by the District of Columbia Redevelopment Land Agency, as per plat recorded in the Office of the Surveyor for the District of Columbia, in liber 154 at folio 149 (901 First Street N.W., the J.B. Johnson Building and grounds).

(Pub. L. 98-621, § 8, Nov. 8, 1984, 98 Stat. 3377.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 225b of this title.

§ 225g. Financing provisions

(a) Authorization of appropriations

There are authorized to be appropriated for grants by the Secretary of Health and Human Services to the District of Columbia comprehensive mental health system, $30,000,000 for fiscal year 1988, $24,000,000 for fiscal year 1989, $18,000,000 for fiscal year 1990, and $12,000,000 for fiscal year 1991.

(b) Federal agencies; payments to District of costs for treatment of certain patients; responsibility of U.S. for service costs

(1) Beginning on October 1, 1987, and in each subsequent fiscal year, the appropriate Federal agency is directed to pay the District of Columbia the full costs for the provision of mental health diagnostic and treatment services for the following types of patients:

(A) Any individual referred to the system pursuant to a Federal statute or by a responsible Federal agency.

(B) Any individual referred to the system for emergency detention or involuntary commitment after being taken into custody (i) as a direct result of the individual's action or threat of action against a Federal official, (ii) as a direct result of the individual's action or threat of action on the grounds of the White House or of the Capitol, or (iii) under chapter 9 of title 21 of the District of Columbia Code.

(C) Any individual referred to the system as a result of a criminal proceeding in a Federal court (including an individual admitted for treatment, observation, and diagnosis and an individual found incompetent to stand trial or found not guilty by reason of insanity). The preceding provisions of this paragraph apply to any individual referred to the system (or to Saint Elizabeths Hospital) before or after November 8, 1984.

(2) The responsibility of the United States for the cost of services for individuals described in paragraph (1) shall not affect the treatment responsibilities to the District of Columbia under the Interstate Compact on Mental Health.

(c) Financial responsibility during coordination period

(1) During the service coordination and the financial transition periods, the District of Columbia shall gradually assume a greater share of the financial responsibility for the provision of mental health services provided by the system to individuals not described in subsection (b) of this section.

(2) Omitted

(d) Shared responsibility for capital improvements

Subject to section 225b(f)(2) of this title, capital improvements to facilities at Saint Elizabeths Hospital authorized during the service coordination period shall be the shared responsibility of the District and the Federal Government in accordance with Public Law 83-472.

(e) Unassigned liabilities; sole responsibility of Federal Government

Pursuant to the financial audit under section 225b(f) of this title, any unassigned liabilities of the Hospital shall be assumed by and shall be the sole responsibility of the Federal Government.

(f) Audit to determine liability of Federal Government for accrued annual leave balances; authorization of appropriations

(1) After the service coordination period, the Secretary shall conduct an audit, under generally accepted accounting procedures, to identify the liability of the Federal Government for accrued annual leave balances for those employees assumed by the District under the system implementation plan.

(2) There is authorized to be appropriated for payment by the Federal Government to the District an amount equal to the liability identified by such audit.

(g) Authority; District; collection of costs for mental health services

Nothing in this subchapter shall affect the authority of the District of Columbia under any other statute to collect costs billed by the District of Columbia for mental health services, except that payment for the same costs may not be collected from more than one party.

(h) Responsibility of United States for certain claims

The Government of the United States shall be solely responsible for—

(1) all claims and causes of action against Saint Elizabeths Hospital that accrue before October 1, 1987, regardless of the date on which legal proceedings asserting such claims were or may be filed, except that the United States shall, in the case of any tort claim, only be responsible for any such claim against the United States that accrues before October 1, 1987, and the United States shall not compromise or settle any claim resulting in District liability without the consent of the District, which consent shall not be unreasonably withheld; and

(2) all claims that result in a judgment or award against Saint Elizabeths Hospital before October 1, 1987.

(Pub. L. 98-621, § 9, Nov. 8, 1984, 98 Stat. 3377.)

REFERENCES IN TEXT

Public Law 83-472, referred to in subsec. (d), is act July 2, 1954, ch. 457, 68 Stat. 434, as amended, known as the Departments of Labor, and Health, Education, and Welfare Appropriation Act, 1955. Certain provisions of this Act relating to Saint Elizabeths Hospital and appearing at 68 Stat. 443, were repealed by section 10(d)(2) of Pub. L. 98-621 effective Oct. 1, 1987. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Subsec. (c)(2) of this section amended section 502 of the District of Columbia Self-Government and Governmental Reorganization Act (Pub. L. 93-198, title V, Dec. 24, 1973, 87 Stat. 813), which appears as section 47-3406 of Title 47, Taxation and Fiscal Affairs, of the District of Columbia Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 225b of this title.

CHAPTER 9—HOSPITALIZATION OF MENTALLY ILL NATIONALS RETURNED FROM FOREIGN COUNTRIES

§ 324. Care and treatment of eligible persons until transfer and release

AMENDMENT OF SUBSECTION (a)

Pub. L. 98-621, §§ 10(r), 11(b), Nov. 8, 1984, 98 Stat. 3381, 3382, provided that, effective Oct. 1, 1987, subsection (a) of this section is amended by substituting "any" for "Saint Elizabeths Hospital, at any other".

TITLE 25—INDIANS

Chap. Sec.
25. Old Age Assistance Claims Settlement . 2301

CHAPTER 1—BUREAU OF INDIAN AFFAIRS

Sec.
13b. Payment of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, and schools; payment of rewards.
13c. Source of funds to pay cost of lunches for nonboarding public school students.
13d. Limits on use of appropriated funds by Bureau for general or other welfare assistance.
13e. Expenses of exhibits; advance payments for services; termination of Federal supervision; treaty expenses.
14a. Deposit of grant funds received by Bureau from other Federal agencies.
16. Transportation of Indians in Bureau vehicles.

§ 13. Expenditure of appropriations by Bureau

SHORT TITLE

Act Nov. 2, 1921, which enacted this section, is popularly known as the Snyder Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13-1, 13a, 155b, 861c, 903a, 1809, 1813, 1912, 1933, 2306 of this title; title 40 App. section 214.

§ 13b. Payment of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, and schools; payment of rewards

On and after October 12, 1984, funds appropriated under this or any other Act for the Bureau of Indian Affairs may be used for the payment in advance or from date or admission of care, tuition, assistance, and other expenses of Indians in boarding homes, institutions, or schools; and the payment of rewards for information or evidence concerning violations of law on Indian reservation lands or treaty fishing rights use areas.

(Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1848.)

§ 13c. Source of funds to pay cost of lunches for nonboarding public school students

On and after October 12, 1984, any cost of providing lunches to nonboarding students in public schools from funds appropriated under this or any other Act for the Bureau of Indian Affairs shall be paid from the amount of such funds otherwise allocated for the schools involved without regard to the cost of providing lunches for such students.

(Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1848.)

§ 13d. Limits on use of appropriated funds by Bureau for general or other welfare assistance

After September 30, 1985, no part of any appropriation (except trust funds) to the Bureau of Indian Affairs may be used directly or by contract for general or other welfare assistance (except child welfare assistance) payments (1) for other than essential needs (specifically identified in regulations of the Secretary or in regulations of the State public welfare agency pursuant to the Social Security Act [42 U.S.C. 301 et seq.] adopted by reference in the Secretary's regulations) which could not be reasonably expected to be met from financial resources or income (including funds held in trust) available to the recipient individual which are not exempted under law from consideration in determining eligibility for or the amount of Federal financial assistance or (2) for individuals who are eligible for general public welfare assistance available from a State except to the extent the Secretary of the Interior determines that such payments are required under sections 6(b)(2), 6(i), and 9(b) of the Maine Indian Claims Settlement Act of 1980 (94 Stat. 1793, 1794, 1796; 25 U.S.C. 1725(b)(2), 1725(i), 1728(b)).

(Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1848.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§ 13e. Expenses of exhibits; advance payments for services; termination of Federal supervision; treaty expenses

On and after October 12, 1984, such appropriations [appropriations for the Bureau of Indian Affairs (except the revolving fund for loans and the Indian loan guarantee and insurance fund)] under this or any other act shall be available for: the expenses of exhibits; advance payments for services (including services which may extend beyond the current fiscal year) under contracts executed pursuant to the Act of June 4, 1936 (48 Stat. 596), as amended (25 U.S.C. 452 et seq.), the Act of August 3, 1956 (70 Stat. 896), as amended (25 U.S.C. 309 et seq.), and legislation terminating Federal supervision over certain tribes; and expenses required by continuing or permanent treaty provision.

(Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1850.)

References in Text

The Act of June 4, 1936 (48 Stat. 596), as amended, referred to in text, probably means act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended generally by act June 4, 1936, ch. 490, 49 Stat. 1458, known as the Johnson-O'Malley Act, which is classified generally to sections 452 to 457 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

The Act of August 3, 1956 (70 Stat. 896), as amended, referred to in text, probably means act Aug. 3, 1956, ch. 930, 70 Stat. 986, which is classified generally to section 309 et seq. of this title. For complete classification of this Act to the Code, see Tables.

§ 14a. Deposit of grant funds received by Bureau from other Federal agencies

On and after October 12, 1984, moneys received by grant to the Bureau of Indian Affairs from other Federal agencies to carry out various programs for elementary and secondary education, handicapped programs, bilingual education, and other specific programs shall be deposited into the appropriation account available for the operation of Bureau schools during the period covered by the grant and shall remain available as otherwise provided by law.

(Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1848.)

§ 16. Transportation of Indians in Bureau vehicles

On and after October 12, 1984, passenger carrying motor vehicles of the Bureau of Indian Affairs may be used for the transportation of Indians.

(Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1850.)

CHAPTER 2—OFFICERS OF INDIAN AFFAIRS

Sec.
47a. Security required by Secretary; contracts with Indian-owned economic enterprise; public work.

§ 32. Omitted

Codification

Section, act July 1, 1898, ch. 545, § 1, 30 Stat. 595, required Indian agents to account for funds received and to be responsible for such funds under their official bonds. The services of Indian agents have been dispensed with since 1908. See section 64 of this title and note set out thereunder.

§ 47. Employment of Indian labor and purchase of products of Indian industry

Section Referred to in Other Sections

This section is referred to in sections 47a, 353, 406, 564h, 697, 747, 1633 of this title; title 23 section 204.

§ 47a. Security required by Secretary; contracts with Indian-owned economic enterprise; public work

The Secretary, in his discretion, may require security other than bonds required by the Miller Act (40 U.S.C. 270a) when entering into a contract with an Indian-owned economic enterprise pursuant to the provisions of the Act of June 25, 1910 (25 U.S.C. 47), for the construction, alteration, or repair of any public work of the United States: *Provided*, That, the alternative form of security provides the United States with adequate security for performance and payment.

(Pub. L. 98-449, § 11, Oct. 4, 1984, 98 Stat. 1726.)

References in Text

The Miller Act, referred to in text, is act Aug. 24, 1935, ch. 642, 49 Stat. 793, as amended, which is classified generally to section 270a et seq. of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 270a of Title 40 and Tables.

CHAPTER 3—AGREEMENTS WITH INDIANS

SUBCHAPTER II—CONTRACTS WITH INDIANS

§ 81. Contracts with Indian tribes or Indians

Section Referred to in Other Sections

This section is referred to in sections 81a, 84, 416a of this title; title 18 section 438.

CHAPTER 4—PERFORMANCE BY UNITED STATES OF OBLIGATIONS TO INDIANS

SUBCHAPTER II—DISBURSEMENT OF MONEYS AND SUPPLIES

Sec.
117. Repealed.
117a. Per capita distribution of funds to tribe members.
117b. Distribution of funds.
  (a) Previous contractual obligations; tax exemption.
  (b) Funds appropriated in satisfaction of judgments.
  (c) Shoshone Tribe and Arapahoe Tribe of the Wind River Reservation, Wyoming.
117c. Standards for approval of tribal payments; United States not liable for distribution of funds; continuing responsibility under other provisions.
123c. Advancement of tribal funds to Indian tribes; miscellaneous authorized purposes.

SUBCHAPTER II—DISBURSEMENT OF MONEYS AND SUPPLIES

§ 117. Repealed. Pub. L. 98-64, § 4(a), Aug. 2, 1983, 97 Stat. 366

Section, act June 10, 1896, ch. 398, § 1, 29 Stat. 336, directed that any sums of money to be paid per capita to individual Indians be paid to said Indians by an officer of the Government designated by the Secretary of the Interior. See section 117a et seq. of this title.

§ 117a. Per capita distribution of funds to tribe members

Funds which are held in trust by the Secretary of the Interior (hereinafter referred to as the "Secretary") for an Indian tribe and which are to be distributed per capita to members of that tribe may be so distributed by either the Secretary or, at the request of the governing body of the tribe and subject to the approval of the Secretary, the tribe. Any funds so distributed shall be paid by the Secretary or the tribe directly to the members involved or, if such members are minors or have been legally determined not competent to handle their own affairs, to a parent or guardian of such members or to a trust fund for such minors or legal incompetents as determined by the governing body of the tribe.

(Pub. L. 98-64, § 1, Aug. 2, 1983, 97 Stat. 365.)

Section Referred to in Other Sections

This section is referred to in sections 117b, 117c of this title.

§ 117b. Distribution of funds

(a) Previous contractual obligations; tax exemption

Funds distributed under sections 117a to 117c of this title shall not be liable for the payment of previously contracted obligations except as may be provided by the governing body of the tribe and distributions of such funds shall be subject to the provisions of section 7 of the Act of October 19, 1973 (87 Stat. 466), as amended [25 U.S.C. 1407].

(b) Funds appropriated in satisfaction of judgments

Nothing in sections 117a to 117c of this title shall affect the requirements of the Act of October 19, 1973 (87 Stat. 466), as amended [25 U.S.C. 1401 et seq.], or of any plan approved thereunder, with respect to the use or distribution of funds subject to that Act: *Provided*, That per capita payments made pursuant to a plan approved under that Act may be made by an Indian tribe as provided in section 117a of this title if all other provisions of the 1973 Act are met, including but not limited to, the protection of the interests of minors and incompetents in such funds.

(c) Shoshone Tribe and Arapahoe Tribe of the Wind River Reservation, Wyoming

Nothing in sections 117a to 117c of this title, except the provisions of subsection (a) of this section, shall apply to the Shoshone Tribe and the Arapahoe Tribe of the Wind River Reservation, Wyoming.

(Pub. L. 98-64, § 2, Aug. 2, 1983, 97 Stat. 365.)

References in Text

The Act of October 19, 1973 (87 Stat. 466), referred to in subsec. (b), is Pub. L. 93-134, Oct. 19, 1973, 87 Stat. 466, as amended, which is classified generally to chapter 16 (§ 1401 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

Section Referred to in Other Sections

This section is referred to in section 117c of this title.

§ 117c. Standards for approval of tribal payments; United States not liable for distribution of funds; continuing responsibility under other provisions

(a) The Secretary shall, by regulation, establish reasonable standards for the approval of tribal payments pursuant to section 117a of this title and, where approval is given under such regulations, the United States shall not be liable with respect to any distribution of funds by a tribe under sections 117a to 117c of this title.

(b) Nothing in sections 117a to 117c of this title shall otherwise absolve the United States from any other responsibility to the Indians, including those which derive from the trust relationship and from any treaties, Executive orders, or agreements between the United States and any Indian tribe.

(Pub. L. 98-64, § 3, Aug. 2, 1983, 97 Stat. 365.)

Definition of Secretary

Secretary, referred to in subsec. (a), means the Secretary of the Interior, see section 117a of this title.

Section Referred to in Other Sections

This section is referred to in section 117b of this title.

§ 123c. Advancement of tribal funds to Indian tribes; miscellaneous authorized purposes

On and after October 12, 1984, tribal funds may be advanced to Indian tribes during each fiscal year for such purposes as may be designated by the governing body of the particular tribe involved and approved by the Secretary including: expenditures for the benefit of Indians and Indian tribes; care, tuition, and other assistance to Indian children attending public and private schools (which may be paid in advance or from date of admission); purchase of land and improvements on land, title to which shall be taken in the name of the United States in trust for the tribe for which purchased; lease of lands and water rights; compensation and expenses of attorneys and other persons employed by Indian tribes under approved contracts; pay, travel, and other expenses of tribal officers, councils, committees, and employees thereof, or other tribal organizations, including mileage for use of privately owned automobiles and per diem in lieu of subsistence at rates established administratively but not to exceed those applicable to civilian employees of the Government; and relief of Indians, including cash grants.

(Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1849.)

SUBCHAPTER III—DEPOSIT, CARE, AND INVESTMENT OF INDIAN MONEYS

§ 155a. Transferred

Codification

Section, act May 17, 1926, ch. 309, § 1, 44 Stat. 560, which related to disposal of miscellaneous revenues from Indian reservations, was merged into section 155 of this title.

§ 161a. Tribal funds in trust in Treasury Department; investment by Secretary of the Treasury; maturities; interest

All funds held in trust by the United States and carried in principal accounts on the books of the United States Treasury to the credit of Indian tribes shall be invested by the Secretary of the Treasury, at the request of the Secretary of the Interior, in public debt securities with maturities suitable to the needs of the fund involved, as determined by the Secretary of the Interior, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(As amended Oct. 4, 1984, Pub. L. 98-451, 98 Stat. 1729.)

AMENDMENTS

1984—Pub. L. 98-451 amended section generally, substituting provisions directing that all funds held in trust by the United States and carried in principal accounts on the books of the United States Treasury to the credit of Indian tribes be invested by the Secretary of the Treasury, at the request of the Secretary of the Interior, in public debt securities with maturities suitable to the needs of the fund involved, as determined by the Secretary of the Interior, and bearing interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities for provisions which required that all funds with account balances exceeding $500 held in trust by the United States and carried in principal accounts on the books of the Treasury Department to the credit of Indian tribes, upon which interest was not otherwise authorized by law, bear simple interest at the rate of 4 per centum per annum.

§ 162a. Deposit of tribal funds in banks; bond or collateral security; investments; collections from irrigation projects

(a) The Secretary of the Interior is hereby authorized in his discretion, and under such rules and regulations as he may prescribe, to withdraw from the United States Treasury and to deposit in banks to be selected by him the common or community funds of any Indian tribe which are, or may hereafter be, held in trust by the United States and on which the United States is not obligated by law to pay interest at higher rates than can be procured from the banks. The said Secretary is also authorized, under such rules and regulations as he may prescribe, to deposit in banks to be selected by him the funds held in trust by the United States for the benefit of individual Indians: *Provided*, That no individual Indian money shall be deposited in any bank until the bank shall have agreed to pay interest thereon at a reasonable rate, subject, however, to the regulations of the Board of Governors of the Federal Reserve System in the case of member banks, and of the Board of Directors of the Federal Deposit Insurance Corporation in the case of insured nonmember banks, except that the payment of interest may be waived in the discretion of the Secretary of the Interior on any deposit which is payable on demand: *Provided further*, That no tribal or individual Indian money shall be deposited in any bank until the bank shall have furnished an acceptable bond or pledged collateral security therefor in the form of any public-debt obligations of the United States and any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, except that no such bond or collateral shall be required to be furnished by any such bank which is entitled to the benefits of section 12B of the Federal Reserve Act, with respect to any deposits of such tribal or individual funds to the extent that such deposits are insured under such section: *Provided, however*, That nothing contained in this section, or in section 12B of the Federal Reserve Act, shall operate to deprive any Indian having unrestricted funds on deposit in any such bank of the full protection afforded by section 12B of the Federal Reserve Act, irrespective of any interest such Indian may have in any restricted Indian funds on deposit in the same bank to the credit of a disbursing agent of the United States. For the purpose of this section and said Act, said unrestricted funds shall constitute a separate and distinct basis for an insurance claim: *Provided further*, That the Secretary of the Interior, if he deems it advisable and for the best interest of the Indians, may invest the trust funds of any tribe or individual Indian in any public-debt obligations of the United States and in any bonds, notes, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States: *And provided further*, That the foregoing shall apply to the funds of the Osage Tribe of Indians, and the individual members thereof, only with respect to the deposit of such funds in banks.

(b) The Secretary of the Interior is authorized to invest any operation and maintenance collections from Indian irrigation projects and revenue collections from power operations on Indian irrigation projects in—

(1) any public-debt obligations of the United States;

(2) any bonds, notes, or other obligations which are unconditionally guaranteed as to both principal and interest by the United States; or

(3) any obligations which are lawful investments for trust funds under the authority or control of the United States.

The Secretary of the Interior is authorized to use earning [1] from investments under this subsection to pay operation and maintenance expenses of the project involved.

(As amended Nov. 4, 1983, Pub. L. 98-146, title I, § 100, 97 Stat. 929.)

REFERENCES IN TEXT

Section 12B of the Federal Reserve Act, referred to in subsec. (a), formerly classified to section 264 of Title 12, Banks and Banking, has been withdrawn from the Federal Reserve Act and incorporated in the Federal Deposit Insurance Act which is classified to chapter 16 (§ 1811 et seq.) of Title 12.

AMENDMENTS

1983—Pub. L. 98-146 designated existing provisions as subsec. (a) and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 155b, 1724, 1754 of this title.

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[1] So in original. Probably should be "earnings".

CHAPTER 5—PROTECTION OF INDIANS

§ 177. Purchases or grants of lands from Indians

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1724, 1757 of this title.

§ 199a. Custody of records; Oklahoma Historical Society

Title to records of Indian tribes heretofore placed with the Oklahoma Historical Society of the State of Oklahoma by the Secretary of the Interior shall remain vested in the United States and such records shall be held by the said society under rules and regulations prescribed by the Archivist of the United States: *Provided*, That copies of any such records, documents, books, or papers held by the said society when certified by the secretary or chief clerk thereof under its seal, or by the officer or person acting as secretary or chief clerk, shall be evidence equally with the original, and in making such certified copies the said secretary or acting secretary and the said chief clerk or acting chief clerk shall be acting as a Federal agent, and such certified copies shall have the same force and effect as if made by the Archivist of the United States as provided in section 2116(b) of title 44: *Provided further*, That whenever such certified copies are desired for official use by the Federal Government they shall be furnished without cost: *Provided further*, That any such records held by the said society shall be promptly returned to the Government official designated by the Archivist of the United States upon his request therefor.

(As amended Oct. 19, 1984, Pub. L. 98-497, title I, § 107(i), 98 Stat. 2292.)

CODIFICATION

"Section 2116(b) of title 44" was substituted for "section 509(b) of the Federal Records Act of 1950 (64 Stat. 583)" on authority of section 2(b) of Pub. L. 90-620, Oct. 22, 1968, 82 Stat. 1305, the first section of which enacted Title 44, Public Printing and Documents, and restated such section 509(b) as section 2112(b) of Title 44, and Pub. L. 98-497, title I, § 102(a)(1), Oct. 19, 1984, 98 Stat. 2280, which renumbered section 2112(b) as 2116(b).

AMENDMENTS

1984—Pub. L. 98-497 substituted "Archivist of the United States" for "Administrator of General Services" in three places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-497 effective Apr. 1, 1985, see section 301 of Pub. L. 98-497, set out as a note under section 2102 of Title 44, Public Printing and Documents.

CHAPTER 7—EDUCATION OF INDIANS

Sec.
290a. Bureau appropriations as not limiting transportation of school children.
292b. Establishment of single system of education in Alaska; transfer of Indian schools to State of Alaska.
292c. Unavailability of appropriated funds for boarding schools.

§ 290a. Bureau appropriations as not limiting transportation of school children

On and after October 12, 1984, no part of any appropriation to the Bureau of Indian Affairs under this or any other act shall be used to subject the transportation of school children to any limitation on travel or transportation expenditures for Federal employees.

(Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1850.)

§ 292b. Establishment of single system of education in Alaska; transfer of Indian schools to State of Alaska

The Bureau of Indian Affairs shall not expend any other funds for the operation of any secondary education program or facility in the State of Alaska after June 30, 1983: *Provided*, That while consultation concerning day school transfers to the State of Alaska will continue with affected villages, local concurrence is not required in this continuing effort to establish a single system of education envisioned by the State's constitution: *Provided further*, That after June 30, 1984, the Bureau of Indian Affairs shall fund no more than ten day schools in Alaska: *Provided further*, That the Bureau of Indian Affairs shall not fund any schools in Alaska after June 30, 1985: *Provided further*, That $9,350,000 of such amount shall be available until expended for transfer to the State of Alaska to assist in the rehabilitation or reconstruction of Bureau-owned schools which are transferred to the State: *Provided further*, That the $9,350,000 appropriated in Public Law 97-394 available to the State of Alaska to assist in the rehabilitation of Bureau-owned schools which are transferred to the State may also be used for reconstruction: *Provided further*, That when any Alaska day school operated by contract is transferred, the State shall assume any existing contract pertaining to the operation or maintenance of such school for a minimum of two years or until the expiration of the negotiated contract, whichever comes first: *Provided further*, That nothing in the foregoing shall preclude assistance otherwise available under the Act of April 16, 1934 (48 Stat. 596) as amended (25 U.S.C. 452 et seq.), or any other Act to such schools on the same basis as other public schools.

(Pub. L. 98-63, title I, § 101, July 30, 1983, 97 Stat. 326.)

REFERENCES IN TEXT

Other funds, referred to in text, means funds other than the appropriation of $22,000,000 made available to the Bureau of Indian Affairs for transfer to the State of Alaska for the benefit of Alaska Native secondary students under the headings "Bureau of Indian Affairs" and "Operation of Indian Programs" of Pub. L. 98-63, title VII, July 30, 1983, 97 Stat. 326.

$9,350,000 of such amount, referred to in text, means $9,350,000 of the $53,150,000 appropriated as an additional amount for the operation of Indian programs by the Bureau of Indian Affairs under the headings "Bureau of Indian Affairs" and "Operation of Indian Programs" of Pub. L. 98-63, title VII, July 30, 1983, 97 Stat. 326.

Pub. L. 97-394, referred to in text, is Pub. L. 97-394, Dec. 30, 1982, 96 Stat. 1966. Provisions of that act relating to an appropriation of $9,350,000 available to the State of Alaska (96 Stat. 1974) are not classified to the Code.

The Act of April 16, 1934 (48 Stat. 596) as amended (25 U.S.C. 452 et seq.), referred to in text, is act Apr. 16, 1934, ch. 147, 48 Stat. 596, as amended, popularly known as the Johnson-O'Malley Act, which is classified generally to section 452 et seq. of this title. For complete classification of this Act to the Code, see Short Title note set out under section 452 of this title and Tables.

§ 292c. Unavailability of appropriated funds for boarding schools

On and after October 12, 1984, no part of any appropriations to the Bureau of Indian Affairs under this or any other Act shall be available to continue academic and residential programs of the Chilocco, Seneca, Concho, and Fort Sill boarding schools, Oklahoma; Mount Edgecumbe boarding school, Alaska; Intermountain boarding school, Utah; and Stewart boarding school, Nevada.

(Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1850.)

CHAPTER 7A—PROMOTION OF SOCIAL AND ECONOMIC WELFARE

Sec.
310. Institute of American Indian Art.

§ 307. Establishment of vocational school for children and housing and training center for adults; transfer of property; supervision

CONVEYANCE OF FEDERAL PROPERTY AT INTERMOUNTAIN INDIAN BOARDING SCHOOL TO BRIGHMAN CITY, UTAH

Pub. L. 98-401, Aug. 27, 1984, 98 Stat. 1477, provided: "That notwithstanding section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719), when the Secretary of the Interior ceases to use the remaining Federal property at the Intermountain Indian Boarding School for Indian school purposes he shall publish the legal description of such property in the Federal Register, and shall convey, by quitclaim deed and without consideration, to the city of Brigham City, Utah, all right, title, and interest of the United States in and to such land, including any improvements thereon."

§ 309. Vocational training program; eligibility; contracts or agreements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13e, 309a of this title.

§ 309a. Authorization of appropriations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13e of this title.

§ 310. Institute of American Indian Art

(a)(1) To the extent of the availability of funds for such purpose, the Secretary of the Interior shall:

(A) enter into a thirty-year agreement with the College of Santa Fe, Santa Fe, New Mexico, to provide educational facilities for the use of, and to develop cooperative educational/arts programs to be carried out with the postsecondary fine arts and museum services programs of, the Institute of American Indian Arts administered by the Bureau of Indian Affairs; and

(B) conduct such activities as are necessary to improve the facilities used by the Institute of American Indian Arts at the College of Santa Fe.

(2) The provisions of this subsection shall take effect on October 1, 1984.

(b)(1) The Secretary of the Interior, acting through the Bureau of Indian Affairs, is directed to conduct a study for the purpose of determining the need, if any, for a museum facility to be established for the benefit of the Institute of American Indian Arts, the feasibility of establishing such museum, and the need or desirability, if any, to establish any such museum in close proximity to the facilities currently being used by such Institute at the College of Santa Fe.

(2) On or before February 1, 1985, the Secretary of the Interior shall report the results of such study, together with his recommendations, to the Congress.

(3) Should the study recommend establishment of a museum, and should the College of Santa Fe be selected as the best site, any agreement entered into by the Secretary of the Interior for construction of such museum shall contain assurances, satisfactory to the Secretary, that appropriate lands at the College of Santa Fe will be available at no cost to the Federal Government for the establishment of a museum facility.

(Pub. L. 98-306, § 14, May 31, 1984, 98 Stat. 226.)

CHAPTER 9—ALLOTMENT OF INDIAN LANDS

§ 331. Allotments on reservations; irrigable and nonirrigable lands

OSAGE INDIAN TRIBE OF OKLAHOMA

Pub. L. 98-576, Oct. 30, 1984, 98 Stat. 3065, provided: "That (a) any Osage headright or restricted real estate or funds which is part of the estate of a deceased Osage Indian with respect to whom—

"(1) a certificate of competency had never been issued before the time of death, or

"(2) a certificate of competency had been revoked by the Secretary of the Interior before the death of such Osage Indian,

shall be exempt from any estate or inheritance tax imposed by the State of Oklahoma.

"(b) Subsection (a) shall apply to the estate of any Osage Indian who dies on or after the date of the enactment of this Act [Oct. 30, 1984].

"SEC. 2. For purposes of this Act—

"(1) the term 'headright' means any right of any person to share in any royalties, rents, sales, or bonuses arising from the Osage mineral estate;

"(2) the term 'Osage mineral estate' means any right, title, or interest in any oil, gas, coal, or other mineral held by the United States in trust for the benefit of the Osage Tribe of Indians under section 3 of the Osage Tribe Allotment Act;

"(3) the term 'restricted real estate or funds' means any real estate or fund held by an Osage Indian or by the Secretary of the Interior in trust for the benefit of such Indian which is subject to any restriction against alienation, or transfer by any other means, under any Act of Congress applicable to the Osage Tribe of Indians or applicable generally to Indians or any bands, tribes, or nations of Indians; and

"(4) the term 'Osage Tribe Allotment Act' means the Act approved June 28, 1906, and entitled 'An Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes' (34 Stat. 539)."

Pub. L. 95-496, §§ 3-11, Oct. 21, 1978, 92 Stat. 1660-1664, as amended by Pub. L. 98-605, § 2, Oct. 30, 1984, 98 Stat. 3163, provided that:

"Sec. 3. (a) [Repealed act Feb. 5, 1948, ch. 46, 62 Stat. 18, formerly set out below.]

"(b) Any Osage Indian having received a certificate of competency under paragraph 7 of section 2 of the Act of June 28, 1906 (34 Stat. 539, 542); section 3 of the Act of March 2, 1929 (45 Stat. 1478, 1480) [amending act Feb. 27, 1925, ch. 359, 43 Stat. 1008, which is set out below]; or the Act of February 5, 1948 (62 Stat. 18) [Act Feb. 5, 1948, ch. 46, 62 Stat. 18], may make application to the Secretary of the Interior to revoke such certificate and the Secretary shall revoke such certificate: *Provided*, That revocation of any certificate shall not affect the legality of any transactions heretofore made by reason of the issuance of any such certificate. Restrictions against alienation of lands heretofore removed are not reimposed.

"(c) [Amended act Feb. 27, 1925, set out below, act Mar. 2, 1929, ch. 493, § 4, 45 Stat. 1480, and June 24, 1938, ch. 645, §§ 1, 3, 52 Stat. 1034, 1035.

"Sec. 4. In order to conserve natural resources and provide for the greatest ultimate recovery of oil and gas underlying the Osage mineral estate, the Secretary of the Interior is authorized to establish rules and regulations under which oil and gas leases producing from a common source of supply may be unitized.

"Sec. 5. (a) [Amended act Apr. 18, 1912, ch. 83, § 8, 37 Stat. 88.]

"(b) [Amended act Apr. 18, 1912, ch. 83, § 3, 37 Stat. 86.]

"(c) [Amended act Feb. 27, 1925, set out below.]

"(d)(1) Notwithstanding any provision of—

"(A) section 3 or 8 of the Osage Indians Act of 1912 (as amended by subsections (b) and (a), respectively) [not classified to the Code], or

"(B) section 7 of the Osage Indians Act of 1925 (as amended by subsection (c)) [act Feb. 27, 1925, set out below],

any sale or transfer or any disposition by any other means of any headright shall be subject to section 7 of this Act [set out below].

"(2) Notwithstanding section 6(a) of this Act [set out below] or section 8 of the Osage Indians Act of 1912, no Osage Indian may—

"(A) provide for the transfer of any interest of such person in any headright—

"(i) by will to any person which is not an individual, or

"(ii) by the establishment of an inter vivos trust for the benefit of any person which is not an individual; or

"(B) provide, whether by the terms of a will, the terms of a testamentary trust established by a will, or by the terms of an instrument establishing an inter vivos trust, that any interest in any headright—

"(i) which such Osage Indian had (at the time of death of such person or at the time any such inter vivos trust was established), and

"(ii) in which any individual was granted a life estate by such Osage Indian,

may be transferred to or held for the benefit of any individual who is not an Osage Indian upon the death of the individual who held such life estate.

"Sec. 6. (a) With the approval of the Secretary of the Interior, any person of Osage Indian blood, eighteen years of age or older, may establish an inter vivos trust covering his headright or mineral interest except as provided in section 8 hereof; surplus funds; invested surplus funds; segregated trust funds; and allotted or inherited land, naming the Secretary of the Interior as trustee. An Osage Indian having a certificate of competency may designate a banking or trust institution as trustee. Said trust shall be revocable and shall make provision for the payment of funeral expenses, expenses of last illness, debts, and an allowance to members of the family dependent on the settlor.

"(b) Property placed in trust as provided by this section shall be subject to the same restrictions against alienation that presently apply to lands and property of Osage Indians, and the execution of such instrument shall not in any way affect the tax-exempt status of said property.

"RULES GOVERNING DEVOLUTION OF INTERESTS IN OSAGE HEADRIGHTS

"Sec. 7. (a) General Rule.—No person who is not an Osage Indian may, on or after October 21, 1978, receive any interest in any headright, other than a life estate in accordance with subsection (b), whether such interest would be received by such person (but for this subsection) under a will, a testamentary or inter vivos trust, or the Oklahoma laws of intestate succession.

"(b) Exception for Life Estates.—Notwithstanding subsection (a) and subject to section 5(d)(2) [set out above], an individual who is not an Osage Indian may receive a life estate in any headright held by a testator, settlor, or decedent who is or was an Osage Indian under a will, or under a testamentary trust established by a will, of such testator, an inter vivos trust established by such settlor, or the Oklahoma laws of intestate succession relating to the administration of the estate of such decedent.

"(c) Special Rules Governing Interests in Osage Headright Upon Death of Individual Who Held Life Estate in Such Headright.—

"(1) Designated osage remaindermen.—Upon the death of any individual who is not an Osage Indian and who held a life estate in any headright of a testator or settlor described in subsection (b), all remaining interests in such headright shall vest in any remaindermen who—

"(A) are designated in the will of the testator or the instrument establishing the trust of the settlor to receive such remainder interest, and

"(B) are Osage Indians.

"(2) No designated osage remaindermen.—Upon the death of any individual who is not an Osage Indian and who held a life estate in any headright of a testator, settlor, or decedent described in subsection (b) who—

"(A) did not designate any remainderman who is an Osage Indian to receive any remaining interest in such headright in the will of such testator or instrument of such settlor, or

"(B) died intestate,

all remaining interests in such headright shall vest in any heirs, as determined under the Oklahoma laws of intestate succession, of such testator, settlor, or decedent who are Osage Indians.

"(3) No heir who is an osage indian.—Upon the death of any individual who is not an Osage Indian and who held a life estate in any headright of an Osage testator, settlor, or decedent described in subsection (b) who—

"(A) designated no remainderman who is an Osage Indian for any remaining interest in such headright, and

"(B) had no heir under the Oklahoma laws of intestate succession who is an Osage Indian and is living at the time of death of the individual who held such life estate,

all remaining interests in such headright shall vest in the Osage Tribe of Indians.

"(d) Liability of Tribe in Case of Remainderman or Heir Who is Not an Osage Indian.—In any case in which—

"(1) any remainder interest of a testator, settlor, or decedent described in subsection (b) vests in the Osage Tribe of Indians under subsection (c)(3), and

"(2) an individual who is not an Osage Indian and who, but for this section, would have received any portion of such remaining interest in the headright by virtue of—

"(A) having been designated under the will of such testator, or the instrument of such settlor which established any such trust, to receive such remainder interest, or

"(B) being the heir of such decedent under the Oklahoma laws of intestate succession,

the tribe shall pay any such individual the fair market value of the portion of the interest in such headright such individual would have received but for this section.

"Sec. 8. (a)(1) No headright owned by any person who is not of Indian blood may be sold, assigned, or transferred without the approval of the Secretary. Any sale of any interest in such headright (and any other transfer which divests such person of any right, title, or interest in such headright) shall be subject to the following rights of purchase:

"(1) First right of purchase by the heirs in the first degree of the first Osage Indian to have acquired such headright under an allotment who are living and are Osage Indians, or, if they all be deceased, all heirs in the second through the fourth degree of such first Osage Indian who are living and are Osage Indians.

"(2) Second right of purchase by any other Osage Indian for the benefit of any Osage Indian in his or her individual capacity.

"(3) Third right of purchase by the Osage Tribal Council on behalf of the Osage Tribe of Indians.

No owner of any headright shall be required, by reason of this subsection, to sell such headright for less than its fair market value or to delay any such sale more than 90 days from the date by which notice of intention to sell (or otherwise transfer) such headright has been received by each person with respect to whom a right of purchase has been established under this subsection.

"(b) Notwithstanding the paragraph designated 'First' of section 4 of the Osage Tribe Allotment Act or any other provision of law, any income from the Osage mineral estate may be used for the purchase of any headright offered for sale to the Osage Tribal Council pursuant to subsection (a) or vested in the Osage Tribe pursuant to section 7 if, prior to the time that any income from the Osage mineral estate is segregated for distribution to holders of headrights, the Osage Tribal Council requests the Secretary to authorize such use of such funds and the Secretary approves such request.

"Sec. 9. Under such regulations as the Secretary of the Interior may prescribe, the heirs and legatees of any deceased owner of an Osage headright or mineral interest, real estate on which restrictions against alienation have not been removed, and funds on deposit at the Osage Agency may be determined by the Secretary if such aggregate interests do not exceed $10,000: *Provided*, That no court of competent jurisdiction has undertaken the probate of the deceased's estate and a request for such administrative determination has been made to the Secretary by one or more of the heirs or legatees."

"Sec. 10. Except where any provision of this Act explicitly provides otherwise, wherever the term 'Osage Indian' is used in this Act, such term shall be construed so as to include any child who has been adopted by an Osage Indian (pursuant to the decision of any court of competent jurisdiction) and any lineal descendant of such child.

"Sec. 11. For purposes of this Act—

"(1) the term 'Osage mineral estate' means any right, title, or interest in any oil, gas, coal, or other mineral held by the United States in trust for the benefit of the Osage Indian Tribe under section 3 of the Osage Tribe Allotment Act;

"(2) the term 'headright' means any right of any person to share in any royalties, rents, sales, or bonuses arising from the Osage mineral estate;

"(3) the term 'Secretary' means the Secretary of the Interior;

"(4) the term 'person' has the meaning given to such term in section 1 of title 1, United States Code;

"(5) the term 'Osage Tribe Allotment Act' means the Act approved June 28, 1906, and entitled 'An Act For the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes.' (34 Stat. 539);

"(6) the term 'Osage Indians Act of 1912' means the Act approved April 18, 1912, and entitled 'An Act Supplementary to and amendatory of the Act entitled "An Act for the division of the lands and funds of the Osage Nation of Indians in Oklahoma," approved June twenty-eighth, nineteen hundred and six, and for other purposes.' (37 Stat. 86); and

"(7) the term 'Osage Indians Act of 1925' means the Act approved February 27, 1925, and entitled 'An Act To amend the Act of Congress of March 3, 1921, entitled "An Act to amend section 3 of the Act of Congress of June 28, 1906, entitled 'An Act of Congress for the division of the lands and funds of the Osage Indians in Oklahoma, and for other purposes.' " ' (43 Stat. 1008) [set out below]."

Act Feb. 27, 1925, ch. 359, 43 Stat. 1008, as amended by acts Mar. 2, 1929, ch. 493, §§ 3, 4, 45 Stat. 1480; Sept. 1, 1950, ch. 832, 64 Stat. 572; Oct. 21, 1978, Pub. L. 95-496, §§ 3(c), 5(c), formerly 5(7), 92 Stat. 1661, 1662; Oct. 30, 1984, Pub. L. 98-605, §§ 2(b), 4, 98 Stat. 3163, 3167, provided that:

[*See main edition for text of Secs. 1 to 6*]

"Sec. 7. Except as provided in sections 5(d) and 7 of the Act approved October 21, 1978, and entitled 'An Act to amend certain laws relating to the Osage Tribe of Oklahoma, and for other purposes.', on or after October 21, 1978 [Pub. L. 95-496, set out above], none but heirs of Indian blood and children legally adopted by a court of competent jurisdiction and parents, Indian or non-Indian, shall inherit, in accordance with the laws of the State of Oklahoma relating to intestate succession from Osage Indians any right, title, or interest to any restricted land, moneys, or Osage headright or mineral interest. No adopted child of any Osage Indian who is not an Osage Indian shall be eligible to inherit, as the collateral heir (within the meaning of the laws of the State of Oklahoma relating to intestate succession) of any Osage Indian decedent, any property or interest in property held in trust by the Secretary of the Interior for the benefit of such decedent."

§ 332. Selection of allotments

All allotments set apart under the provisions of this act shall be selected by the Indians, heads of families selecting for their minor children, and the agents shall select for each orphan child, and in such manner as to embrace the improvements of the Indians making the selection. Where the improvements of two or more Indians have been made on the same legal subdivision of land, unless they shall otherwise agree, a provisional line may be run dividing said lands between them, and the amount to which each is entitled shall be equalized in the assignment of the remainder of the land to which they are entitled under this act: *Provided*, That if any one entitled to an allotment shall fail to make a selection within four years after the President shall direct that allotments may be made on a particular reservation, the Secretary of the Interior may direct the agent of such tribe or band, if such there be, and if there be no agent, then a special agent appointed for that purpose, to make a selection for such Indian, which selection shall be allotted as in cases where selections are made by the Indians, and patents shall issue in like manner.

(Feb. 8, 1887, ch. 119, § 2, 24 Stat. 388.)

References in Text

This act, referred to in text, is act Feb. 8, 1887, ch. 119, 24 Stat. 388, as amended, and is popularly known as the Indian General Allotment Act. For classification of this act to the Code, see Short Title note set out under section 331 of this title and Tables.

Codification

Section is set out in this supplement to correct typographical error appearing in the main edition.

CHAPTER 10—DESCENT AND DISTRIBUTION; HEIRS OF ALLOTTEE

§ 373. Disposal by will of allotments held under trust

Any persons of the age of twenty-one years having any right, title, or interest in any allotment held under trust or other patent containing restrictions on alienation or individual Indian moneys or other property held in trust by the United States shall have the right prior to the expiration of the trust or restrictive period, and before the issuance of a fee simple patent or the removal of restrictions, to dispose of such property by will, in accordance with regulations to be prescribed by the Secretary of the Interior: *Provided, however,* That no will so executed shall be valid or have any force or effect unless and until it shall have been approved by the Secretary of the Interior: *Provided further,* That the Secretary of the Interior may approve or disapprove the will either before or after the death of the testator, and in case where a will has been approved and it is subsequently discovered that there has been fraud in connection with the execution or procurement of the will the Secretary of the Interior is authorized within one year after the death of the testator to cancel the approval of the will, and the property of the testator shall thereupon descend or be distributed in accordance with the laws of the State wherein the property is located: *Provided further,* That the approval of the will and the death of the testator shall not operate to terminate the trust or restrictive period, but the Secretary of the Interior may, in his discretion, cause the lands to be sold and the money derived therefrom, or so much thereof as may be necessary, used for the benefit of the heir or heirs entitled thereto, remove the restrictions, or cause patent in fee to be issued to the devisee or devisees, and pay the moneys to the legatee or legatees either in whole or in part from time to time as he may deem advisable, or use it for their benefit: *Provided also,* That this section and section 372 of this title shall not apply to the Five Civilized Tribes or the Osage Indians.

(June 25, 1910, ch. 431, § 2, 36 Stat. 856; Feb. 14, 1913, ch. 55, 37 Stat. 678.)

Codification

Section is set out in this supplement to correct typographical error appearing in the main edition.

§ 373b. Restricted estate or homestead on the public domain

If an Indian found to have died intestate without heirs was the holder of a restricted allotment or homestead or interest therein on the public domain, the land or interest therein and all accumulated rents, issues, and profits therefrom shall escheat to the United States, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder, and the land shall become part of the public domain subject to the payment of such creditors' claims as the Secretary of the Interior may find proper to be paid from the cash on hand or income accruing to said estate: *Provided,* That if the Secretary determines that the land involved lies within or adjacent to an Indian community and may be advantageously used for Indian purposes, the land or interest therein shall escheat to the United States to be held in trust for such needy Indians as the Secretary of the Interior may designate, where the value of the estate does not exceed $50,000, and in case of estates exceeding said sum, such estates shall be held in trust by the United States for such Indians as the Congress may on and after November 24, 1942 designate, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder[1] *Provided further,* That interests in all Burns public domain allotments located in Harney County, Oregon, belonging to Indians who die intestate without heirs shall be held in trust by the United States for the Burns Paiute Indian Colony of Oregon and shall be part of the Burns Paiute Indian Reservation.

(As amended May 2, 1983, Pub. L. 98-25, §§ 2, 3, 97 Stat. 185.)

Amendments

1983—Pub. L. 98-25, § 2, added further proviso that interests in all Burns public domain allotments located in Harney County, Oregon, belonging to Indians who die intestate without heirs shall be held in trust by the United States for the Burns Paiute Indian Colony of Oregon and shall be part of the Burns Paiute Indian Reservation.

Pub. L. 98-25, § 3, substituted "$50,000" for "$2,000".

Non-Indian Lands in Harney County, Oregon

Section 2 of Pub. L. 98-25 provided in part that no non-Indian lands in Harney County, Oregon, shall be considered Indian country as defined in section 1151 of Title 18, Crimes and Criminal Procedure.

CHAPTER 11—IRRIGATION OF ALLOTTED LANDS

§ 386a. Adjustment of reimbursable debts; construction charges

Section Referred to in Other Sections

This section is referred to in section 564*l* of this title; title 43 sections 620c, 1542.

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[1] So in original. Probably should be followed by a colon.

CHAPTER 12—LEASE, SALE, OR SURRENDER OF ALLOTTED OR UNALLOTTED LANDS

§ 398e. Applications for permits to prospect for oil and gas filed under other statutes; disposition

REFERENCES IN TEXT

Act of February 25, 1920, referred to in text, probably means act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, popularly known as the Mineral Lands Leasing Act, which is classified principally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

§ 415. Leases of restricted lands

(a) Authorized purposes; term; approval by Secretary

Any restricted Indian lands, whether tribally, or individually owned, may be leased by the Indian owners, with the approval of the Secretary of the Interior, for public, religious, educational, recreational, residential, or business purposes, including the development or utilization of natural resources in connection with operations under such leases, for grazing purposes, and for those farming purposes which require the making of a substantial investment in the improvement of the land for the production of specialized crops as determined by said Secretary. All leases so granted shall be for a term of not to exceed twenty-five years, except leases of land located outside the boundaries of Indian reservations in the State of New Mexico, leases of land on the Agua Caliente (Palm Springs) Reservation, the Dania Reservation, the Moapa Indian reservation, the Swinomish Indian Reservation, the Southern Ute Reservation, the Fort Mojave Reservation, the Burns Paiute Reservation, the Coeur d'Alene Indian Reservation, the Kalispel Indian Reservation, the pueblo of Cochiti, the pueblo of Pojoaque, the pueblo of Tesuque, the pueblo of Zuni, the Hualapai Reservation, the Spokane Reservation, the San Carlos Apache Reservation, Yavapai-Prescott [1] Community Reservation, the Pyramid Lake Reservation, the Gila River Reservation, the Soboba Indian Reservation, the Tulalip Indian Reservation, the Navajo Reservation, leases of the lands comprising the Moses Allotment Numbered 10, Chelan County, Washington,,[2] and lands held in trust for the Las Vegas Paiute Tribe of Indians, and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indians, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and leases to the Devils Lake Sioux Tribe, or any organization of such tribe, of land on the Devils Lake Sioux Reservation, which may be for a term of not to exceed ninety-nine years, and except leases of land for grazing purposes which may be for a term of not to exceed ten years. Leases for public, religious, educational, recreational, residential, or business purposes (except leases the initial term of which extends for more than seventy-four years) with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed twenty-five years, and all leases and renewals shall be made under such terms and regulations as may be prescribed by the Secretary of the Interior. Prior to approval of any lease or extension of an existing lease pursuant to this section, the Secretary of the Interior shall first satisfy himself that adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality, and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased lands will be subject.

[*See main edition for text of* (*b*)]

(As amended Aug. 8, 1983, Pub. L. 98-70, 97 Stat. 401; Dec. 2, 1983, Pub. L. 98-203, § 1(c), 97 Stat. 1384.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-203 added ", and lands held in trust for the Las Vegas Paiute Tribe of Indians,".

Pub. L. 98-70 added ", and lands held in trust for the Twenty-nine Palms Band of Luiseno Mission Indians, and the lands held in trust for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415a, 415b, 415c, 415d, 416a, 1724 of this title.

§ 415a. Lease of lands of deceased Indians for benefit of heirs or devisees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415b, 415c, 415d, 416a, 1724 of this title.

§ 415b. Advance payment of rent or other consideration

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415a, 415c, 415d, 416a, 1724 of this title.

§ 415c. Approval of leases

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415a, 415b, 415d, 416a, 1724 of this title.

§ 415d. Lease of restricted lands under other laws unaffected

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 415a, 415b, 415c, 416a, 1724 of this title.

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[1] So in original. Probably should be preceded by "the".

[2] So in original.

§ 416. Leases of trust or restricted lands on San Xavier and Salt River Pima-Maricopa Indian Reservations for public, religious, educational, recreational, residential, business, farming or grazing purposes

Section Referred to in Other Sections

This section is referred to in sections 416, 416a, 416b, 416c, 416d, 416e, 416h, 416i, 416j of this title.

§ 416a. Lease provisions

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Binding arbitration of disputes

Any lease entered into under sections 416 to 416j or 415 to 415d of this title or any contract entered into under section 81 of this title, affecting land within the Salt River Pima-Maricopa Indian Reservation may contain a provision for the binding arbitration of disputes arising out of such lease or contract. Such leases or contracts entered into pursuant to such sections shall be considered within the meaning of "commerce" as defined and subject to the provisions of section 1 of title 9. Any refusal to submit to arbitration pursuant to a binding agreement for arbitration or the exercise of any right conferred by title 9 to abide by the outcome of arbitration pursuant to the provisions of chapter 1 of title 9, sections 1 through 14, shall be deemed to be a civil action arising under the Constitution, laws or treaties of the United States within the meaning of section 1331 of title 28.

(As amended Pub. L. 98-163, Nov. 22, 1983, 97 Stat. 1016.)

References in Text

Sections 415 to 415d of this title, referred to in subsec. (c), was in the original "the Act of August 9, 1955 (69 Stat. 539), as amended", which enacted sections 415 to 415d of this title and amended section 396 of this title.

Amendments

1983—Subsec. (c). Pub. L. 98-163 added subsec. (c).

§ 416b. Development pursuant to lease

Section Referred to in Other Sections

This section is referred to in sections 416, 416a, 416c, 416d, 416e, 416h, 416i, 416j of this title.

§ 416c. Lease of lands of deceased Indians for benefit of heirs or devisees

Section Referred to in Other Sections

This section is referred to in sections 416, 416a, 416b, 416d, 416e, 416h, 416i, 416j of this title.

§ 416d. Advance payment of rent or other consideration

Section Referred to in Other Sections

This section is referred to in sections 416, 416a, 416b, 416c, 416e, 416h, 416i, 416j of this title.

§ 416e. Approval of leases

Section Referred to in Other Sections

This section is referred to in sections 416, 416a, 416b, 416c, 416d, 416h, 416i, 416j of this title.

§ 416f. Dedication of land for public purposes

Section Referred to in Other Sections

This section is referred to in sections 416, 416a, 416b, 416c, 416d, 416e, 416h, 416i, 416j of this title.

§ 416g. Contract for water, sewerage, law enforcement, or other public services

Section Referred to in Other Sections

This section is referred to in sections 416, 416a, 416b, 416c, 416d, 416e, 416h, 416i, 416j of this title.

§ 416h. Zoning, building, and sanitary regulations

Section Referred to in Other Sections

This section is referred to in sections 416, 416a, 416b, 416c, 416d, 416e, 416i, 416j of this title.

§ 416i. Restrictions

Section Referred to in Other Sections

This section is referred to in sections 416, 416a, 416b, 416c, 416d, 416e, 416h, 416j of this title.

§ 416j. Mission San Xavier del Bac

Section Referred to in Other Sections

This section is referred to in sections 416, 416a, 416b, 416c, 416d, 416e, 416h, 416i of this title.

CHAPTER 14—MISCELLANEOUS

SUBCHAPTER II—INDIAN SELF-DETERMINATION

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450e-1. Grant and cooperative agreements.

SUBCHAPTER XXX-C—CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON

713. Definitions.
713a. Consideration of Confederated Tribes of Grand Ronde Community as one tribe.
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713c. Interim Council.
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  (b) Nomination and election of Interim Council members.
  (c) Authority and capacity; termination.
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713d. Tribal constitution and bylaws; tribal governing body.
  (a) Adoption of proposed constitution and bylaws; election time and procedure.
  (b) Notice and consultation.
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Sec.
- 713e. Membership rolls; voting rights of member.
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- 713f. Establishment of tribal reservation.
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  - (d) Appendix to plan submitted to the Congress.
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SUBCHAPTER XXX-D—CONFEDERATED TRIBES OF COOS, LOWER UMPQUA, AND SIUSLAW INDIANS: RESTORATION OF FEDERAL SUPERVISION

- 714. Definitions.
- 714a. Extension of Federal recognition, rights, and privileges.
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- 714b. Membership rolls.
  - (a) Opening; duty of Interim Council and tribal officials.
  - (b) Criteria for enrollment.
  - (c) Verification of eligibility for enrollment; appeal; finality of determination; possession of enrollment records and materials.
  - (d) Franchisement.
- 714c. Interim Council.
- 714d. Tribal constitution and bylaws.
  - (a) Election; time and procedure.
  - (b) Preelection distribution of proposed constitution and bylaws and brief, impartial description; consultation by Interim Council with members of Tribe.
  - (c) Majority vote necessary for adoption of constitution and bylaws.
  - (d) Election of tribal officials provided for in constitution and bylaws; ballot requirements.
- 714e. Reservation.
  - (a) Establishment.
  - (b) Legal description.
  - (c) State of Oregon; criminal and civil jurisdiction.
- 714f. Regulations.

SUBCHAPTER I—GENERAL PROVISIONS

§ 443a. Conveyance to Indian tribes of federally owned buildings, improvements, or facilities; disposition of property by Indians; forfeiture; "Indian" defined

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1812 of this title.

SUBCHAPTER II—INDIAN SELF-DETERMINATION

§ 450. Congressional statement of findings

ACT REFERRED TO IN OTHER SECTIONS

The Indian Self-Determination and Education Assistance Act is referred to in sections 1635, 2001, 2006 of this title; title 7 sections 178g, 178h; title 20 section 241bb-1; title 42 sections 1471, 5302.

§ 450e-1. Grant and cooperative agreements

The provisions of this Act shall not be subject to the requirements of chapter 63 of title 31: *Provided*, That a grant agreement or a cooperative agreement may be utilized in lieu of a contract under sections 450f and 450g of this title when mutually agreed to by the appropriate Secretary and the tribal organization involved.

(Pub. L. 93-638, § 9, as added Pub. L. 98-250, § 1, Apr. 3, 1984, 98 Stat. 118.)

REFERENCES IN TEXT

This Act, referred to in text, is the Indian Self-Determination and Education Assistance Act, which is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

CODIFICATION

"Chapter 63 of title 31" was substituted in text for "the Federal Grant and Cooperative Agreement Act of 1977 (Public Law 95-224; 92 Stat. 3) [41 U.S.C. 501 et seq.]" on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was not enacted as part of title I of Pub. L. 93-638 which comprises this subchapter.

§ 450f. Contracts by Secretary of the Interior with tribal organizations

(a) Request by tribe for contract by Secretary to plan, conduct and administer education, etc., programs; refusal of request

The Secretary of the Interior is directed, upon the request of any Indian tribe, to enter into a contract or contracts with any tribal organization of any such Indian tribe to plan, conduct, and administer programs, or portions thereof, provided for in sections 452 to 457 of this title, any other program or portion thereof which the Secretary of the Interior is authorized to administer for the benefit of Indians under section 13 of this title, and any Act subsequent thereto: *Provided, however*, That the Secretary may initially decline to enter into any contract requested by an Indian tribe if he finds that: (1) the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory; (2) adequate protection of trust resources is not assured, or (3) the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract: *Provided further*, That in arriving at his finding, the Secretary shall consider whether the tribe or tribal organization would be deficient in performance under the contract with respect to (A) equipment, (B) bookkeeping and accounting procedures, (C) substantive knowledge of the program to be contracted for, (D) community support for the contract, (E) adequately trained personnel, or (F) other necessary components of contract performance.

[See main edition for text of (b) and (c); credits]

CODIFICATION

Subsec. (a) is set out in this supplement to correct translations appearing in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450e-1, 450h, 450j, 450m, 1724 of this title; title 7 section 2020; title 20 sections 2313, 2471; title 29 section 750; title 42 section 2004b.

§ 450g. Contracts by Secretary of Health and Human Services with tribal organizations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450e-1, 450h, 450j, 450m of this title; title 7 section 2020; title 20 sections 2313, 2471; title 42 section 2004b.

§ 450h. Grants to tribal organizations or tribes

(a) Request by tribe for contract or grant by Secretary of the Interior for improving, etc., tribal governmental, contracting, and program planning activities

The Secretary of the Interior is authorized, upon the request of any Indian tribe (from funds appropriated for the benefit of Indians pursuant to section 13 of this title, and any Act subsequent thereto) to contract with or make a grant or grants to any tribal organization for—

[See main edition for text of (1) to (4); (b) and (c); credits]

CODIFICATION

Subsec. (a) is set out in this supplement to correct translations appearing in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450j, 450m, 2009 of this title; title 7 section 2020; title 20 sections 2313, 2471; title 42 section 2004b.

§ 450i. Retention of Federal employee coverage, rights and benefits by employees of tribal organizations

(a) Eligible employees; Federal employee programs subject to retention

Notwithstanding any other law, executive order, or administrative regulation, an employee serving under an appointment not limited to one year or less who leaves Federal employment to be employed by a tribal organization, the city of St. Paul, Alaska, the city of St. George, Alaska, upon incorporation, or the Village Corporations of St. Paul and St. George Islands established pursuant to section 1607 of title 43 on or before December 31, 1985, in connection with governmental or other activities which are or have been performed by employees in or for Indian communities is entitled, if the employee and the tribal organization so elect, to the following:

[See main edition for text of (1) to (4); (b) to (f)]

(As amended Pub. L. 89-702, title II, § 210(a), as added Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 843.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 89-702 inserted ", the city of St. Paul, Alaska, the city of St. George, Alaska, upon incorporation, or the Village Corporations of St. Paul and St. George Islands established pursuant to section 1607 of title 43".

PRIBILOF ISLAND NATIVES EMPLOYED BY FEDERAL GOVERNMENT ON OCTOBER 28, 1983

Pub. L. 89-702, title II, § 210(b), as added Pub. L. 98-129, § 2, Oct. 14, 1983, 97 Stat. 844, provided that: "Notwithstanding any other provision of law, any Native of the Pribilof Islands employed by the Federal government on October 28, 1983, shall be deemed to have been covered under chapters 81, 83, 85 and 87 of title 5, United States Code, on such date for the purposes of determining eligibility for continuity of benefits under section 105(e) of the Act of January 4, 1975 (Public Law 93-638), known as the Indian Self-Determination and Education Assistance Act [subsec. (a) of this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8336; title 7 section 2020; title 20 sections 2313, 2471; title 42 section 9464.

§ 450j. Contract or grant provisions and administration

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2020; title 20 sections 2313, 2471.

§ 450k. Rules and regulations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450h, 450j of this title; title 7 section 2020; title 20 sections 2313, 2471.

§ 450*l*. Report by tribe requesting contract or grant; contents

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2020; title 20 sections 2313, 2471.

§ 450m. Rescission of contract or grant and assumption of control of program, etc.; authority; grounds; procedure; correction of violation as prerequisite to new contract or grant agreement; construction with occupational safety and health requirements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2020; title 20 sections 2313, 2471.

§ 450n. Sovereign immunity and trusteeship rights unaffected

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 2020; title 20 sections 2313, 2471.

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SUBCHAPTER III—CONTRACTS WITH STATES

§ 452. Contracts for education, medical attention, relief and social welfare of Indians

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13-1, 13e, 292b, 304a, 450d to 450f, 453, 454, 456, 458d of this title; title 20 sections 2313, 2471, 3232; title 43 section 1620.

§ 453. Use of Government property by States and Territories

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13-1, 13e, 292b, 304a, 450d to 450f, 453, 454, 456, 458d of this title; title 20 sections 2313, 2471, 3232; title 43 section 1620.

§ 454. Rules and regulations; minimum standards of service

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13-1, 13e, 292b, 304a, 450d to 450f, 453, 454, 456, 458d of this title; title 20 sections 2313, 2471, 3232; title 43 section 1620.

§ 455. Contracts for education in public schools; submission of education plan by contractor as prerequisite; criteria for approval of plan by Secretary of the Interior; participation by non-Indian students

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13-1, 13e, 292b, 304a, 450d to 450f, 453, 454, 456, 458d of this title; title 20 sections 2313, 2471, 3232; title 43 section 1620.

§ 456. Local committee of Indian parents in school districts having school boards composed of non-Indian majority

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13-1, 13e, 292b, 304a, 450d to 450f, 453, 454, 456, 458, 458d of this title; title 20 sections 2313, 2471, 3232; title 43 section 1620.

§ 457. Reimbursement to school districts for educating non-resident students

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 13-1, 13e, 292b, 304a, 450d to 450f, 453, 454, 456, 458d of this title; title 20 sections 2313, 2471, 3232; title 43 section 1620.

SUBCHAPTER V—PROTECTION OF INDIANS AND CONSERVATION OF RESOURCES

§ 461. Allotment of land on Indian reservations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 462. Existing periods of trust and restrictions on alienation extended

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 463. Restoration of lands to tribal ownership

(a) Protection of existing rights

The Secretary of the Interior, if he shall find it to be in the public interest, is authorized to restore to tribal ownership the remaining surplus lands of any Indian reservation heretofore opened, or authorized to be opened, to sale, or any other form of disposal by Presidential proclamation, or by any of the public-land laws of the United States: *Provided, however*, That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by sections 461, 462, 463, 464, 465, 466 to 470, 471 to 473, 474, 475, 476 to 478, and 479 of this title: *Provided further*, That this section shall not apply to lands within any reclamation project heretofore authorized in any Indian reservation.

[*See main edition for text of* (*b*); *credits*]

REFERENCES IN TEXT

"Heretofore", referred to in subsec. (a), means before June 18, 1934.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 464. Transfer of restricted Indian lands or shares in assets of Indian tribes or corporation; exchange of lands

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 465. Acquisition of lands, water rights or surface rights; appropriation; title to lands; tax exemption

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 463b, 464, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108, 2202 of this title; title 43 section 1615.

§ 466. Indian forestry units; rules and regulations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 467. New Indian reservations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 468. Allotments or holdings outside of reservations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 469. Indian corporations; appropriation for organizing

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 470. Revolving fund; appropriation for loans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 671, 674, 676, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 471. Vocational and trade schools; appropriation for tuition

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 472. Standards for Indians appointed to Indian Office

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 472a, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2011, 2108 of this title; title 5 section 8336; title 43 section 1615.

§ 473. Application of sections

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 474. Continuation of allowances

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 475. Claims or suits of Indian tribes against United States; rights unimpaired

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 476. Organization of Indian tribes; constitution and bylaws; special election

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 390, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 711d, 713d, 714d, 723, 725, 728, 758, 762, 765, 903a, 903c, 935, 1300b-14, 1300f, 1461, 1742, 2108 of this title; title 16 section 803; title 43 section 1615.

§ 477. Incorporation of Indian tribes; charter; ratification by election

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 713b, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 478. Acceptance of sections 461 to 479 optional

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478a, 478b, 479, 480, 482, 483, 488, 503, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461. 2108, 2202 of this title; title 43 section 1615.

§ 479. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 324, 396b, 443, 463, 464, 465, 467, 468, 469, 470a, 473, 473a, 474, 475, 475a, 478, 478a, 478b, 480, 482, 483, 488, 503, 504, 507, 711a, 723, 725, 728, 758, 762, 903a, 903c, 935, 1300b-14, 1300f, 1461, 2108 of this title; title 43 section 1615.

§ 483a. Mortgages and deeds of trust by individual Indian owners; removal from trust or restricted status; application to Secretary

(a) The individual Indian owners of any land which either is held by the United States in trust for them or is subject to a restriction against alienation imposed by the United States are authorized, subject to approval by the Secretary of the Interior, to execute a mortgage or deed of trust to such land. Such land shall be subject to foreclosure or sale pursuant to the terms of such mortgage or deed of trust in accordance with the laws of the State or Territory in which the land is located. For the purpose of any foreclosure or sale proceeding the Indian owners shall be regarded as vested with an unrestricted fee simple title to the land, the United States shall not be a necessary party to the proceeding, and any conveyance of the land pursuant to the proceeding shall divest the United States of title to the land. All mortgages and deeds of trust to such land heretofore approved by the Secretary of the Interior are ratified and confirmed.

(b) In the event such land is acquired by an Indian or an Indian tribe, such land shall not be removed from trust or restricted status except upon application to the Secretary under existing law.

(As amended Oct. 30, 1984, Pub. L. 98-608, § 2, 98 Stat. 3173.)

AMENDMENTS

1984—Pub. L. 98-608 designated existing provisions as subsec. (a) and added subsec. (b).

SUBCHAPTER XIII—KLAMATH TRIBE: TERMINATION OF FEDERAL SUPERVISION

§ 564w-1. Klamath Indian Forest and Klamath Marsh

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Appraisals; notice to Congressional committees; appropriation; realization value; report to Congressional committees

Within sixty days after August 23, 1958 the Secretary of the Interior shall contract by negotiation with three qualified appraisers or three qualified appraisal organizations for a review of the appraisal approved by the Secretary pursuant to section 564d(a)(2) of this title. In such review full consideration shall be given to all reasonably ascertainable elements of land, forest, and mineral values. Not less than thirty days before executing such contracts the Secretary shall notify the chairman of the House Committee on Interior and Insular Affairs and the chairman of the Senate Committee on Interior and Insular Affairs of the names and addresses of the appraisers selected. The cost of the appraisal review shall be paid from tribal funds which are made available for such purpose, subject to full reimbursement by the United States, and the appropriation of funds for that purpose is authorized. Upon the basis of a review of the appraisal heretofore made of the forest units and marsh lands involved and such other materials as may be readily available, including additional market data since the date of the prior appraisal, but without making any new and independent appraisal, each appraiser shall estimate the fair market value of such forest units and marsh lands as if they had been offered for sale on a competitive market without limitation on use during the interval between the adjournment of the Eighty-fifth Congress and the termination date specified in section 564e(b) of this title. This value shall be known as the realization value. If the three appraisers are not able to agree on the realization value of such forest units and marsh lands, then such realization values shall be determined by averaging the values estimated by each appraiser. The Secretary shall report such realization values to the chairman of the House Committee on Interior and Insular Affairs and to the chairman of the Senate Committee on Interior and Insular Affairs not later than January 15, 1959. No sale of forest units that comprise the Klamath Indian Forest designated pursuant to subsection (a) of this section shall be made under the provisions of this subchapter prior to April 1, 1959.

[*See main edition for text of* (*d*) *to* (*i*); *credits*]

CODIFICATION

Subsec. (c) is set out in this supplement to correct a typographical error appearing in the main edition.

SUBCHAPTER XXI—NAVAJO AND HOPI TRIBES: REHABILITATION

§ 640b. Grants

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 640a, 640c-1, 640c-2, 1832 of this title; title 20 section 3489.

§ 640c-1. Authorization of appropriations

(a) Construction grants

(1) For the purpose of making construction grants under sections 640a to 640c-2 of this title, there are hereby authorized to be appropriated such sums as may be necessary for the fiscal year beginning October 1, 1984, and for the three succeeding fiscal years.

[*See main edition for text of* (*2*); (*b*) *and* (*c*)]

(As amended Pub. L. 98-192, § 14, Dec. 1, 1983, 97 Stat. 1343.)

AMENDMENTS

1983—Subsec. (a)(1). Pub. L. 98-192 substituted "October 1, 1984" for "October 1, 1979".

SUBCHAPTER XXII—NAVAJO AND HOPI TRIBES: SETTLEMENT OF RIGHTS AND INTERESTS

§ 640d-1. Negotiating teams

REFERENCES IN TEXT

Section 640d-3 of this title, referred to in subsecs. (b) and (d), was amended by Pub. L. 98-620, title IV, § 402(27), Nov. 8, 1984, 98 Stat. 3359, by striking out subsec. (b) and redesignating subsec. (a) as the entire section.

§ 640d-3. Default or failure to reach agreement; recommendations to District Court; final adjudication

If the negotiating teams fail to reach full agreement within the time period allowed in section 640d-2(a) of this title or if one or both of the tribes are in default under the provisions of section 640d-1(b) or (d) of this title, the Mediator, within ninety days thereafter, shall prepare and submit to the District Court a report containing his recommendations for the settlement of the interests and rights set out in section 640d(a) of this title which shall be most reasonable and equitable in light of the law and circumstances and consistent with the provisions of this subchapter. Following the District Court's review of the report and recommendations (which are not binding thereon) and any further proceedings which the District Court may schedule, the District Court is authorized to make a final adjudication, including partition of the joint use area, and enter the judgments in the supplemental proceedings in the Healing case.

(As amended Pub. L. 98-620, title IV, § 402(27), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Pub. L. 98-620 struck out the designation "(a)" before "If the negotiating", and struck out subsec. (b) which provided that any proceedings as authorized in this section had to be assigned for hearing at the earliest possible date, would take precedence over all other matters pending on the docket of the District Court at that time, and had to be expedited in every way by the Court.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 640d-10. Resettlement lands for Navajo Tribe

(a) Transfer of lands under jurisdiction of Bureau of Land Management; State and private land exchanges; valuation; acquired private lands; lands to be held in trust

The Secretary is authorized and directed to—

(1) transfer not to exceed two hundred and fifty thousand acres of lands under the jurisdiction of the Bureau of Land Management within the State [3] of Arizona and New Mexico to the Navajo Tribe: *Provided*, That, in order to facilitate such transfer, the Secretary is authorized to exchange such lands for State or private lands of equal value or, if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands transferred out of Federal ownership. The Secretary shall try to reduce the payment to as small an amount as possible.

(2) on behalf of the United States, accept title to not to exceed one hundred and fifty thousand acres of private lands acquired by the Navajo Tribe. Title thereto shall be taken in the name of the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation.

Subject to the provisions of the following sentences of this subsection, all rights, title and interests of the United States in the lands described in paragraph (1), including such interests the United States as lessor has in such lands under the Mineral Leasing Act of 1920, as amended [30 U.S.C. 181 et seq.], will, subject to existing leasehold interests, be transferred without cost to the Navajo Tribe and title thereto shall be taken by the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation. So long as selected lands coincide with pending noncompetitive coal lease applications under the Mineral Leasing Act of 1920, as amended, the Secretary may not transfer any United States interests in such lands until the noncompetitive coal lease applications have been fully adjudicated. If such adjudication results in issuance of Federal coal leases to the applicants, such transfer shall be subject to such leases. The leaseholders rights and interests in such coal leases will in no way be diminished by the transfer of the rights, title and interests of the United States in such lands to the Navajo Tribe. If any selected lands are subject to valid claims located under the Mining Law of 1872 the transfer of the selected lands may be made subject to those claims.

(2) [4] Those interests in lands acquired in the State of New Mexico by the Navajo Tribe pursuant to subsection 2 [5] of this section shall be subject to the right of the State of New Mexico to receive the same value from any sales, bonuses, rentals, royalties and interest charges from the conveyance, sale, lease, development, and production of coal as would have been received had the subsurface interest in such lands remained with the United States and been leased pursuant to the Mineral Lands Leasing Act of 1920, as amended [30 U.S.C. 181 et seq.], or any successor Act; or otherwise developed. The State's interest shall be accounted for in the same manner as it would have been if a lease had issued pursuant to the Mineral Lands Leasing Act of 1920, as amended.

[*See main edition for text of* (*b*) *to* (*i*)]

(As amended Pub. L. 98-603, title I, § 106, Oct. 30, 1984, 98 Stat. 3157.)

REFERENCES IN TEXT

The Mineral Leasing Act of 1920, as amended, and the Mineral Lands Leasing Act of 1920, as amended, referred to in subsec. (a), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified principally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

The Mining Law of 1872, referred to in subsec. (a), is act May 10, 1872, ch. 152, 17 Stat. 91, as amended, which was incorporated into the Revised Statutes of 1878 as R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of Title 30. For complete classification of such Revised Statutes sections to the Code, see Tables.

Subsection (a)(2) of this section, referred to in subsec. (f)(1), (3), means the first paragraph (2) of subsec. (a), relating to acceptance of title to private lands.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-603, § 106(2), added provisions relating to transfer without cost to the Navajo Tribe with title taken by the United States in trust for the benefit of the Navajo Tribe as part of the Navajo Reservation of all rights, title, and interests of the United States in the lands described in par. (1), subject to existing leaseholds.

Subsec. (a)(1). Pub. L. 98-603, § 106(1), struck out provisions requiring transfer of lands without cost to the Navajo Tribe with title taken by the United States in trust for the benefit of the Navajo Tribe as part of the Navajo Reservation.

Subsec. (a)(2). Pub. L. 98-603, § 106(3), added the par. (2) relating to interests in lands acquired in the State of New Mexico.

§ 640d-24. Authorization of appropriations

(a) Purposes; amounts

[*See main edition for text of* (*1*) *to* (*3*)]

(4) For the purpose of carrying out the provisions of section 640d-13(b) of this title, there is

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[3] So in original. Probably should be "States".

[4] So in original. Two pars. designated (2) have been enacted.

[5] So in original. Probably should be "paragraph (1)".

hereby authorized to be appropriated not to exceed $7,700,000.

[*See main edition for text of* (5) *to* (7)]

(8) For the purposes of carrying out the provisions of section 640d-14 of this title, there is authorized to be appropriated not to exceed $15,000,000 annually for fiscal years 1983 through 1987.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-48, July 13, 1983, 97 Stat. 244.)

Amendments

1983—Subsec. (a)(4). Pub. L. 98-48, § 1, substituted "$7,700,000" for "$5,500,000".

Subsec. (a)(8). Pub. L. 98-48, § 2, added par. (8).

SUBCHAPTER XXVI—SOUTHERN UTE INDIAN TRIBE OF COLORADO

§ 668. Sale of lands held by the United States

Southern Ute Indian Reservation in Colorado; Confirmation of Reservation Boundaries

Pub. L. 98-290, May 21, 1984, 98 Stat. 201, provided that:

"CONGRESSIONAL PURPOSE

"Section 1. The purposes of this Act are—

"(1) to resolve uncertainty over the boundaries of the Southern Ute Indian Reservation and the status of unrestricted land on such reservation, and

"(2) to avoid long and costly litigation over issues dependent on reservation or Indian country status.

"INDIAN TRUST LAND DEFINED

"Sec. 2. For purposes of this Act, the term 'Indian trust land' means any land within the boundaries of the Southern Ute Indian Reservation which—

"(1) is held by the United States in trust for the benefit of the Southern Ute Indian Tribe or individual Indians, or

"(2) is owned by the United States and reserved for use or actually used in the administration of Indian affairs.

Any right-of-way bounded on both sides by Indian trust land shall be Indian trust land. Any other right-of-way shall not be Indian trust land.

"BOUNDARIES OF THE SOUTHERN UTE INDIAN RESERVATION DEFINED

"Sec. 3. The Southern Ute Indian Reservation in the State of Colorado is declared to have the following boundaries:

"(1) Bounded on the north by the southern boundary of the lands—

"(A) ceded to the United States by certain bands of Ute Indians under the Articles of Convention entered into on September 13, 1873, and ratified by the Act approved April 29, 1874 (18 Stat. 36), and

"(B) described in article I of such Articles of Convention.

"(2) Bounded on the south by the boundary line between the States of Colorado and New Mexico as described in article II of the treaty between the United States and the Ute Indians concluded March 2, 1868, and proclaimed November 6, 1868 (15 Stat. 619).

"(3) Bounded on the west by the eastern boundary of the Ute Mountain Ute Indian Reservation.

"(4) Bounded on the east by the southernmost 15 miles of the eastern boundary of the lands reserved to the Ute Indians by article II of the treaty between the United States and the Ute Indians concluded March 2, 1868, and proclaimed November 6, 1868 (15 Stat. 619), except that the lands east of such boundary in township 32 north, range 1 west, New Mexico principal meridian, that are held by the United States in trust for the benefit of the Southern Ute Indian Tribe are part of the Southern Ute Indian Reservation.

"JURISDICTION OVER RESERVATION

"Sec. 4. (a) Such territorial jurisdiction as the Southern Ute Indian Tribe has over persons other than Indians and the property of such persons shall be limited to Indian trust lands within the reservation.

"(b) Any person who is not an Indian and the property of any such person shall be subject to the jurisdiction of the United States under section 1152 of title 18, United States Code, only on Indian trust land.

"(c) Any law of the United States related to the sale, possession, introduction, or manufacture of alcoholic beverages or to trading with Indians within Indian country, or within the Indian reservation, shall apply, with respect to the Southern Ute Indian Reservation, only on Indian trust land.

"JURISDICTION OVER INCORPORATED MUNICIPALITIES WITHIN THE RESERVATION

"Sec. 5. The State of Colorado shall exercise criminal and civil jurisdiction within the boundaries of the town of Ignacio, Colorado, and any other municipality which may be incorporated under the laws of Colorado within the Southern Ute Indian Reservation, as if such State had assumed jurisdiction pursuant to the Act of August 15, 1953 (67 Stat. 588), as amended by the Act of April 11, 1968 (82 Stat. 79) [see 28 U.S.C. 1360 note]."

SUBCHAPTER XXX—WESTERN OREGON INDIANS: TERMINATION OF FEDERAL SUPERVISION

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 711a, 712a, 713b, 714a of this title.

§ 704. Omitted

Codification

Section, act Aug. 13, 1954, ch. 733, § 14, 68 Stat. 727, which revoked the corporate charter of the Confederated Tribes of the Grand Ronde Community of Oregon and provided for termination of Federal power with regard to the tribe, was omitted in view of the Federal recognition and restoration of the corporate charter of the Confederated Tribes of the Grand Ronde Community of Oregon by section 713b of this title.

SUBCHAPTER XXX-C—CONFEDERATED TRIBES OF THE GRAND RONDE COMMUNITY OF OREGON

§ 713. Definitions

For the purposes of this subchapter—

(1) the term "tribe" means the Confederated Tribes of the Grand Ronde Community of Oregon considered as one tribe in accordance with section 713a of this title;

(2) the term "Secretary" means the Secretary of the Interior or his designated representative;

(3) the term "Interim Council" means the council which is established under, and the members of which are elected pursuant to, section 713c of this title;

(4) the term "tribal governing body" means the governing body which is established under, and the members of which are elected pursuant to, the tribal constitution and bylaws adopted in accordance with section 713d of this title; and

(5) the term "member", when used with respect to the tribe, means an individual enrolled on the membership roll of the tribe in accordance with section 713e of this title.

(Pub. L. 98-165, § 2, Nov. 22, 1983, 97 Stat. 1064.)

Short Title

Section 1 of Pub. L. 98-165 provided that: "This Act [enacting this subchapter] may be cited as the 'Grand Ronde Restoration Act'."

§ 713a. Consideration of Confederated Tribes of Grand Ronde Community as one tribe

The Confederated Tribes of the Grand Ronde Community of Oregon shall be considered as one tribal unit for purposes of Federal recognition and eligibility for Federal benefits under section 713b of this title, the establishment of tribal self-government under sections 713c and 713d of this title, the compilation of a tribal membership roll under section 713e of this title, and the establishment of a tribal reservation under section 713f of this title.

(Pub. L. 98-165, § 3, Nov. 22, 1983, 97 Stat. 1064.)

Section Referred to in Other Sections

This section is referred to in section 713 of this title.

§ 713b. Restoration of Federal recognition, rights, and privileges

(a) Federal recognition

Notwithstanding any provision of subchapter XXX of this chapter or any other law, Federal recognition is extended to the Confederated Tribes of the Grand Ronde Community of Oregon and the corporate charter of such tribe issued pursuant to section 477 of this title and ratified by the tribe on August 22, 1936, is reinstated. Except as otherwise provided in this subchapter, all laws and regulations of the United States of general application to Indians or nations, tribes, or bands of Indians which are not inconsistent with any specific provision of this subchapter shall be applicable to the tribe.

(b) Restoration of rights and privileges

Except as provided in subsection (d) of this section, all rights and privileges of the tribe and the members of the tribe under any Federal treaty, Executive order, agreement, or statute, or under any other Federal authority, which may have been diminished or lost under subchapter XXX of this chapter are restored, and the provisions of such subchapter shall be inapplicable to the tribe and to members of the tribe after November 22, 1983.

(c) Federal services and benefits

Notwithstanding any other provision of law, the tribe and its members shall be eligible, on and after November 22, 1983, for all Federal services and benefits furnished to federally recognized Indian tribes without regard to the existence of a reservation for the tribe. In the case of Federal services available to members of federally recognized Indian tribes residing on or near a reservation, members of the tribe residing in the following counties of the State of Oregon shall be deemed to be residing on or near a reservation:

(1) Washington County.
(2) Marion County.
(3) Yamhill County.
(4) Polk County.
(5) Tillamook County.
(6) Multnomah County.

Any member residing in any such county shall continue to be eligible to receive any such Federal service notwithstanding the establishment of any reservation for the tribe in accordance with any plan prepared pursuant to section 713f of this title.

(d) No hunting, fishing or trapping rights restored

No hunting, fishing, or trapping rights of any nature of the tribe or of any member, including any indirect or procedural right or advantage over individuals who are not members, are granted or restored under this subchapter.

(e) Effect on property rights and other obligations

Except as otherwise specifically provided in this subchapter, no provision contained in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes already levied.

(Pub. L. 98-165, § 4, Nov. 22, 1983, 97 Stat. 1064.)

References in Text

Subchapter XXX [§ 691 et seq.] of this chapter, referred to in subsecs. (a) and (b), was in the original a reference to the Act approved August 13, 1954 (25 U.S.C. 691 et seq.).

Section Referred to in Other Sections

This section is referred to in section 713a of this title.

§ 713c. Interim Council

(a) Establishment

There is established an Interim Council of the tribe which shall be composed of nine members. The Interim Council shall represent the tribe and its members in the implementation of this subchapter and shall be the governing body of the tribe until the tribal governing body established in accordance with section 713d of this title first convenes.

(b) Nomination and election of Interim Council members

(1) Within forty-five days after November 22, 1983, the Secretary shall announce the date of a general council meeting of the tribe to nominate candidates for election to the Interim Council. Such general council meeting shall be held within fifteen days of such announcement.

(2) Within forty-five days after such general council meeting, the Secretary shall hold an election by secret ballot to elect the members of the Interim Council from among the mem-

bers nominated in such general council meeting. Absentee and write-in balloting shall be permitted.

(3) The Secretary shall approve the results of the Interim Council election conducted pursuant to this section if he is satisfied that the requirements of this section relating to the nomination and the election processes have been met. If he is not satisfied, he shall call for another general council meeting to be held within sixty days after such election to nominate candidates for election to the Interim Council and shall hold another election within forty-five days of such meeting.

(4) The Secretary shall take any action necessary to ensure that each member described in section 713e(d) of this title is given notice of the time, place, and purpose of each meeting and election held pursuant to this subsection at least ten days before such general meeting or election.

(c) Authority and capacity; termination

(1) The Interim Council shall have no powers other than those given it under this subchapter.

(2) With respect to any Federal service or benefit for which the tribe or any member is eligible, the Interim Council shall have full authority and capacity to receive grants and to enter into contracts.

(3)(A) Except as provided in subparagraph (B), the Interim Council and such Council's authority and capacity under this section shall cease to exist on the date the tribal governing body first convenes.

(B) With respect to any contractual right established and any obligation entered into by the Interim Council, such Council shall have the authority and capacity to bind the tribal governing body, as the successor in interest to the Interim Council, for a period of not more than six months beginning on the date such tribal governing body first convenes.

(d) Vacancy on Interim Council

Within thirty days after a vacancy occurs on the Interim Council and subject to the approval of the Secretary, the Interim Council shall hold a general council meeting to nominate a candidate for election to fill such vacancy and shall hold such election. The Interim Council shall provide notice of the time, place, and purpose of such meeting and election to members described in section 713e(d) of this title at least ten days before each such general meeting or election.

(Pub. L. 98-165, § 5, Nov. 22, 1983, 97 Stat. 1065.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 713, 713a, 713e of this title.

§ 713d. Tribal constitution and bylaws; tribal governing body

(a) Adoption of proposed constitution and bylaws; election: time and procedure

(1) The Interim Council shall be responsible for preparing the tribal constitution and bylaws which shall provide for, at a minimum, the establishment of a tribal governing body and tribal membership qualifications. Such proposed constitution and bylaws shall be adopted by the Interim Council no later than six months after November 22, 1983.

(2) Upon the adoption of the proposed tribal constitution and bylaws by the Interim Council, the Council shall request the Secretary, in writing, to schedule an election to approve or disapprove the adoption of such constitution and bylaws. The Secretary shall conduct an election by secret ballot in accordance with section 476 of this title.

(b) Notice and consultation

Not less than thirty days before any election scheduled pursuant to subsection (a) of this section, a copy of the proposed tribal constitution and bylaws, as adopted by the Interim Council, along with a brief and impartial description of the proposed constitution and bylaws shall be sent to each member eligible to participate in such election under section 713e(d) of this title. The members of the Interim Council may freely consult with members of the tribe concerning the text and description of the constitution and bylaws, except that such consultation may not be carried on within fifty feet of the polling places on the date of such election.

(c) Majority vote for adoption; procedure in event of failure to adopt proposed constitution

(1) In any election held pursuant to subsection (a) of this section, a vote of a majority of those actually voting shall be necessary and sufficient for the approval of the adoption of the tribal constitution and bylaws.

(2) If in any such election such majority does not approve the adoption of the proposed tribal constitution and bylaws, the Interim Council shall be responsible for preparing another tribal constitution and other bylaws in the same manner provided in this section for the first proposed constitution and bylaws. Such new proposed constitution and bylaws shall be adopted by the Interim Council no later than six months after the date of the election in which the first proposed constitution and bylaws failed of adoption. An election on the question of the adoption of the new proposal of the Interim Council shall be conducted in the same manner provided in subsection (a)(2) of this section for the election on the first proposed constitution and bylaws.

(d) Election of tribal governing body

Not later than one hundred and twenty days after the tribe approves the adoption of the tribal constitution and bylaws and subject to the approval of the Secretary, the Interim Council shall conduct an election, by secret ballot, to elect the tribal governing body established under such constitution and bylaws. Notwithstanding any provision of the tribal constitution and bylaws, absentee and write-in balloting shall be permitted in an election under this subsection.

(Pub. L. 98-165, § 6, Nov. 22, 1983, 97 Stat. 1066.)

Section Referred to in Other Sections

This section is referred to in sections 713, 713a, 713c, 713e of this title.

§ 713e. Membership rolls; voting rights of member

(a) Membership roll established and opened

The membership roll of the tribe is established and open.

(b) Criteria governing eligibility

(1) Until the first election of the tribal governing body is held pursuant to section 713d(d) of this title, any living individual may be enrolled on the membership roll of the tribe if—

(A) that individual's name was listed on the final membership roll of the tribe published on April 6, 1956, in volume 20, number 101, Federal Register, pages 3636 through 3642;

(B) that individual was entitled to be on the membership roll of the tribe on August 13, 1954, but was not listed; or

(C) that individual is a descendant of an individual, living or dead, described in subparagraph (A) or (B) and possesses at least one-fourth degree of blood of members of the tribe, living or dead, or individuals who are or would have been eligible to be members under this paragraph.

(2) After the first election of the tribal governing body is held pursuant to section 713d(d) of this title, the provisions of the constitution and bylaws adopted in accordance with section 713d(a) of this title shall govern membership in the tribe.

(c) Procedures for verification of eligibility

(1) Before the election of the members of the Interim Council is held pursuant to section 713c(b) of this title, verification of (A) descendancy, for purposes of enrollment, and (B) age, for purposes of voting rights under subsection (d) of this section, shall be made upon oath before the Secretary whose determination thereon shall be final.

(2) After the election of the members of the Interim Council is held pursuant to section 713c(b) of this title, but before the first election of the members of the tribal governing body is held pursuant to section 713d(d) of this title, the verification of descendancy and age shall be made upon oath before the Interim Council, or its authorized representative. An individual may appeal the exclusion of his name from the membership roll of the tribe to the Secretary, who shall make a final determination of each such appeal within ninety days after such an appeal has been filed with him. The determination of the Secretary with respect to such an appeal shall be final.

(3) After the first election of the members of the tribal governing body is held pursuant to section 713d(d) of this title, the provisions of the constitution and bylaws adopted in accordance with section 713d(a) of this title shall govern the verification of any requirements for membership in the tribe. The Interim Council and the Secretary shall deliver their records and files and any other material relating to the enrollment of tribal members to such tribal governing body.

(4) Not less than sixty days before the election under section 713d(a) of this title, the Secretary shall publish in the Federal Register a certified copy of the membership roll of the tribe as of the date of such publication. Such membership roll shall include the names of all individuals who were enrolled by the Secretary, either directly under paragraph (1) or pursuant to an appeal under paragraph (2), and by the Interim Council under paragraph (2).

(d) Voting rights of member

Each member who is eighteen years of age or older shall be eligible to attend, participate in, and vote at each general council meeting. Each such member may nominate candidates for any office, run for any office, and vote in any election of members to the Interim Council and to such other tribal governing body as may be established under the constitution and bylaws adopted in accordance with section 713d of this title.

(Pub. L. 98-165, § 7, Nov. 22, 1983, 97 Stat. 1067.)

Section Referred to in Other Sections

This section is referred to in sections 713, 713a, 713c, 713d of this title.

§ 713f. Establishment of tribal reservation

(a) Plan for establishment of reservation

(1) Any reservation for the tribe shall be established by an Act of Congress enacted after November 22, 1983.

(2) The Secretary shall enter into negotiations with the tribal governing body with respect to establishing a reservation for the tribe and, in accordance with this section and within two years of November 22, 1983, develop a plan for the establishment of such a reservation. Upon the approval of such plan by the tribal governing body (and after consultation with interested parties pursuant to subsection (b) of this section), the Secretary shall submit such plan to the Clerk of the House of Representatives and the Secretary of the Senate for distribution to the committees of the respective Houses of the Congress with jurisdiction over the subject matter.

(b) Consultation with State and local officials required

To assure that legitimate State and local interests are not prejudiced by the proposed enlargement of the reservation, the Secretary shall notify and consult all appropriate officials of the State of Oregon, all appropriate local governmental officials in the State of Oregon, and any other interested party in developing any plan under subsection (a) of this section. The Secretary shall provide complete information on the proposed plan to such officials and interested parties, including the restrictions on such proposed plan imposed by subsection (c) of this section. During any consultation by the Secretary under this subsection, the Secretary shall provide such information as he may possess, and shall request comments and additional information, on the following subjects:

(1) The size and location of the proposed reservation.

(2) The anticipated effect of the establishment of the proposed reservation on State and local expenditures and tax revenues.

(3) The extent of any State or local service to the tribe, the reservation of the tribe, or members after the establishment of the proposed reservation.

(4) The extent of Federal services to be provided in the future to the tribe, the reservation of the tribe, or members.

(5) The extent of service to be provided in the future by the tribe to members residing on or off the reservation.

(c) Restrictions on plan

Any plan developed by the Secretary under subsection (a) of this section shall provide that—

(1) any real property transferred by the tribe or any member to the Secretary shall be taken and held in the name of the United States for the benefit of the tribe and shall be a part of the reservation of the tribe;

(2) the establishment of the reservation shall not grant or restore to the tribe or any member any hunting, fishing, or trapping right of any kind on such reservation, including any indirect or procedural right or advantage over individuals who are not members of the tribe;

(3) the Secretary shall not accept any real property in trust for the benefit of the tribe or its members which is not located within the political boundaries of Polk, Yamhill, or Tillamook County, Oregon;

(4) any real property taken in trust by the Secretary pursuant to such plan shall be subject to—

(A) all legal rights and interests in such land existing at the time of the acquisition of such land by the Secretary, including any lien, mortgage, or previously levied and outstanding State or local tax, and

(B) foreclosure or sale in accordance with the laws of the State of Oregon pursuant to the terms of any valid obligation in existence at the time of the acquisition of such land by the Secretary;

(5) any real property transferred pursuant to such plan shall be exempt from Federal, State, and local taxation of any kind;

(6) the State of Oregon shall exercise criminal and civil jurisdiction over the reservation, and over the individuals on the reservation, in accordance with section 1162 of title 18 and section 1360 of title 28, respectively; and

(7) any Federal real property transferred for the benefit of the tribe, pursuant to any reservation plan developed under subsection (a) of this section, shall come only from available public lands administered under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701), and from lands held in trust by the United States for the tribe or for individual Indians.

(d) Appendix to plan submitted to the Congress

The Secretary shall append to the plan submitted to the Congress under subsection (a) of this section a detailed statement—

(1) describing the manner in which the Secretary notified all interested parties in accordance with subsection (b) of this section;

(2) naming each individual and official consulted in accordance with subsection (b) of this section;

(3) summarizing the testimony received by the Secretary pursuant to any such consultation; and

(4) including any written comments or reports submitted to the Secretary by any party named in paragraph (2).

(Pub. L. 98-165, § 8, Nov. 22, 1983, 97 Stat. 1068.)

REFERENCES IN TEXT

The Federal Land Policy and Management Act of 1976, referred to in subsec. (c)(7), is Pub. L. 94-579, Oct. 21, 1976, 90 Stat. 2743, as amended, which is classified principally to chapter 35 (§ 1701 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of Title 43 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 713a, 713b of this title.

§ 713g. Regulations

The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 98-165, § 9, Nov. 22, 1983, 97 Stat. 1070.)

SUBCHAPTER XXX-D—CONFEDERATED TRIBES OF COOS, LOWER UMPQUA, AND SIUSLAW INDIANS: RESTORATION OF FEDERAL SUPERVISION

§ 714. Definitions

For the purposes of this subchapter—

(1) "Tribe" means the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians;

(2) "Secretary" means the Secretary of the Interior or his authorized representative;

(3) "Interim Council" means the tribal council of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, which serves pursuant to section 714c of this title; and

(4) "member" used with respect to the Tribe means a person enrolled on the membership roll of the Tribe provided for in section 714b of this title.

(Pub. L. 98-481, § 2, Oct. 17, 1984, 98 Stat. 2250.)

SHORT TITLE

Section 1 of Pub. L. 98-481 provided: "That this Act [enacting this subchapter] may be cited as the 'Coos, Lower Umpqua, and Siuslaw Restoration Act'."

§ 714a. Extension of Federal recognition, rights, and privileges

(a) Federal recognition

Federal recognition is hereby extended to the Tribe, and its members shall be eligible for all Federal services and benefits furnished to federally recognized tribes. Notwithstanding any provision to the contrary in any law establishing such services and benefits, eligibility of the Tribe and its members for such Federal services and benefits shall become effective on October 17, 1984, without regard to the existence of a reservation for the Tribe or the residence of the members of the Tribe on a reservation for such members who reside in the following counties of Oregon: Coos, Lane, Lincoln, Douglas, and Curry.

(b) Restoration of rights and privileges

Except as provided in subscription[1] (c) of this section, all rights and privileges of the Tribe and of members of the Tribe under any Federal treaty, Executive order, agreement or statute, or under any other authority, which were diminished or lost under subchapter XXX of this chapter, are hereby restored and the provisions of that Act are inapplicable to the Tribe and to members of the Tribe on October 17, 1984.

(c) Hunting, fishing, or trapping rights not granted or restored

This subchapter shall not grant or restore any hunting, fishing, or trapping right of any nature, including any indirect or procedural right or advantage, to any member of the Tribe, nor shall any presumption be created by this subchapter as to the existence or nonexistence of such rights.

(d) Effect on property rights and other obligations

Except as specifically provided in this subchapter, nothing in this subchapter shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes already levied.

(Pub. L. 98-481, § 3, Oct. 17, 1984, 98 Stat. 2250.)

References in Text

Subchapter XXX [§ 691 et seq.] of this chapter, referred to in subsec. (b), was in the original a reference to the Act of Aug. 13, 1954 (25 U.S.C. 691, et seq.).

Codification

In subsecs. (a) and (b), "on October 17, 1984," the date of enactment of Pub. L. 98-481, was substituted for "upon passage of this Act".

§ 714b. Membership rolls

(a) Opening; duty of Interim Council and tribal officials

The membership roll is declared open. The Interim Council and tribal officials under the Tribe's constitution and bylaws shall take such measures as will insure the continuing accuracy of the membership roll.

(b) Criteria for enrollment

(1) Until a tribal constitution and bylaws are adopted, a person shall be a member of the Tribe and his name shall be placed on the membership roll if the individual is living and if—

(a) that individual's name was listed on the Tribe's Census Roll of 1940;

(b) that individual was entitled to be listed on the Tribe's Census Roll of January 1, 1940 but was not so listed. Any person placed on the membership roll must be listed on the January 1, 1940 Census Roll of the Grand Ronde-Siletz Indian Agency of nonreservation Indians as Coos, Lower Umpqua, or Siuslaw, be a descendant of such a person, or be a descendant of public domain allotee of Western Oregon who was a member of one of these three tribes.

(c) that individual is a direct lineal descendant of an individual, living or dead, identified by subparagraph (a) or (b); and

(d) that individual or the lineal ancestor through whom he qualifies for membership under subparagraph (c) has never been an enrolled member of, or qualified for the payment of any money for the taking of land or otherwise through, any other Indian tribe, either federally recognized or acknowledged or not federally recognized or acknowledged.

(2) Until a tribal constitution and bylaws are adopted, a person shall be eligible for membership if the individual is living and meets the criteria established in subsections (b)(1)(a), (b) and (c) of this section. Such individual may submit an application for enrollment to the Interim Council for consideration and decision and the Interim Council shall place on the roll the name of all individuals who submitted an application and are meeting the criteria established under subsections (b)(1)(a), (b) and (c) of this section: *Provided*, That the Interim Council may reject the application of any person who is found to be a member or who is claiming membership in another Indian tribe. Nothing in this subchapter shall bar unsuccessful applicants for enrollment before the Interim Council from submitting an application for enrollment to the Tribe after the adoption of a tribal constitution and bylaws.

(3) After the adoption of a tribal constitution and bylaws, those documents shall govern membership in the Tribe.

(c) Verification of eligibility for enrollment; appeal; finality of determination; possession of enrollment records and materials

(1) Prior to any election pursuant to section 714d of this title, the Interim Council shall verify by tribal resolution the eligibility for enrollment and age of each member listed on the Tribe's membership roll, which resolution shall be forwarded to the Secretary.

(2) With regard to the exclusion of any name from the tribal membership roll, any member may appeal to the Secretary, who shall make a final determination of each such appeal within ninety days after an appeal has been filed with him. The determination of the Secretary with respect to such an appeal shall be final.

(d) Franchisement

A member who is eighteen years of age or older is entitled and eligible to be given notice of, attend, participate in, and vote at, general council meetings and to nominate candidates for, to run for any office in, and to vote in elections of members to the interim council[2] and to other tribal councils.

(Pub. L. 98-481, § 4, Oct. 17, 1984, 98 Stat. 2251.)

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[1] So in original. Probably should be "subsection".

[2] So in original. Probably should be "Interim Council".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 714, 714d of this title.

§ 714c. Interim Council

Until such time as a new tribal constitution and bylaws are adopted in accordance with section 714d of this title, the Tribe shall be governed by an Interim Council, the membership of which shall consist of the members of the current council of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, Incorporated or such new members as may be elected in accordance with election procedures followed by the tribal corporate body prior to October 17, 1984.

(Pub. L. 98-481, § 5, Oct. 17, 1984, 98 Stat. 2252.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 714 of this title.

§ 714d. Tribal constitution and bylaws

(a) Election; time and procedure

Upon the written request of the Interim Council, the Secretary shall conduct an election by secret ballot, pursuant to section 476 of this title, for the purpose of adopting a constitution and bylaws for the Tribe. The election shall be held after such written request and within sixty days after the Secretary has published in appropriate local media a certification copy of the Tribe's membership roll.

(b) Preelection distribution of proposed constitution and bylaws and brief, impartial description; consultation by Interim Council with members of Tribe

The Interim Council shall draft and distribute to each member described in section 714b(d) of this title, no later than thirty days before the election under subsection (a) of this section, a copy of the proposed constitution and bylaws of the Tribe, as proposed by the Interim Council, along with a brief, impartial description of the constitution and bylaws. The members of the Interim Council may freely consult with members of the Tribe, outside legal counsel and other consultants concerning the text and description of the constitution and bylaws, except that such consultation may not be carried on within fifty feet of the polling places on the date of the election.

(c) Majority vote necessary for adoption of constitution and bylaws

In any election held pursuant to subsection (a) of this section, the vote of a majority of those actually voting shall be necessary and sufficient for the adoption of a tribal constitution and bylaws: *Provided*, That the total vote cast shall not be less than thirty percent of those entitled to vote.

(d) Election of tribal officials provided for in constitution and bylaws; ballot requirements

Not later than one hundred and twenty days after the tribe[3] adopts a constitution and bylaws, the Interim Council shall conduct an election by secret ballot for the purpose of electing the individuals who will serve as tribal officials as provided in the tribal constitution and bylaws. For the purpose of this election and notwithstanding any provision in the tribal constitution and bylaws to the contrary, absentee balloting shall be permitted.

(Pub. L. 98-481, § 6, Oct. 17, 1984, 98 Stat. 2252.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 714b, 714c of this title.

§ 714e. Reservation

(a) Establishment

A reservation shall be established by this subchapter at no cost to the Federal Government.

(b) Legal description

So long as the lands are offered to the Federal Government free of purchase cost, the Secretary shall accept the following lands in trust for the tribe[3] as a reservation:

(1) In Coos County, Oregon, a parcel containing 1.02 acres and described as parcel 3200 of section 106B of township 25 south, range 12 west, Willamette meridian.

(2) In Coos County, Oregon, a parcel described as lots 10-18, block 13, Empire Commercial tracts K73 2K 81, A. N. Foley Donation Land Claim Numbered 38, section 20 of township 25 south, range 13 west, Willamette meridian. The Secretary shall not accept this parcel into trust until the date that is 1 year after October 17, 1984. If before the end of the ninety day period, a person or entity other than the tribe[3] files a lawsuit in a court of competent jurisdiction claiming an interest in such parcel or portion thereof, the Secretary shall not accept the parcel into trust until the final adjudication of this lawsuit. Nothing in this subchapter shall be construed to the prejudice of any parties to such lawsuit or be construed to prevent a court of competent jurisdiction from partitioning such parcel in the adjudication of such lawsuit. Notwithstanding any other provision of law, the United States District Court for the District of Oregon shall be deemed to have jurisdiction over any lawsuit filed to determine the rights to the above described parcel of land.

(3) In Curry County, Oregon, a parcel described as the southeast quarter of the southeast quarter of the southwest quarter of section 11 of township 32 south, range 15 west, Willamette meridian.

(c) State of Oregon; criminal and civil jurisdiction

The State of Oregon shall exercise criminal and civil jurisdiction over the reservation, and over the individuals on the reservation, in accordance with section 1162 of title 18 and section 1360 of title 28, respectively.

(Pub. L. 98-481, § 7, Oct. 17, 1984, 98 Stat. 2253.)

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[3] So in original. Probably should be "Tribe".

§ 714f. Regulations

The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this subchapter.

(Pub. L. 98-481, § 8, Oct. 17, 1984, 98 Stat. 2254.)

SUBCHAPTER XXXII-A—PAIUTE INDIANS OF UTAH: RESTORATION OF FEDERAL SUPERVISION

§ 766. Tribal reservation

RESERVATION OF PAIUTE INDIAN TRIBE OF UTAH

Pub. L. 98-219, Feb. 17, 1984, 98 Stat. 11, provided that:

"SECTION 1. (a) Subject to subsection (d), all right, title, and interest of the United States in the lands described in subsection (b) (including all improvements thereon and appurtenances thereto) are declared to be held in trust by the United States for the benefit of the respective bands of the Paiute Indian Tribe of Utah, as provided in subsection (b), and are declared to be part of the reservation of the Paiute Indian Tribe of Utah.

"(b) The lands subject to this section are parcels 1 through 5 of the lands depicted on the maps contained in the draft document entitled 'Proposed Paiute Indian Tribe of Utah Reservation Plan', dated January 24, 1982, and published by the United States Department of the Interior, Bureau of Indian Affairs. Upon enactment of this Act [Feb. 17, 1984], the Secretary shall publish in the Federal Register the legal description of the lands so depicted. The Secretary is authorized to correct any technical errors in the descriptions of the subject lands. Such lands shall be held as follows:

"(1) To be held in trust for the Kanosh Band of the Paiute Tribe of Utah: Parcel numbered 2, figure 5, page 95, containing approximately five hundred and sixty acres; parcel numbered 3, figure 6, page 99, containing approximately five hundred and two acres.

"(2) To be held in trust for the Koosharem Band of the Paiute Tribe of Utah: Parcel numbered 4, figure 7, page 105, containing approximately five hundred and twenty acres; parcel numbered 5, figure 8, page 111, containing approximately seven hundred and fifteen acres.

"(3) To be held in trust for the Cedar City Band of the Paiute Tribe of Utah: That portion of parcel numbered 1, figure 4, page 85, containing approximately two thousand forty-four acres.

"(4) To be held in trust for the Indian Peaks Band of the Paiute Indian Tribe of Utah: That portion of parcel numbered 1, figure 4, page 85, containing approximately four hundred and twenty-four acres.

"(c) Nothing in this section shall deprive any person of any existing legal right-of-way, mining claim, grazing permit, water right, or other right or interest which such person may have in the lands described in subsection (b).

"(d) Pursuant to the Act of June 14, 1934 (48 Stat. 985) [probably means section 5 of act June 18, 1934, 25 U.S.C. 465], the Secretary shall acquire, to the extent available, easements to and water rights for the lands described in subsection (b) as necessary for their use.

"(e) The Secretary shall consult with the town council of Joseph, Utah, and other appropriate local governmental entities prior to permitting the introduction of any point source of contamination pursuant to any proposed development on parcel numbered 4 as described in subsection (b)(2). The Secretary shall require a minimum of one thousand five hundred feet distance be maintained from the town well of the town of Joseph and any such point source of contamination and may, if he determines it is necessary to prevent contamination of said well, require the installation of an appropriate waste water disposal system as part of any proposed development on parcel 4.

"(f) Upon the effective date of this Act [Feb. 17, 1984], all valid leases, permits, rights-of-way, or other land use rights or authorizations, except mining claims, existing on the date of enactment of this Act [Feb. 17, 1984] in the lands described in subsection (b), including the right to receive compensation for use of the lands, shall cease to be the responsibility of, or enure to the benefit of, the United States, and shall become the responsibility of the Paiute Indian Tribe which shall succeed to the interests of the United States and shall continue to maintain them under the same terms and conditions as they were maintained by the United States.

"(g) All improvements on the lands described in subsection (b) in existence on the effective date of the Act [Feb. 17, 1984], under the authority of the land use rights or authorizations described in subsection (c), shall remain in the same status as to ownership and right of use as existed prior to the date of enactment of this Act [Feb. 17, 1984].

"(h) Nothing in this Act shall be construed as terminating any valid mining claim existing on the date of enactment of this Act [Feb. 17, 1984] on the lands described in subsection (b).

"(i) The mining claims described in subsection (c) shall carry all the rights incident to mining claims, including the rights of ingress and egress over the land described in subsection (b). Such mining claims shall carry the right to occupy and use so much of the surface of the land within their boundaries as is required for all purposes reasonably necessary to mine and remove the minerals, including the removal of timber for mining purposes. Such mining claims shall terminate when they are determined invalid under subsection (j) or are abandoned.

"(j) As soon as possible after enactment of this Act, the Secretary of the Interior shall determine the validity of the mining claims described in subsection (h) as of the date of enactment of this Act [Feb. 17, 1984]. Those mining claims which the Secretary determines to be valid shall be maintained thereafter in compliance with the mining laws of the United States but the holders of such claims shall not be entitled to a patent.

"(k) Nothing in this Act shall prevent the Paiute Indian Tribe from negotiating the accommodation of land use rights or authorizations described in this section through any method acceptable to the parties.

"SEC. 2. The lands which are declared to be held in trust for the benefit of the tribe or bands under this Act shall be subject to the laws of the United States relating to Indian land to the same extent and in the same manner as the lands comprising the reservation of the tribe or bands on the day before the date of the enactment of this Act [Feb. 17, 1984].

"SEC. 3. (a) The Secretary of Agriculture shall not deny the tribe or any member of the tribe the right to use and occupy, on a nonexclusive basis, the national forest land described in subsection (b) for religious and ceremonial purposes for such periods of time and under such reasonable terms and conditions as the Secretary may prescribe: *Provided*, That the Secretary shall permit the tribe to use and occupy, on an exclusive basis, so much of the national forest land in subsection (b) abutting Fish Lake as is necessary for such religious and ceremonial purposes during and including the second and third weeks of June and the first and second weeks of September of each year, under such reasonable terms and conditions as the Secretary may prescribe.

"(b) The land referred to in subsection (a) is the parcel of land depicted on the map contained in the document entitled 'Proposed Paiute Indian Tribe of Utah Reservation Plan', dated January 24, 1982, and published by the United States Department of the Interior, Bureau of Indian Affairs, as follows: Parcel numbered 6: Fish Lake; figure 9, page 117.

"SEC. 4. (a) There is hereby established in the Treasury of the United States a fund to be known as the

Paiute Indian Tribe of Utah Economic Development and Tribal Government Fund. This Fund shall be held in trust for the benefit of the tribe and administered in accordance with this Act.

"(b)(1) One-half of the principal of the Fund shall be designated as the Economic Development Fund and the remaining one-half as the Tribal Government Fund. Each portion of the Fund shall be administered by the Secretary in accordance with reasonable terms established by the tribe and agreed to by the Secretary. The Secretary shall not agree to terms which provide for the investment of the Fund in a manner not in accordance with section 1 of the Act of June 24, 1938 (52 Stat. 1037) [25 U.S.C. 162a], unless the tribe first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment. Until such terms have been agreed upon, the Secretary shall fix the terms for the administration of any portion of the Fund as to which there is no agreement.

"(2) Under no circumstances shall any part of the principal of the Fund be distributed to the tribe, or to any member of the tribe, nor shall income accruing to the Fund be used for per capita payments to any member of the tribe.

"(3) The Secretary shall make available to the tribe in quarterly payments, without any deductions, any income received from the investment of each fund. The use of the income from the Tribal Government Fund shall be free of regulation by the Secretary. The use of the income from the Economic Development Fund shall be consistent with an economic development plan developed by the tribe and approved by the Secretary. The Secretary shall approve such plan within sixty days of its submission if he finds that it is reasonably related to the economic development of the tribe. If the Secretary does not approve such plan, he shall, at the time of his decision, set forth in writing the reasons for his disapproval. With the approval of the Secretary, the tribe may alter the economic development plan subject to the conditions set forth in this section.

"(c) There is authorized to be appropriated in fiscal year 1985 the sum of $2,500,000, which shall be deposited in the Fund. Not more than 5 per centum of any amount appropriated to the Fund under this section may be obligated or spent by the tribe under any contract or agreement relating to the employment of legal counsel.

"(d) The transfer of the approximately four thousand seven hundred and seventy acres of land and the appropriation of the $2,500,000 authorized by this Act shall be in complete fulfillment of the provisions of Public Law 96-227 [this subchapter] relating to the enlargement of the tribe's reservation.

"Sec. 5. For purposes of this Act—

"(1) the term 'tribe' means the Cedar City, Shivwits, Kanosh, Koosharem, and Indian Peaks Bands of Paiute Indians of Utah; and

"(2) except where otherwise specified, the term 'Secretary' means the Secretary of the Interior."

SUBCHAPTER XXXIV—CREEK NATION OF INDIANS

§ 788b. Distribution of funds; tax exemption; equal shares

DISTRIBUTION OF CERTAIN UNDISTRIBUTED JUDGMENT FUNDS AWARDED TO CREEK NATION

Pub. L. 98-390, Aug. 21, 1984, 98 Stat. 1356, provided: "That, notwithstanding Public Law 90-506 [25 U.S.C. 788e et seq.] and any other provision of law, any funds appropriated by Public Law 89-697 [Oct. 27, 1966, 80 Stat. 1057] in satisfaction of a judgment awarded the Muscogee (Creek) Nation of Oklahoma in docket numbered 276 of the Indian Claims Commission which have not been distributed on the date of enactment of this Act [Aug. 21, 1984] (including all interest and investment income accrued thereon) shall be distributed by the Secretary of the Interior to the Muscogee (Creek) Nation of Oklahoma as needed to make expenditures for any plan or program authorized by ordinance of such Nation.

"Sec. 2. (a) Notwithstanding Public Law 90-504 [25 U.S.C. 788a et seq.] and any other provision of law, any funds appropriated by Public Law 89-16 [Apr. 30, 1965, 79 Stat. 81] in satisfaction of a judgment awarded the Creek Nation of Indians in docket numbered 21 of the Indian Claims Commission which have not been distributed on the date of enactment of this Act [Aug. 21, 1984] (including all interest and investment income accrued thereon) shall be used and distributed in accordance with the provisions of this section.

"(b)(1) The Secretary of the Interior (hereinafter in this section referred to as the 'Secretary') shall allocate—

"(A) 81.6196 per centum of the funds described in subsection (a) to the Muscogee (Creek) Nation of Oklahoma, and

"(B) 18.3804 per centum of the funds described in subsection (a) to the Eastern Creeks.

"(2) The funds allocated to the Muscogee (Creek) Nation of Oklahoma under paragraph (1) shall be distributed to such Nation by the Secretary as needed to make expenditures for any plan or program authorized by ordinance of such Nation.

"(3)(A) The funds allocated to the Eastern Creeks under paragraph (1) shall be held in trust and invested by the Secretary for the benefit of the Eastern Creeks.

"Sec. 3. (a) If one or more of the Eastern Creek entities that have filed a petition for Federal acknowledgement are acknowledged to be an Indian tribe on or before December 30, 1984, such tribe or tribes shall be deemed to be a successor entity to the original Eastern Creek group for purposes of distribution of the residual funds in docket numbered 21, and the funds held in trust for the benefit of the Eastern Creeks under section 2 of this Act (including all interest and income accrued thereon) shall be distributed to such tribe or tribes by the Secretary as needed to make any expenditures for any plan or program authorized by ordinance or resolution of such tribe or tribes.

"(b) If more than one tribal entity is recognized by the Secretary, such funds shall be prorated between the tribes on the basis of their respective base membership rolls on the date of acknowledgement.

"(c) If none of the Eastern Creeks which have filed a petition for acknowledgement are recognized as an Indian tribe by the Secretary prior to December 30, 1984, the funds held in trust for the Eastern Creeks under this Act (including all interest and income accrued thereon) shall be distributed by the Secretary in the form of per capita payments in addition to any amount appropriated in satisfaction of a judgment awarded the Eastern Creeks in docket numbered 275 of the Indian Claims Commission.

"Sec. 4. If Federal recognition as an Indian tribe is extended to any Eastern Creek entity prior to distribution of the funds awarded in docket numbered 272 and 275, such tribe or tribes shall be entitled to amend the existing distribution plans for these awards by filing with the Secretary an alternative distribution plan for its proportionate share of funds in these dockets."

SUBCHAPTER XXXIX—INDIANS OF OKLAHOMA

§ 883. Osage Tribe; disposition of judgment fund

[See main edition for text of (a)]

(b) Education program; advances, expenditures, etc., for financing such program

The sum of $1,000,000 plus any funds that revert to the Osage Tribe may be advanced, expended, invested, or reinvested for the purpose of financing an education program of benefit to the Osage Tribe of Indians of Oklahoma, such program to be administered as authorized by the Secretary of the Interior.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-605, § 5, Oct. 30, 1984, 98 Stat. 3168.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-605 struck out "or other socioeconomic programs" after "an education program" and substituted "such program" for "such programs".

CHAPTER 15—CONSTITUTIONAL RIGHTS OF INDIANS

SUBCHAPTER I—GENERALLY

§ 1301. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 8331.

SUBCHAPTER III—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1755 of this title.

§ 1326. Special election

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1755 of this title.

CHAPTER 16—DISTRIBUTION OF JUDGMENT FUNDS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 117b, 609c of this title.

§ 1407. Tax exemption; resources exemption limitation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 117b of this title.

CHAPTER 17—FINANCING ECONOMIC DEVELOPMENT OF INDIANS AND INDIAN ORGANIZATIONS

GENERAL PROVISIONS

§ 1451. Congressional declaration of policy

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-449, § 1, Oct. 4, 1984, 98 Stat. 1725, provided: "That this Act [enacting section 47a of this title and amending sections 1461, 1465, 1481, 1484, 1491, 1497, 1512, 1522, 1523, 1541, and 1543 of this title] may be cited as the 'Indian Financing Act Amendments of 1984'."

§ 1452. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 450e, 1484 of this title; title 12 sections 1228, 1787, 1821; title 31 section 7102; title 40 section 483.

SUBCHAPTER I—INDIAN REVOLVING LOAN FUND

§ 1461. Administration as single Indian Revolving Loan Fund sums from diverse sources; availability of fund for loans to Indians and for administrative expenses

In order to provide credit that is not available from private money markets, all funds that are now or hereafter a part of the revolving fund authorized by the Act of June 18, 1934 (48 Stat. 986), the Act of June 26, 1936 (49 Stat. 1967), and the Act of April 19, 1950 (64 Stat. 44), as amended and supplemented, including sums received in settlement of debts of livestock pursuant to sections 442 and 443 of this title, and sums collected in repayment of loans heretofore or hereafter made, and as interest or other charges on loans, shall hereafter be administered as a single Indian Revolving Loan Fund. The fund shall be available for loans to Indians having a form of organization that is satisfactory to the Secretary and for loans to individual Indians: *Provided*, That, where the Secretary determines a rejection of a loan application from a member of an organization making loans to its membership from moneys borrowed from the fund is unwarranted, he may, in his discretion, make a direct loan to such individual from the fund. The fund shall also be available for administrative expenses incurred in connection therewith.

(As amended Pub. L. 98-449, § 2, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Pub. L. 98-449 which directed that "which are not members of or eligible for membership in an organization which is making loans to its members" be stricken was executed by striking out "who are not members of or eligible for membership in an organization which is making loans to its members" before the proviso.

§ 1465. Modification of amount of loan and document securing loan in collection of loan or in best interests of the United States

The Secretary may cancel, adjust, compromise, or reduce the amount of any loan or any portion thereof heretofore or hereafter made from the revolving loan fund established by this subchapter and its predecessor constituent funds which he determines to be uncollectable in whole or in part, or which is collectable only at an unreasonable cost, or when such action would, in his judgment, be in the best interests of the United States. He may also adjust, compromise, subordinate, or modify the terms of any mortgage, lease, assignment, contract, agreement, or other document taken to secure such loans.

(As amended Pub. L. 98-449, § 3, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Pub. L. 98-449 struck out the proviso at the end of the first sentence which provided that proceedings pursuant to this section would be effective only after following the procedure set out in section 386a of this title.

SUBCHAPTER II—LOAN GUARANTY AND INSURANCE

§ 1481. Statement of purpose

In order to provide access to private money sources which otherwise would not be available, the Secretary is authorized (a) to guarantee not to exceed 90 per centum of the unpaid principal and interest due on any loan made to any organization of Indians having a form or organization satisfactory to the Secretary, and to individual Indians; and (b) in lieu of such guaranty, to insure loans under an agreement approved by the Secretary whereby the lender will be reimbursed for losses in an amount not to exceed 15 per centum of the aggregate of such loans made by it, but not to exceed 90 per centum of the loss on any one loan.

(As amended Pub. L. 98-449, § 4, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Pub. L. 98-449 struck out "who are not members of or eligible for membership in an organization which is making loans to its members" before "; and (b)".

§ 1484. Application for loan; approval by Secretary; issuance of certificate; limitations on amount of loans to individual Indians or economic enterprises; review by Secretary

The application for a loan to be guaranteed hereunder shall be submitted to the Secretary for prior approval. The Secretary shall review each loan application individually and independently from the lender. Upon approval, the Secretary shall issue a certificate as evidence of the guaranty. Such certificate shall be issued only when, in the judgment of the Secretary, there is a reasonable prospect of repayment. No loan to an individual Indian may be guaranteed or insured which would cause the total unpaid principal indebtedness to exceed $350,000. No loan to an economic enterprise (as defined in section 1452 of this title) in excess of $100,000, or such lower amount as the Secretary may determine to be appropriate, shall be insured unless prior approval of the loan is obtained from the Secretary.

(As amended Pub. L. 98-449, § 5, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Pub. L. 98-449 substituted "$350,000" for "$100,000" in the fourth sentence, and added "The Secretary shall review each loan application individually and independently from the lender."

§ 1491. Defaults; written notification; pro rata payments; subrogation and assignment rights of Secretary; cancellation of uncollectable portion of obligations; forbearance for benefit of borrower; interest or charges cessation date

In the event of a default of a loan guaranteed hereunder, the holder of the guaranty certificate may immediately notify the Secretary in writing of such default and the Secretary shall thereupon pay to such holder the pro rata portion of the amount guaranteed and shall be subrogated to the rights of the holder of the guaranty and receive an assignment of the obligation and security. The Secretary may cancel the uncollectable portion of any obligation, to which he has an assignment or a subrogated right under this section. Nothing in this section shall be construed to preclude any forbearance for the benefit of the borrower as may be agreed upon by the parties to the loan and approved by the Secretary. The Secretary may establish the date, not later than the date of judgment and decree of foreclosure or sale, upon which accrual of interest or charges shall cease.

(As amended Pub. L. 98-449, § 6, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Pub. L. 98-449 struck out the proviso at the end of the second sentence which provided that proceedings pursuant to this section shall be effective only after following the procedure set out in section 386a of this title.

§ 1497. Indian Loan Guaranty and Insurance Fund

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Authorization of appropriations

There are authorized to be appropriated for each fiscal year beginning in fiscal year 1985 such sums as may be necessary to fulfill obligations with respect to losses on loans guaranteed or insured under this subchapter. All collections shall remain until expended.

(As amended Pub. L. 98-449, § 7, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-449 added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1482 of this title.

SUBCHAPTER III—INTEREST SUBSIDIES AND ADMINISTRATIVE EXPENSES

§ 1512. Authorization of appropriations for interest payments

There are authorized to be appropriated for fiscal year 1985, and for each fiscal year thereafter, an amount which does not exceed $5,500,000 for purposes of making interest payments authorized under this subchapter. Sums appropriated under this section, shall remain available until expended.

(As amended Pub. L. 98-449, § 8, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Pub. L. 98-449 amended section generally, substituting provisions authorizing appropriations for payment of interest under this subchapter for provisions authorizing appropriations for the Indian Loan Guarantee and Insurance Fund, interest subsidies and administrative expenses.

SUBCHAPTER IV—INDIAN BUSINESS GRANTS

§ 1522. Conditions

(a) Limitation of amount

No grant in excess of $100,000 in the case of an Indian and $250,000 in the case of an Indian tribe, or such lower amount as the Secretary may determine to be appropriate, may be made under this subchapter.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98-449, § 9, Oct. 4, 1984, 98 Stat. 1725.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-449 amended subsec. (a) generally, substituting provisions setting forth different levels of maximum grant amounts in cases of Indians and Indian tribes for provisions providing a maximum of $50,000 in cases of both Indians and Indian tribes.

§ 1523. Authorization of appropriations

There are authorized to be appropriated not to exceed the sum of $10,000,000 per year for fiscal year 1986 and each fiscal year thereafter for the purposes of this subchapter.

(As amended Pub. L. 98-449, § 10, Oct. 4, 1984, 98 Stat. 1726.)

AMENDMENTS

1984—Pub. L. 98-449 amended section generally, substituting "$10,000,000" for "$14,000,000" and "1986 and each fiscal year thereafter" for "1978 and 1979".

SUBCHAPTER V—MISCELLANEOUS PROVISIONS

§ 1541. Competent management and technical assistance for economic enterprises

Prior to and concurrent with the making or guaranteeing of any loan under subchapters I and II of this chapter and with the making of a grant under subchapter IV of this chapter, the purpose of which is to fund the development of an economic enterprise, the Secretary shall insure [1] that the loan or grant applicant shall be provided competent management and technical assistance for preparation of the application and/or administration of funds granted consistent with the nature of the enterprise proposed to be or in fact funded.

(As amended Pub. L. 98-449, § 12, Oct. 4, 1984, 98 Stat. 1726.)

AMENDMENTS

1984—Pub. L. 98-449 amended section generally, adding "Prior to and" and "for preparation of the application and/or administration of funds granted".

§ 1543. Funds limitation for private contracts

For the purpose of entering into contracts pursuant to section 1542 of this title in fiscal year 1985, the Secretary is authorized to use not to exceed 6 percent of any funds appropriated for any fiscal year pursuant to section 1512 of this title. For fiscal year 1986 and for each fiscal year thereafter, there are authorized to be appropriated such sums as may be necessary to carry out the provisions of this subchapter.

(As amended Pub. L. 98-449, § 13, Oct. 4, 1984, 98 Stat. 1726.)

AMENDMENTS

1984—Pub. L. 98-449 amended section generally, substituting provisions limiting funds expended for private contracts to 6 percent of appropriated funds in 1985 and authorizing the appropriation of such sums as may be necessary to carry out this subchapter in fiscal years after 1985 for provisions putting a 5 percent limitation on use of appropriated funds.

CHAPTER 18—INDIAN HEALTH CARE

SUBCHAPTER III—HEALTH FACILITIES

Sec.
1635. Renovation and modernization of facilities.

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

1681. Billing of Indians by Indian Health Service.
1682. Subrogation of claims by Indian Health Service.

SUBCHAPTER III—HEALTH FACILITIES

§ 1635. Renovation and modernization of facilities

On and after October 12, 1984, notwithstanding any other law, an Indian tribe may acquire and expend funds, other than funds appropriated to the Service, for major renovation and modernization, including planning and design for such renovation and modernization of Service facilities, including facilities operated pursuant to contract under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) [25 U.S.C. 450 et seq.] subject to the following conditions:

(1) the implementation of such project shall not require or obligate the Service to provide any additional staff or equipment;

(2) the project shall be subject to the approval of the Area Director of the Service area office involved;

(3) the tribe shall have full authority to administer the project, but shall do so in accordance with applicable rules and regulations of the Secretary governing construction or renovation of Service health facilities; and

(4) no project of renovation or modernization shall be authorized herein if it would require the diversion of Service funds from meeting the needs of projects having a higher priority on the current health facilities priority system.

(Pub. L. 98-473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1865.)

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[1] So in original. Probably should be "ensure".

References in Text

The Indian Self-Determination and Education Assistance Act, referred to in text, is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

Codification

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1985, as enacted by Pub. L. 98-473, and not as part of the Indian Health Care Improvement Act which comprises this chapter.

SUBCHAPTER VI—MISCELLANEOUS PROVISIONS

§ 1681. Billing of Indians by Indian Health Service

With the exception of service units which currently have a billing policy, the Indian Health Service shall not initiate any further action to bill Indians in order to collect from third-party payers nor to charge those Indians who may have the economic means to pay unless and until such time as Congress has agreed upon a specific policy to do so and has directed the IHS to implement such a policy.

(Pub. L. 98-473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1865.)

Codification

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1985, as enacted by Pub. L. 98-473, and not as part of the Indian Health Care Improvement Act which comprises this chapter.

Section Referred to in Other Sections

This section is referred to in section 1682 of this title.

§ 1682. Subrogation of claims by Indian Health Service

On and after October 12, 1984, the Indian Health Service may seek subrogation of claims including but not limited to auto accident claims, including no-fault claims, personal injury, disease, or disability claims, and workman's compensation claims except as otherwise limited by section 1681 of this title.

(Pub. L. 98-473, title I, § 101(c) [title II, § 201], Oct. 12, 1984, 98 Stat. 1837, 1865.)

Codification

Section was enacted as part of the Department of the Interior and Related Agencies Appropriations Act, 1985, as enacted by Pub. L. 98-473, and not as part of the Indian Health Care Improvement Act which comprises this chapter.

CHAPTER 19—INDIAN CLAIMS SETTLEMENTS WITH STATES

SUBCHAPTER IV—CONNECTICUT INDIAN LAND CLAIMS SETTLEMENT

Sec.
1751. Congressional findings.
1752. Definitions.
1753. Extinguishment of aboriginal titles and Indian claims.
    (a) Approval and ratification of prior transfers.
    (b) Extinguishment of title.
    (c) Extinguishment of claims.
    (d) Savings provision.
    (e) Effective date; notice.
1754. Mashantucket Pequot Settlement Fund.
    (a) Establishment and administration.
    (b) Expenditure of Fund; private settlement lands; economic development plan; acquisition of land and natural resources.
    (c) Transfer of private settlement land as involuntary conversion.
    (d) Documentation of relinquishment of tribal claims.
    (e) Authorization of appropriation.
1755. State jurisdiction over reservation.
1756. Practice and procedure.
    (a) Constitutionality.
    (b) Jurisdiction.
    (c) Removal of actions.
    (d) Jurisdictional acts; implied consent to sue the United States.
1757. Restriction against alienation.
1758. Extension of Federal recognition and privileges.
    (a) Applicability of United States laws and regulations.
    (b) Filing of organic governing document and amendments.
    (c) Eligibility for services and benefits.
1759. General discharge and release of State of Connecticut.
1760. Separability of provisions.

SUBCHAPTER I—RHODE ISLAND INDIAN CLAIMS SETTLEMENT

Part A—General Provisions

§ 1701. Congressional findings and declaration of policy

Short Title

For short title of Pub. L. 97-399, which enacted subchapter III of this chapter as the Florida Indian Land Claims Settlement Act of 1982, see section 1 of Pub. L. 97-399, set out as a note under section 1741 of this title.

For short title of Pub. L. 98-134, which enacted subchapter IV of this chapter as the Mashantucket Pequot Indian Claims Settlement Act, see section 1 of Pub. L. 98-134, set out as a note under section 1751 of this title.

SUBCHAPTER II—MAINE INDIAN CLAIMS SETTLEMENT

§ 1725. State laws applicable

Section Referred to in Other Sections

This section is referred to in sections 13d, 1724, 1727 of this title.

§ 1728. Federal financial aid programs unaffected by payments under subchapter

Section Referred to in Other Sections

This section is referred to in section 13d of this title.

SUBCHAPTER IV—CONNECTICUT INDIAN LAND CLAIMS SETTLEMENT

§ 1751. Congressional findings

The Congress finds that—

(a) there is pending before the United States District Court for the District of Connecticut a civil action entitled "Western Pequot Tribe of Indians against Holdridge Enterprises Incorporated, et al., Civil Action Numbered H76-193 (D. Conn.)," which involves Indian claims to certain public and private lands within the town of Ledyard, Connecticut;

(b) the pendency of this lawsuit has placed a cloud on the titles to much of the land in the town of Ledyard, including lands not involved in the lawsuit, which has resulted in severe economic hardships for the residents of the town;

(c) the Congress shares with the State of Connecticut and the parties to the lawsuit a desire to remove all clouds on titles resulting from such Indian land claims;

(d) the parties to the lawsuit and others interested in the settlement of Indian land claims within the State of Connecticut have reached an agreement which requires implementing legislation by the Congress of the United States and the Legislature of the State of Connecticut;

(e) the Western Pequot Tribe, as represented as of October 18, 1983, by the Mashantucket Pequot Tribal Council, is the sole successor in interest to the aboriginal entity generally known as the Western Pequot Tribe which years ago claimed aboriginal title to certain lands in the State of Connecticut; and

(f) the State of Connecticut is contributing twenty acres of land owned by the State of Connecticut to fulfill this subchapter. The State of Connecticut will construct and repair three sections of paved or gravel roadways within the reservation of the Tribe. The State of Connecticut has provided special services to the members of the Western Pequot Tribe residing within its borders. The United States has provided few, if any, special services to the Western Pequot Tribe and has denied that it had jurisdiction over or responsibility for said Tribe. In view of the provision of land by the State of Connecticut, the provision of paved roadways by the State of Connecticut, and the provision of special services by the State of Connecticut without being required to do so by Federal law, it is the intent of Congress that the State of Connecticut not be required to otherwise contribute directly to this claims settlement.

(Pub. L. 98-134, § 2, Oct. 18, 1983, 97 Stat. 851.)

Codification

In subsec. (e), "October 18, 1983" was substituted for "the time of the passage of this Act", meaning the date of approval of Pub. L. 98-134.

Short Title

Section 1 of Pub. L. 98-134 provided: "That this Act [enacting this subchapter] may be cited as the 'Mashantucket Pequot Indian Claims Settlement Act'."

Section Referred to in Other Sections

This section is referred to in section 1752 of this title.

§ 1752. Definitions

For the purposes of this subchapter—

(1) The term "Tribe" means the Mashantucket Pequot Tribe (also known as the Western Pequot Tribe) as identified by chapter 832 of the Connecticut General Statutes and all its predecessors and successors in interest. The Mashantucket Pequot Tribe is represented, as of October 18, 1983, by the Mashantucket Pequot Tribal Council.

(2) The term "land or natural resources" means any real property or natural resources, or any interest in or right involving any real property or natural resources, including without limitation minerals and mineral rights, timber and timber rights, water and water rights, and hunting and fishing rights.

(3) The term "private settlement lands" means—

(A) the eight hundred acres, more or less, of privately held land which are identified by a red outline on a map filed with the secretary of the State of Connecticut in accordance with the agreement referred to in section 1751(d) of this title, and

(B) the lands known as the Cedar Swamp which are adjacent to the Mashantucket Pequot Reservation as it exists on October 18, 1983. Within thirty days of October 18, 1983, the secretary of the State of Connecticut shall transmit to the Secretary a certified copy of said map.

(4) The term "settlement lands" means—

(A) the lands described in sections 2(a) and 3 of the Act To Implement the Settlement of the Mashantucket Pequot Indian Land Claims as enacted by the State of Connecticut and approved on June 9, 1982, and

(B) the private settlement lands.

(5) The term "Secretary" means the Secretary of the Interior.

(6) The term "transfer" means any transaction involving, or any transaction the purpose of which was to effect, a change in title to or control of any land or natural resources, and any act, event, or circumstance that resulted in a change in title to, possession of, dominion over, or control of land or natural resources, including any sale, grant, lease, allotment, partition, or conveyance, whether pursuant to a treaty, compact, or statute of a State or otherwise.

(7) The term "reservation" means the existing reservation of the Tribe as defined by chapter 824 of the Connecticut General Statutes and any settlement lands taken in trust by the United States for the Tribe.

(Pub. L. 98-134, § 3, Oct. 18, 1983, 97 Stat. 852.)

Codification

In pars. (1) and (3)(B), "October 18, 1983" was substituted for "the date of the enactment of this Act" and "the enactment of this Act", meaning the date of approval of Pub. L. 98-134.

§ 1753. Extinguishment of aboriginal titles and Indian claims

(a) Approval and ratification of prior transfers

Any transfer before October 18, 1983, from, by, or on behalf of the Tribe or any of its members of land or natural resources located anywhere within the United States, and any transfer before October 18, 1983, from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians of land or natural resources located anywhere within the town of Ledyard, Connecticut, shall be deemed to have been made in accordance with the Constitution and all laws of the United States, including without limitation the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137, 138), and all amendments thereto and all subsequent reenactments and versions thereof, and Congress hereby does approve and ratify any such transfer effective as of the date of said transfer.

(b) Extinguishment of title

By virtue of the approval and ratification of a transfer of land or natural resources effected by subsection (a) of this section, any aboriginal title held by the Tribe or any member of the Tribe, or any other Indian, Indian nation, or tribe or band of Indians, to any land or natural resources the transfer of which was approved and ratified by subsection (a) of this section shall be regarded as extinguished as of the date of such transfer.

(c) Extinguishment of claims

By virtue of the approval and ratification of a transfer of land or natural resources effected by this section, or the extinguishment of aboriginal title effected thereby, any claim (including any claim for damages for trespass or for use and occupancy) by, or on behalf of, the Tribe or any member of the Tribe or by any other Indian, Indian nation, or tribe or band of Indians, against the United States, any State or subdivision thereof or any other person which is based on—

(1) any interest in or right involving any land or natural resources the transfer of which was approved and ratified by subsection (a) of this section, or

(2) any aboriginal title to land or natural resources the extinguishment of which was effected by subsection (b) of this section,

shall be regarded as extinguished as of the date of any such transfer.

(d) Savings provision

Nothing in this section shall be construed to affect or eliminate the personal claim of any individual Indian (except for Federal common law fraud claim) which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(e) Effective date; notice

(1) This section shall take effect upon the appropriation of $900,000 as authorized under section 1754(e) of this title.

(2) The Secretary shall publish notice of such appropriation in the Federal Register when the funds are deposited in the fund established under section 1754(a) of this title.

(Pub. L. 98-134, § 4, Oct. 18, 1983, 97 Stat. 852.)

REFERENCES IN TEXT

The Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137, 138), referred to in subsec. (a), is not classified to the Code. See sections 177, 179, 180, 193, 194, 201, 229, 230, 251, 263, and 264 of this title.

CODIFICATION

In subsec. (a), "October 18, 1983" was substituted for "the date of enactment of this Act", meaning the date of approval of Pub. L. 98-134.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1754, 1760 of this title.

§ 1754. Mashantucket Pequot Settlement Fund

(a) Establishment and administration

There is hereby established in the United States Treasury an account to be known as the Mashantucket Pequot Settlement Fund (hereinafter referred to in this section as the "Fund"). The Fund shall be held in trust by the Secretary for the benefit of the Tribe and administered in accordance with this subchapter.

(b) Expenditure of Fund; private settlement lands; economic development plan; acquisition of land and natural resources

(1) The Secretary is authorized and directed to expend, at the request of the Tribe, the Fund together with any and all income accruing to such Fund in accordance with this subsection.

(2) Not less than $600,000 of the Fund shall be available until January 1, 1985, for the acquisition by the Secretary of private settlement lands. Subsequent to January 1, 1985, the Secretary shall determine whether and to what extent an amount less than $600,000 has been expended to acquire private settlement lands and shall make that amount available to the Tribe to be used in accordance with the economic development plan approved pursuant to paragraph (3).

(3)(A) The Secretary shall disburse all or part of the Fund together with any and all income accruing to such Fund (excepting the amount reserved in paragraph (2)) according to a plan to promote the economic development of the Tribe.

(B) The Tribe shall submit an economic development plan to the Secretary and the Secretary shall approve such plan within sixty days of its submission if he finds that it is reasonably related to the economic development of the Tribe. If the Secretary does not approve such plan, he shall, at the time of his decision, set forth in writing and with particularity, the reasons for his disapproval.

(C) The Secretary may not agree to terms which provide for the investment of the Fund in a manner inconsistent with section 162a of this title, unless the Tribe first submits a specific waiver of liability on the part of the United States for any loss which may result from such an investment.

(D) The Tribe may, with the approval of the Secretary, alter the economic development plan subject to the conditions set forth in subparagraph (B).

(4) Under no circumstances shall any part of the Fund be distributed to any member of the Tribe unless pursuant to the economic develop-

ment plan approved by the Secretary under paragraph (3).

(5) As the Fund or any portion thereof is disbursed by the Secretary in accordance with this section, the United States shall have no further trust responsibility to the Tribe or its members with respect to the sums paid, any subsequent expenditures of these sums, or any property other than private settlement lands or services purchased with these sums.

(6) Until the Tribe has submitted and the Secretary has approved the terms of the use of the Fund, the Secretary shall fix the terms for the administration of the portion of the Fund as to which there is no agreement.

(7) Lands or natural resources acquired under this subsection which are located within the settlement lands shall be held in trust by the United States for the benefit of the Tribe.

(8) Land or natural resources acquired under this subsection which are located outside of the settlement lands shall be held in fee by the Mashantucket Pequot Tribe, and the United States shall have no further trust responsibility with respect to such land and natural resources. Such land and natural resources shall not be subject to any restriction against alienation under the laws of the United States.

(9) Notwithstanding the provisions of section 257 of title 40 and section 258a of title 40, the Secretary may acquire land or natural resources under this section from the ostensible owner of the land or natural resources only if the Secretary and the ostensible owner of the land or natural resources have agreed upon the identity of the land or natural resources to be sold and upon the purchase price and other terms of sale. Subject to the agreement required by the preceding sentence, the Secretary may institute condemnation proceedings in order to perfect title, satisfactory to the Attorney General, in the United States and condemn interests adverse to the ostensible owner.

(c) Transfer of private settlement land as involuntary conversion

For the purpose of subtitle A of title 26, any transfer of private settlement lands to which subsection (b) of this section applies shall be deemed to be an involuntary conversion within the meaning of section 1033 of title 26.

(d) Documentation of relinquishment of tribal claims

The Secretary may not expend on behalf of the Tribe any sums deposited in the Fund established pursuant to subsection (a) of this section unless and until he finds that authorized officials of the Tribe have executed appropriate documents relinquishing all claims to the extent provided by sections 1753 and 1759 of this title, including stipulations to the final judicial dismissal with prejudice of its claims.

(e) Authorization of appropriation

There is authorized to be appropriated $900,000 to be deposited in the Fund.

(Pub. L. 98-134, § 5, Oct. 18, 1983, 97 Stat. 853.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1753 of this title.

§ 1755. State jurisdiction over reservation

Notwithstanding the provision relating to a special election in section 406 of the Act of April 11, 1968 (82 Stat. 80; 25 U.S.C. 1326), the reservation of the Tribe is declared to be Indian country subject to State jurisdiction to the maximum extent provided in title IV of such Act [25 U.S.C. 1321 et seq.].

(Pub. L. 98-134, § 6, Oct. 18, 1983, 97 Stat. 855.)

REFERENCES IN TEXT

The Act of April 11, 1968, referred to in text, is Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 73, as amended, popularly known as the Civil Rights Act of 1968. Title IV of Pub. L. 90-284 is classified generally to subchapter III (§ 1321 et seq.) of chapter 15 of this title. For complete classification of this Act to the Code, see Tables.

§ 1756. Practice and procedure

(a) Constitutionality

Notwithstanding any other provision of law, the constitutionality of this subchapter may not be drawn into question in any action unless such question has been raised in—

(1) a pleading contained in a complaint filed before the end of the one-hundred-and-eighty-day period beginning on October 18, 1983, or

(2) an answer contained in a reply to a complaint before the end of such period.

(b) Jurisdiction

Notwithstanding any other provision of law, exclusive jurisdiction of any action in which the constitutionality of this subchapter is drawn into question is vested in the United States District Court for the District of Connecticut.

(c) Removal of actions

Any action to which subsection (a) of this section applies and which is brought in the court of any State may be removed by the defendant to the United States District Court for the District of Connecticut.

(d) Jurisdictional acts; implied consent to sue the United States

Except as provided in this subchapter, no provision of this subchapter shall be construed to constitute a jurisdictional act, to confer jurisdiction to sue, or to grant implied consent to any Indian, Indian nation, or tribe or band of Indians to sue the United States or any of its officers with respect to the claims extinguished by the operation of this subchapter.

(Pub. L. 98-134, § 7, Oct. 18, 1983, 97 Stat. 855.)

CODIFICATION

In subsec. (a)(1), "October 18, 1983" was substituted for "the date of the enactment of this Act", meaning the date of approval of Pub. L. 98-134.

§ 1757. Restriction against alienation

(a) Subject to subsection (b) of this section, lands within the reservation which are held in trust by the Secretary for the benefit of the Tribe or which are subject to a Federal restraint against alienation at any time after October 18, 1983, shall be subject to the laws of the United States relating to Indian lands, including section 177 of this title.

(b) Notwithstanding subsection (a) of this section, the Tribe may lease lands for any term of years to the Mashantucket Pequot Housing Authority, or any successor in interest to such Authority.

(Pub. L. 98-134, § 8, Oct. 18, 1983, 97 Stat. 855.)

CODIFICATION

In subsec. (a), "October 18, 1983" was substituted for "the date of the enactment of this Act", meaning the date of approval of Pub. L. 98-134.

§ 1758. Extension of Federal recognition and privileges

(a) Applicability of United States laws and regulations

Notwithstanding any other provision of law, Federal recognition is extended to the Tribe. Except as otherwise provided in this subchapter, all laws and regulations of the United States of general application to Indians or Indian nations, tribes or bands of Indians which are not inconsistent with any specific provision of this subchapter shall be applicable to the Tribe.

(b) Filing of organic governing document and amendments

The Tribe shall file with the Secretary a copy of its organic governing document and any amendments thereto. Such instrument must be consistent with the terms of this subchapter and the Act to Implement the Settlement of the Mashantucket Pequot Indian Land Claim as enacted by the State of Connecticut and approved June 9, 1982.

(c) Eligibility for services and benefits

Notwithstanding any other provision of law, the Tribe and members of the Tribe shall be eligible for all Federal services and benefits furnished to federally recognized Indian tribes as of October 18, 1983.

(Pub. L. 98-134, § 9, Oct. 18, 1983, 97 Stat. 855.)

CODIFICATION

In subsec. (c), "October 18, 1983" was substituted for "the date of enactment of this Act", meaning the date of approval of Pub. L. 98-134.

§ 1759. General discharge and release of State of Connecticut

Except as expressly provided herein, this subchapter shall constitute a general discharge and release of all obligations of the State of Connecticut and all of its political subdivisions, agencies, departments, and all of the officers or employees thereof arising from any treaty or agreement with, or on behalf of the Tribe or the United States as trustee therefor.

(Pub. L. 98-134, § 10, Oct. 18, 1983, 97 Stat. 856.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1754 of this title.

§ 1760. Separability of provisions

In the event that any provision of section 1753 of this title is held invalid, it is the intent of Congress that the entire subchapter be invalidated. In the event that any other section or provision of this subchapter is held invalid, it is the intent of Congress that the remaining sections of this subchapter shall continue in full force and effect.

(Pub. L. 98-134, § 11, Oct. 18, 1983, 97 Stat. 856.)

CHAPTER 20—TRIBALLY CONTROLLED COMMUNITY COLLEGE ASSISTANCE

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SUBCHAPTER I—TRIBALLY CONTROLLED COMMUNITY COLLEGES GRANT PROGRAM

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SUBCHAPTER II—TRIBALLY CONTROLLED COMMUNITY COLLEGE ENDOWMENT PROGRAM

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1836. Authorization of appropriations.

§ 1801. Definitions

(a) For purposes of this chapter, the term—

(1) "Indian" means a person who is a member of an Indian tribe;

(2) "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Alaskan Native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act [43 U.S.C. 1601 et seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians;

(3) "Secretary", unless otherwise designated, means the Secretary of the Interior;

(4) "tribally controlled community college" means an institution of higher education which is formally controlled, or has been formally sanctioned, or chartered, by the governing body of an Indian tribe or tribes, except that no more than one such institution shall be recognized with respect to any such tribe;

(5) "institution of higher education" means an institution of higher education as defined by section 1141(a) of title 20, except that clause (2) of such section shall not be applicable and the reference to Secretary in clause (5)(A) of such section shall be deemed to refer to the Secretary of the Interior;

(6) "national Indian organization" means an organization which the Secretary finds is nationally based, represents a substantial Indian constituency, and has expertise in the field of Indian education; and

(7) "Indian student count" means a number equal to the total number of Indian students enrolled in each tribally controlled community college, determined in a manner consistent with subsection (b) of this section on the basis of the quotient of the sum of the credit hours of all Indian students so enrolled, divided by twelve.

(b) The following conditions shall apply for the purpose of determining the Indian student count pursuant to paragraph (7) of subsection (a) of this section:

(1) Such number shall be calculated on the basis of the registrations of Indian students as in effect at the conclusion of the third week of each academic term.

(2) Credits earned in classes offered during a summer term shall be counted toward the computation of the Indian student count in the succeeding fall term.

(3) Indian students earning credits in any continuing education program of a tribally controlled community college shall be included in determining the sum of all credit hours.

(4) Credits earned in a continuing education program shall be converted to a credit-hour basis in accordance with the tribally controlled community college's system for providing credit for participation in such program.

(5) No credit hours earned by an Indian student who is not making satisfactory progress toward a degree or certificate, in accordance with the standards and practices of the appropriate accrediting agency or the institution at which the student is in attendance, shall be taken into account.

(Pub. L. 95-471, § 2, formerly § 1, Oct. 17, 1978, 92 Stat. 1325, renumbered and amended Pub. L. 98-192, § 1, Dec. 1, 1983, 97 Stat. 1335.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 95-471, Oct. 17, 1978, 92 Stat. 1325, as amended, known as the Tribally Controlled Community College Assistance Act of 1978, which enacted this chapter and section 640c-1 of this title, amended section 640c of this title, and enacted provisions set out as notes under sections 640a, 640c-1, and 1801 of this title. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

The Alaskan Native Claims Settlement Act, referred to in subsec. (a)(2), probably means the Alaska Native Claims Settlement Act, Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-192, § 1(1), designated existing provisions as subsec. (a), and in subsec. (a) as so designated, inserted introductory provision preceding par. (1).

Subsec. (a)(1). Pub. L. 98-192, § 1(2), struck out "and is eligible to receive services from the Secretary of the Interior" after "Indian tribe".

Subsec. (a)(5). Pub. L. 98-192, § 1(3), inserted "and the reference to Secretary in clause (5)(A) of such section shall be deemed to refer to the Secretary of the Interior".

Subsec. (a)(7). Pub. L. 98-192, § 1(4), substituted provision defining the term "Indian student count" to mean a number equal to the total number of Indian students enrolled in each tribally controlled community college, determined as consistent with subsec. (b) of this section on the basis of the quotient of the sum of the credit hours of all Indians so enrolled, divided by twelve for provision defining the term "full-time equivalent Indian student" to mean the number of Indians enrolled full-time and the full-time equivalent of the number of Indians enrolled part-time, determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by twelve, calculated on the basis of registrations as in effect at the conclusion of the sixth week of an academic term.

Subsec. (b). Pub. L. 98-192, § 1(4), added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1808 of this title.

SUBCHAPTER I—TRIBALLY CONTROLLED COMMUNITY COLLEGES GRANT PROGRAM

§ 1802. Purpose

It is the purpose of this subchapter to provide grants for the operation and improvement of tribally controlled community colleges to insure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of such institutions.

(As amended Pub. L. 98-192, § 2, Dec. 1, 1983, 97 Stat. 1336.)

AMENDMENTS

1983—Pub. L. 98-192 inserted ", and to allow for the improvement and expansion of the physical resources of such institutions".

§ 1803. Grants authorized

(a) Purposes

The Secretary shall, subject to appropriations, make grants pursuant to this subchapter to tribally controlled community colleges to aid in the post-secondary education of Indian students.

(b) Deposit of funds; limitations on uses

Grants made pursuant to this subchapter shall go into the general operating funds of the institution to defray, at the determination of the tribally controlled community college, expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college. Funds provided pursuant to this subchapter shall not be used in connection with religious worship or sectarian instruction.

(As amended Pub. L. 98-192, § 3(a), Dec. 1, 1983, 97 Stat. 1336.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-192, § 3(a)(1), substituted "shall, subject to appropriations," for "is authorized to".

Subsec. (b). Pub. L. 98-192, § 3(a)(2), substituted "to defray, at the determination of the tribally controlled community college, expenditures for academic, educational, and administrative purposes and for the operation and maintenance of the college" for "to defray the expense of activities related to education programs for Indian students".

§ 1804. Eligible grant recipients

To be eligible for assistance under this subchapter, a tribally controlled community college must be one which—

[*See main edition for text of (1) to (3); credits*]

CODIFICATION

Section is set out in this supplement to change translations appearing in the main edition to reflect the editorial redesignation of sections 1802 to 1815 of this title as subchapter I of this chapter.

§ 1804a. Planning grants

(a) Establishment of program

The Secretary shall establish a program in accordance with this section to make grants to tribes and tribal entities (1) to conduct planning activities for the purpose of developing proposals for the establishment of tribally controlled community colleges, or (2) to determine the need and potential for the establishment of such colleges.

(b) Procedures for submission and review of applications

The Secretary shall establish, by regulation, procedures for the submission and review of applications for grants under this section.

(c) Reservation of funds; number of grants

From the amount appropriated to carry out this subchapter for any fiscal year (exclusive of sums appropriated for section 1805 of this title), the Secretary shall reserve (and expend) an amount necessary to make grants to five applicants under this section of not more than $15,000 each, or an amount necessary to make grants in that amount to each of the approved applicants, if less than five apply and are approved.

(Pub. L. 95-471, title I, § 104, as added Pub. L. 98-192, § 4(a)(2), Dec. 1, 1983, 97 Stat. 1336.)

§ 1805. Technical assistance contracts

The Secretary shall provide, upon request from a tribally controlled community college which is receiving funds under section 1808 of this title, technical assistance either directly or through contract. In the awarding of contracts for technical assistance, preference shall be given to an organization designated by the tribally controlled community college to be assisted. No authority to enter into contracts provided by this section shall be effective except to the extent authorized in advance by appropriations Acts.

(Pub. L. 95-471, title I, § 105, formerly § 104, Oct. 17, 1978, 92 Stat. 1326, renumbered and amended Pub. L. 98-192, §§ 4(a)(1), 5, Dec. 1, 1983, 97 Stat. 1336.)

AMENDMENTS

1983—Pub. L. 98-192, § 5, inserted "from a tribally controlled community college which is receiving funds under section 1808 of this title" and struck out "to tribally controlled community colleges" before "either directly".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1804a, 1810, 1813 of this title.

§ 1806. Eligibility studies

(a) Development of plans, procedures, and criteria

The Secretary is authorized to enter into an agreement with the Secretary of Education to assist the Bureau of Indian Affairs in developing plans, procedures, and criteria for conducting the eligibility studies required by this section. Such agreement shall provide for continuing technical assistance in the conduct of such studies.

(b) Initiation by Secretary; grant applications and budgets

The Secretary, within thirty days after a request by any Indian tribe, shall initiate a [1] eligibility study to determine whether there is justification to encourage and maintain a tribally controlled community college, and, upon a positive determination, shall aid in the preparation of grant applications and related budgets which will insure successful operation of such an institution. Such a positive determination shall be effective for the fiscal year succeeding the fiscal year in which such determination is made.

(c) Source of appropriations

Funds to carry out the purposes of this section for any fiscal year may be drawn from either—

(1) general administrative appropriations to the Secretary made after October 17, 1978 for such fiscal year; or

(2) not more than 5 per centum of the funds appropriated to carry out section 1807 of this title for such fiscal year.

(Pub. L. 95-471, title I, § 106, formerly § 105, Oct. 17, 1978, 92 Stat. 1326, renumbered and amended Pub. L. 98-192, §§ 4(a)(1), (b)(1), 6(a)(2)-(5), Dec. 1, 1983, 97 Stat. 1336, 1337.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-192, § 6(a)(2), (3), substituted "eligibility" for "feasibility" and "Secretary of Education" for "Assistant Secretary of Education of the Department of Health, Education, and Welfare".

Subsec. (b). Pub. L. 98-192, § 6(a)(2), (4), inserted provision that such positive determination be effective for the fiscal year succeeding the fiscal year in which such determination is made, and substituted "eligibility" for "feasibility".

Subsec. (c)(2). Pub. L. 98-192, §§ 4(b)(1), 6(a)(5), substituted "5 per centum" for "10 per centum" and made a technical amendment to the reference to section 1807 of this title to reflect the renumbering of that section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1807, 1811 of this title.

§ 1807. Grants to tribally controlled community colleges

(a) Submission of applications; necessity of eligibility study

Grants shall be made under this subchapter only in response to applications by tribally controlled community colleges. Such applications shall be submitted at such time, in such manner, and will contain or be accompanied by such information as the Secretary may reasonably require pursuant to regulations. Such application shall include a description of recordkeeping procedures for the expenditure of funds received under this chapter which will allow the Secretary to audit and monitor programs conducted with such funds. The Secretary shall not consider any grant application unless a [1] eligibility study has been conducted under section 1806 of this title and it has been found that the applying community college will service a reasonable student population.

[See main edition for text of (b) to (d)]

(Pub. L. 95-471, title I, § 107, formerly § 106, Oct. 17, 1978, 92 Stat. 1327; Pub. L. 97-375, title I, § 108(c), Dec. 21, 1982, 96 Stat. 1820; renumbered and amended Pub. L. 98-192, §§ 3(b), 4(a)(1), (b)(2), 6(b), Dec. 1, 1983, 97 Stat. 1336, 1337.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-192, § 6(b)(1), substituted "eligibility" for "feasibility".

Pub. L. 98-192, § 4(b)(2), made a technical amendment to the reference to section 1806 of this title to reflect the renumbering of that section.

Pub. L. 98-192, § 3(b), inserted provision that such application include a description of the recordkeeping procedures for expenditure of funds as will allow the Secretary to audit and monitor programs conducted with such funds.

Subsec. (b). Pub. L. 98-192, § 6(b)(2), substituted "Secretary of Education" for "Assistant Secretary of Education of the Department of Health, Education, and Welfare".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1806, 1810, 1811, 1813, 1832 of this title.

§ 1808. Amount of grants

(a) Formula

Except as provided in section 1811 of this title, the Secretary shall, subject to appropriations, grant for each academic year to each tribally controlled community college having an application approved by him an amount equal to the product of—

(1) the Indian student count at such college during such academic year, as determined by the Secretary in accordance with section 1801(a)(7); and

(2)(A) $4,000 for fiscal year 1984,

(B) $5,025 for fiscal year 1985,

(C) $5,415 for fiscal year 1986, and

(D) $5,820 for fiscal year 1987,

except that no grant shall exceed the total cost of the education program provided by such college.

(b) Advance installment payments; adjustments

The Secretary shall make payments, pursuant to grants under this subchapter, in advance installments of not less than 40 per centum of the funds available for allotment, based on anticipated or actual numbers of full-time equivalent Indian students or such other factors as determined by the Secretary. Adjustments for overpayments and underpayments shall be applied to the remainder of such funds and such remainder shall be delivered no later than July 1 of each year.

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[1] So in original. Probably should be "an".

(c) Accounting by recipient institutions; data collection system

(1) Each institution receiving payments under this subchapter shall annually provide to the Secretary an accurate and detailed accounting of its operating and maintenance expenses and such other information concerning costs as the Secretary may request.

[*See main edition for text of* (*2*)]

(Pub. L. 95-471, title I, § 108, formerly § 107, Oct. 17, 1978, 92 Stat. 1327; Pub. L. 97-375, title I, § 108(c), Dec. 21, 1982, 96 Stat. 1820; renumbered and amended Pub. L. 98-192, §§ 4(a)(1), 7, Dec. 1, 1983, 97 Stat. 1336, 1337.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-192 amended subsec. (a) generally, substituting provision establishing a formula premised on Indian student count at each tribally controlled community college on which funding is to be based for provision which directing the Secretary to grant an amount equal to $4,000 for each full-time equivalent Indian student in attendance during the academic year to each tribally controlled community college having an application approved by the Secretary.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1805, 1809 of this title.

§ 1809. Effect on other programs

(a) Eligibility for assistance

Except as specifically provided in this subchapter, eligibility for assistance under this subchapter shall not, by itself, preclude the eligibility of any tribally controlled college to receive Federal financial assistance under any program authorized under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] or any other applicable program for the benefit of institutions of higher education, community colleges, or postsecondary educational institutions.

(b) Allocations from Bureau of Indian Affairs

(1) The amount of any grant for which tribally controlled community colleges are eligible under section 1808 of this title shall not be altered because of funds allocated to any such colleges from funds appropriated under the Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13).

(2) No tribally controlled community college shall be denied funds appropriated under such Act of November 2, 1921, because of the funds it receives under this chapter.

(c) Assistance deemed to be basic educational opportunity grant

For the purposes of sections 312(2)(A)(i) and 322(a)(2)(A)(i) of the Higher Education Act of 1965 [20 U.S.C. 1058(2)(A)(i), 1061(a)(2)(A)(i)], any Indian student who receives a student assistance grant from the Bureau of Indian Affairs for postsecondary education shall be deemed to have received such assistance under subpart 1 of part A of title IV of such Act [20 U.S.C. 1070a].

(Pub. L. 95-471, title I, 109, formerly § 108, Oct. 17, 1978, 92 Stat. 1328, renumbered and amended Pub. L. 98-192, §§ 4(a)(1), 8, Dec. 1, 1983, 97 Stat. 1336, 1337.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsecs. (a) and (c), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. Subpart 1 of part A of title IV of the Higher Education Act of 1965 is classified generally to subpart 1 (§ 1070a) of part A of subchapter IV of chapter 28 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

The Act of November 2, 1921, referred to in subsec. (b), is act Nov. 2, 1921, ch. 115, 42 Stat. 208, as amended, popularly known as the Snyder Act, is classified to section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98-192, § 8, designated existing provision as subsec. (a) and added subsecs. (b) and (c).

§ 1810. Authorization of appropriations

(a)(1) There is authorized to be appropriated, for the purpose of carrying out section 1805 of this title, $3,200,000 for each of the fiscal years 1985, 1986, and 1987.

(2) There is authorized to be appropriated for the purpose of carrying out section 1807 of this title, $30,000,000 for each of such fiscal years.

(3) There are authorized to be appropriated such sums as may be necessary for the purpose of carrying out sections 1812(b) and 1813 of this title for each of such fiscal years.

(b)(1) For the purpose of affording adequate notice of funding available under this chapter, amounts appropriated in an appropriation Act for any fiscal year to carry out this chapter shall become available for obligation on July 1 of that fiscal year and shall remain available until September 30 of the succeeding fiscal year.

(2) In order to effect a transition to the forward funding method of timing appropriation action described in paragraph (1), there are authorized to be appropriated, in an appropriation Act or Acts for the same fiscal year, two separate appropriations to carry out this chapter, the first of which shall not be subject to paragraph (1).

(Pub. L. 95-471, title I, § 110, formerly § 109, Oct. 17, 1978, 92 Stat. 1328, renumbered and amended Pub. L. 98-192, §§ 4(a)(1), 9, Dec. 1, 1983, 97 Stat. 1336, 1337.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-192, § 9, amended subsec. (a) generally, substituting provision authorizing appropriations for fiscal years 1985, 1986, and 1987 of $3,200,000 for carrying out section 1805 of this title, $30,000,000 for carrying out section 1807 of this title, and appropriations as necessary for carrying out sections 1812(b) and 1813 of this title for provision authorizing appropriations for carrying out section 1807 of this title of $25,000,000 for each of the fiscal years beginning Oct. 1, 1979 and Oct. 1, 1980, and $30,000,000 for the fiscal year beginning Oct. 1, 1981, and $3,200,000 for each of such fiscal years for the provision of technical assistance pursuant to section 1805 of this title.

Subsec. (b). Pub. L. 98-192, § 9, amended subsec. (b) generally, substituting provision relating to affording adequate notice of funding available under this chapter and directing two separate appropriations in order to effect a transition to the forward funding method of timing appropriation action for provision directing that, unless otherwise provided, funds appropriated under this section remain available until expended.

Subsec. (c). Pub. L. 98-192, § 9, struck out subsec. (c) which provided that nothing in this chapter be deemed to authorize appropriations for the fiscal year beginning Oct. 1, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1811 of this title.

§ 1811. Grant adjustments

(a) Formula for allocation

(1) If the sums appropriated for any fiscal year pursuant to section 1810(a)(2) of this title for grants under section 1807 of this title are not sufficient to pay in full the total amount which approved applicants are eligible to receive under such section for such fiscal year—

(A) the Secretary shall first allocate to each such applicant which received funds under section 1807 of this title for the preceding fiscal year an amount equal to 95 per centum of the product of—

(i) the per capita payment for the preceding fiscal year; and

(ii) such applicant's Indian student count for the current fiscal year;

(B) the Secretary shall next allocate to applicants who did not receive funds under such section for the preceding fiscal year an amount equal to 100 per centum of the product of—

(i) the per capita payment for the preceding fiscal year; and

(ii) the applicant's Indian student count for the current fiscal year;

in the order in which such applicants have qualified for assistance in accordance with such section so that no amount shall be allocated to a later qualified applicant until each earlier qualified applicant is allocated an amount equal to such product; and

(C) if additional funds remain after making the allocations required by subparagraphs (A) and (B), the Secretary shall allocate such funds by—

(i) ratably increasing the amounts of the grants determined under subparagraph (A) until such grants are equal to 100 per centum of the product described in such subparagraph; and

(ii) then ratably increasing the amounts of both (I) the grants determined under subparagraph (A), as increased under clause (i) of this subparagraph, and (II) the grants determined under subparagraph (B).

(2) For purposes of paragraph (1) of this subsection, the term "per capita payment" for any fiscal year shall be determined by dividing the amount available for grants to tribally controlled community colleges under section 1807 of this title for such fiscal year by the sum of the Indian student counts of such colleges for such fiscal year. The Secretary shall, on the basis of the most satisfactory data available, compute the Indian student count for any fiscal year for which such count was not used for the purpose of making allocations under this subchapter.

(b) Ratable reduction or increase in funds available for existing schools; excess funds; definition

(1) If the sums appropriated for any fiscal year for grants under section 1807 of this title are not sufficient to pay in full the total amount of the grants determined pursuant to subsection (a)(1)(A) of this section, the amount which applicants described in such subsection are eligible to receive under section 1807 of this title for such fiscal year shall be ratably reduced.

(2) If any additional funds become available for making payments under section 1807 of this title for any fiscal year to which subsection (a) of this section or paragraph (1) of this subsection applies, such additional amounts shall be allocated by first increasing grants reduced under paragraph (1) of this subsection on the same basis as they were reduced and by then allocating the remainder in accordance with subsection (a) of this section. Sums appropriated in excess of the amount necessary to pay in full the total amounts for which applicants are eligible under section 1807 of this title shall be allocated by ratably increasing such total amounts.

(3) References in this subsection and subsection (a) of this section to section 1807 of this title shall, with respect to fiscal year 1983, be deemed to refer to section 1806 of this title as in effect at the beginning of such fiscal year.

(c) Reallocation of funds

In any fiscal year in which the amounts for which grant recipients are eligible to receive have been reduced under the first sentence of subsection (a) of this section, and in which additional funds have not been made available to pay in full the total of such amounts under the second sentence of such subsection, each grantee shall report to the Secretary any unused portion of received funds ninety days prior to the grant expiration date. The amounts so reported by any grant recipient shall be made available for reallocation to eligible grantees on a basis proportionate to the amount which is unfunded as a result of the ratable reduction, but no grant recipient shall receive, as a result of such reallocation, more than the amount provided for under section 1807(a) of this title.

(Pub. L. 95-471, title I, § 111, formerly § 110, Oct. 17, 1978, 92 Stat. 1328, renumbered and amended Pub. L. 98-192, §§ 4(a)(1), (b)(3), 10, Dec. 1, 1983, 97 Stat. 1336, 1338.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-192, § 10, amended subsec. (a) generally, substituting provision establishing a formula to be used to determine funding between existing and newly eligible schools when funds appropriated are not sufficient to pay in full the total amount which approved applicants are eligible to receive under section 1807 of this title for provision that if funds were insufficient to pay in full the total amounts which approved grant applicants were eligible to receive, the available funds would be ratably decreased and if funds later became available or there were excess funds, such funds would be ratably increased.

Subsecs. (b), (c). Pub. L. 98-192, § 10, added subsec. (b) and redesignated former subsec. (b) as (c).

Pub. L. 98-192, § 4(b)(3), made a technical amendment to the reference to section 1807 of this title to reflect the renumbering of that section.

§ 1812. Report on facilities

(a) Study on condition of currently existing facilities; submission of report; contents

The Administrator of General Services shall provide for the conduct of a study of facilities available for use by tribally controlled community colleges. Such study shall consider the condition of currently existing Bureau of Indian Affairs facilities which are vacant or underutilized and shall consider available alternatives for renovation, alteration, repair, and reconstruction of such facilities (including renovation, alteration, repair, and reconstruction necessary to bring such facilities into compliance with local building codes). Such study shall also identify the need for new construction. A report on the results of such study shall be submitted to the Congress not later than eighteen months after December 1, 1983. Such report shall also include an identification of property—

(1) on which structurally sound buildings suitable for use as educational facilities are located, and

(2) which is available for use by tribally controlled community colleges under section 483(a)(2) of title 40 and section 443a of this title.

(b) Renovation program

The Administrator of General Services, in consultation with the Bureau of Indian Affairs, shall initiate a program to conduct necessary renovations, alterations, repairs, and reconstruction identified pursuant to subsection (a) of this section.

(c) "Reconstruction" defined

For the purposes of this section, the term "reconstruction" has the meaning provided in the first sentence of subparagraph (B) of section 1132e-1(2) of title 20.

(Pub. L. 95-471, title I, § 112, formerly § 111, Oct. 17, 1978, 92 Stat. 1328, renumbered and amended Pub. L. 98-192, §§ 4(a)(1), 11, Dec. 1, 1983, 97 Stat. 1336, 1339.)

AMENDMENTS

1983—Pub. L. 98-192 amended section generally, substituting provision requiring a study on the condition of currently existing facilities, submission of a report on the study, contents of the report, establishment of a renovation program, and defining term "reconstruction" for provision which required the Secretary of the Interior, not later than ninety days after Oct. 17, 1978, to prepare and submit a report to the Congress containing a survey of existing and planned physical facilities of tribally controlled community colleges.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1810, 1813 of this title.

§ 1813. Construction of new facilities

(a) Grants

With respect to any tribally controlled community college for which the report of the Administrator of General Services under section 1812(a) of this title identifies a need for new construction, the Secretary shall, subject to appropriations and on the basis of an application submitted in accordance with such requirements as the Secretary may prescribe by regulation, provide grants for such construction in accordance with this section.

(b) Eligibility requirements

In order to be eligible for a grant under this section, a tribally controlled community college—

(1) must be a current recipient of grants under section 1805 or 1807 of this title, and

(2) must be accredited by a nationally recognized accrediting agency listed by the Secretary of Education pursuant to the last sentence of section 1141(a) of title 20, except that such requirement may be waived if the Secretary determines that there is a reasonable expectation that such college will be fully accredited within eighteen months. In any case where such a waiver is granted, grants under this section shall be available only for planning and development of proposals for construction.

(c) Maximum amount of grant; waiver of restriction

(1) Except as provided in paragraph (2), grants for construction under this section shall not exceed 80 per centum of the cost of such construction, except that no tribally controlled community college shall be required to expend more than $400,000 in fulfillment of the remaining 20 per centum. For the purpose of providing its required portion of the cost of such construction, a tribally controlled community college may use funds provided under the Act of November 2, 1921 (25 U.S.C. 13), popularly referred to as the Snyder Act.

(2) The Secretary may waive, in whole or in part, the requirements of paragraph (1) in the case of any tribally controlled community college which demonstrates that neither such college nor the tribal government with which it is affiliated have sufficient resources to comply with such requirements. The Secretary shall base a decision on whether to grant such a waiver solely on the basis of the following factors: (A) tribal population; (B) potential student population; (C) the rate of unemployment among tribal members; (D) tribal financial resources; and (E) other factors alleged by the college to have a bearing on the availability of resources for compliance with the requirements of paragraph (1) and which may include the educational attainment of tribal members.

(d) Failure to use facility in approved manner; title to vest in United States; settlement

If, within twenty years after completion of construction of a facility which has been constructed in whole or in part with a grant made available under this section—

(1) the facility ceases to be used by the applicant in a public or nonprofit capacity as an academic facility, unless the Secretary determines that there is good cause for releasing the institution from this obligation, and

(2) the tribe with which the applicant is affiliated fails to use the facility for a public purpose approved by the tribal government in furtherance of the general welfare of the community served by the tribal government,

title to the facility shall vest in the United States and the applicant (or such tribe if such tribe is the successor in title to the facility) shall be entitled to recover from the United States an amount which bears the same ratio to the present value of the facility as the amount of the applicant's contribution (excluding any funds provided under the Act of November 2, 1921 (25 U.S.C. 13)) bore to the original cost of the facility. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is located.

(e) Religious use

No construction assisted with funds under this section shall be used for religious worship or a sectarian activity or for a school or department of divinity.

(f) "Construction" and "academic facilities" defined

For the purposes of this section—

(1) the term "construction" includes reconstruction or renovation (as such terms are defined in the first sentence of subparagraph (B) of section 1132e-1(2) of title 20); and

(2) the term "academic facilities" has the meaning provided such term under section 1132e-1(1) of title 20.

(Pub. L. 95-471, title I, § 113, formerly § 112, Oct. 17, 1978, 92 Stat. 1329, renumbered and amended Pub. L. 98-192, §§ 4(a)(1), 12, Dec. 1, 1983, 97 Stat. 1336, 1340.)

REFERENCES IN TEXT

The Act of November 2, 1921, referred to in subsecs. (c)(1) and (d), is act Nov. 2, 1921, ch. 115, 42 Stat. 208, as amended, popularly known as the Snyder Act, which is classified to section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

AMENDMENTS

1983—Pub. L. 98-192 amended section generally, substituting provision authorizing grants for construction of new facilities, establishing eligibility requirements for grants, maximum amounts of grants, waiver of amount restriction, results of failure to use facilities in an approved manner, and prohibition of religious use of such facilities, and defining the terms "construction" and "academic facilities" for provision requiring the Secretary of the Interior to conduct a detailed survey and study of the academic facilities needs of tribally controlled community colleges and report to the Congress not later than Nov. 1, 1979, the results of such survey and study.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1810 of this title.

§ 1814. Miscellaneous provisions

(a) Eligibility of Navajo Tribe

The Navajo Tribe shall not be eligible to participate under the provisions of this subchapter.

(b) Discriminatory practices prohibited

[*See main edition for text of* (*1*)]

(2) The Secretary shall take steps to recover any unexpended and unobligated funds provided under this subchapter held by an institution determined to be in violation of paragraph (1).

(Pub. L. 95-471, title I, § 114, formerly § 113, Oct. 17, 1978, 92 Stat. 1329, renumbered Pub. L. 98-192, § 4(a)(1), Dec. 1, 1983, 97 Stat. 1336.)

CODIFICATION

Subsecs. (a) and (b)(2) are set out in this supplement to change translations appearing in the main edition to reflect the editorial redesignation of sections 1802 to 1815 of this title as subchapter I of this chapter.

§ 1815. Rules and regulations

(a) Consultation with national Indian organizations

Within four months from October 17, 1978, the Secretary shall, to the extent practicable, consult with national Indian organizations to consider and formulate appropriate rules and regulations for the conduct of the grant program established by this subchapter.

[*See main edition for text of* (*b*)]

(c) Promulgation

Within ten months from October 17, 1978, the Secretary shall promulgate rules and regulations for the conduct of the grant program established by this subchapter.

[*See main edition for text of* (*d*)]

(Pub. L. 95-471, title I, § 115, formerly § 114, Oct. 17, 1978, 92 Stat. 1329, renumbered Pub. L. 98-192, § 4(a)(1), Dec. 1, 1983, 97 Stat. 1336.)

CODIFICATION

Subsecs. (a) and (c) are set out in this supplement to change translations appearing in the main edition to reflect the editorial redesignation of sections 1802 to 1815 of this title as subchapter I of this chapter.

PROMULGATION OF REGULATIONS; CONSULTATION

Section 15 of Pub. L. 98-192 provided that: "In promulgating any regulations to implement the amendments made by this Act [enacting sections 1804a and 1831 to 1836 of this title and amending sections 640c-1, 1801 to 1803, and 1805 to 1813 of this title], the Secretary of the Interior shall consult with tribally controlled community colleges."

SUBCHAPTER II—TRIBALLY CONTROLLED COMMUNITY COLLEGE ENDOWMENT PROGRAM

§ 1831. Purpose

It is the purpose of this subchapter to provide grants for the encouragement of endowment funds for the operation and improvement of tribally controlled community colleges.

(Pub. L. 95-471, title III, § 301, as added Pub. L. 98-192, § 13, Dec. 1, 1983, 97 Stat. 1341.)

§ 1832. Establishment of program; program agreements

(a) From the amount appropriated pursuant to section 1836 of this title, the Secretary shall establish a program of making endowment grants to tribally controlled community colleges which are current recipients of assistance under section 1807 of this title or under section 640b of this title. No such college shall be ineligible for such a grant for a fiscal year by reason of the receipt of such a grant for a preceding fiscal year, but no such college shall be eligible for such a grant for a fiscal year if such college has been awarded a grant under section 1065a of title 20 for such fiscal year.

(b) No grant for the establishment of an endowment fund by a tribally controlled community college shall be made unless such college enters into an agreement with the Secretary which—

(1) provides for the establishment and maintenance of a trust fund at a federally insured banking or savings institution;

(2) provides for the deposit in such trust fund of—

(A) any Federal capital contributions made from funds appropriated under section 1836 of this title;

(B) a capital contribution by such college in an amount equal to the amount of each Federal capital contribution; and

(C) any earnings of the funds so deposited;

(3) provides that such funds will be deposited in such a manner as to insure the accumulation of interest thereon at a rate not less than that generally available for similar funds deposited at the same banking or savings institution for the same period or periods of time;

(4) provides that, if at any time such college withdraws any capital contribution made by that college, an equal amount of Federal capital contribution shall be withdrawn and returned to the Secretary for reallocation to other colleges;

(5) provides that no part of the net earnings of such trust fund will inure to the benefit of any private person; and

(6) includes such other provisions as may be necessary to protect the financial interest of the United States and promote the purpose of this subchapter and as are agreed to by the Secretary and the college, including a description of recordkeeping procedures for the expenditure of accumulated interest which will allow the Secretary to audit and monitor programs and activities conducted with such interest.

(Pub. L. 95-471, title III, § 302, as added Pub. L. 98-192, § 13, Dec. 1, 1983, 97 Stat. 1341.)

Section Referred to in Other Sections

This section is referred to in sections 1833, 1834, 1835 of this title.

§ 1833. Use of funds

Interest deposited, pursuant to section 1832(b)(2)(C) of this title, in the trust fund of any tribally controlled community college may be periodically withdrawn and used, at the discretion of such college, to defray any expenses associated with the operation of such college, including expense of operations and maintenance, administration, academic and support personnel, community and student services programs, and technical assistance.

(Pub. L. 95-471, title III, § 303, as added Pub. L. 98-192, § 13, Dec. 1, 1983, 97 Stat. 1342.)

§ 1834. Compliance with matching requirement

For the purpose of complying with the contribution requirement of section 1832(b)(2)(B) of this title, a tribally controlled community college may use funds which are available from any private or tribal source.

(Pub. L. 95-471, title III, § 304, as added Pub. L. 98-192, § 13, Dec. 1, 1983, 97 Stat. 1342.)

§ 1835. Allocation of funds

(a) From the amount appropriated pursuant to section 1836 of this title, the Secretary shall allocate to each tribally controlled community college which is eligible for an endowment grant under this subchapter an amount for a Federal capital contribution equal to the amount which such college demonstrates has been placed within the control of, or irrevocably committed to the use of, the college and is available for deposit as a capital contribution of that college in accordance with section 1832(b)(2)(B) of this title, except that the maximum amount which may be so allocated to any such college for any fiscal year shall not exceed $350,000.

(b) If for any fiscal year the amount appropriated pursuant to section 1836 of this title is not sufficient to allocate to each tribally controlled community college an amount equal to the amount demonstrated by such college pursuant to subsection (a) of this section, then the amount of the allocation to each such college shall be ratably reduced.

(Pub. L. 95-471, title III, § 305, as added Pub. L. 98-192, § 13, Dec. 1, 1983, 97 Stat. 1342.)

§ 1836. Authorization of appropriations

(a) There is authorized to be appropriated to carry out the provisions of this subchapter $5,000,000 for each of the fiscal years 1985, 1986, and 1987.

(b) Any funds appropriated pursuant to subsection (a) of this section are authorized to remain available until expended.

(Pub. L. 95-471, title III, § 306, as added Pub. L. 98-192, § 13, Dec. 1, 1983, 97 Stat. 1343.)

Section Referred to in Other Sections

This section is referred to in sections 1832, 1835 of this title.

CHAPTER 22—EDUCATION PROGRAMS OF BUREAU OF INDIAN AFFAIRS

Sec.
2004. School boundaries.
  (a) Separate attendance areas.
  (b) Time for proposals; acceptance or rejection.
  (c) Reservation attendance area.
  (d) Superintendent for education; coordinating and consulting functions.
2020. Voluntary services.
2021. Proration of pay.
  (a) Annual election of basis for payments without loss of pay or benefits.
  (b) Change of election.
  (c) Lump sum payment.
  (d) "Educator" and "education position" defined; personnel within section.
2022. Extracurricular activities.
  (a) Stipend; election; supplement to base pay.
  (b) Amount of stipend; area level.
  (c) Alternative to stipend.
  (d) Personnel within section.
2023. Housing.
  (a) Rental rates; proceeds for improvement and repair of quarters.
  (b) Waiver of rentals; finality of decision.
  (c) Waiver of rentals during non-session periods and non-pay status.
  (d) "Educator" defined; personnel within section.

§ 2001. Standards for basic education of Indian children in Bureau or contract schools

[*See main edition for text of* (*a*)]

(b) Minimum academic standards; proposal, establishment, applicability, etc.

[*See main edition for text of* (*1*)]

(2) Such standards shall apply to Bureau schools, and subject to subsection (e) of this section, to contract schools, and may also serve as a model for educational programs for Indian children in public schools. In establishing and revising such standards, the Secretary shall take into account the special needs of Indian students and the support and reinforcement of the specific cultural heritage of each tribe. Such standards shall include a requirement, developed in coordination with Indian tribes, the affected local school boards, the Indian Health Service of the Department of Health and Human Services, the State health departments, and the Federal Center for Disease Control, on immunization for childhood diseases, including provisions for in-school immunization, where necessary.

[*See main edition for text of* (*c*)]

(d) Waiver or revision of minimum academic standards or alternative or modified standards by tribal governing body or local school board; proposal for alternative standards; action by Secretary on revised standards

A tribal governing body, or the local school board if so designated by the tribal governing body, shall have the local authority to waive, in part or in whole, the standards established under subsections (b) and (c) of this section, where such standards are deemed by such body to be inappropriate or ill-conceived. The tribal governing body or designated school board shall thereafter submit to the Secretary a proposal for alternative standards that takes into account the specific needs of the tribe's children. Such revised standards shall be established by the Secretary unless specifically rejected by the Secretary for good cause and in writing to the affected tribes or local school board, which rejection shall be final and unreviewable.

(e) Contracts for implementation of minimum academic standards or alternative or modified standards pursuant to request of contract school board; alternative or modified standards in lieu of established minimum academic standards or alternative or modified standards pursuant to request of contract school board; accreditation; uniform fiscal control and fund accounting procedures

(1) The Secretary, through contracting procedures, shall assist school boards of contract schools in the implementation of the standards established under subsection (b) and (c) of this section, if the school boards request that such standards, in part or in whole, be implemented. At the request of a contract school board, the Secretary shall provide alternative or modified standards for the standards established under subsections (b) and (c) of this section to take into account the needs of the Indian children and the contract school.

(2) Within two years of the initial contract for the provision of educational services under Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.] each such school shall (A) be in compliance with the standards prescribed under subsection (a) of this section, or (B) have obtained accreditation, or be a candidate for accreditation, with one of the accrediting agencies recognized by the Secretary of Education or the State in which it is found.

(3) Within one year of October 19, 1984, the Bureau shall, through contract with a national Indian organization, establish uniform fiscal control and fund accounting procedures for all contract schools. Such procedures shall yield data results comparable to those used by Bureau schools.

(f) General implementation authority of established applicable standards; submission of plan to Congressional committees for compliance with established applicable standards; contents of plan; personnel action restriction

Subject to subsections (d) and (e) of this section, the Secretary shall begin to implement the standards established under this section immediately upon the date of their establishment. No later than January 1, 1981, and at each time thereafter that the annual budget request for Bureau educational services is presented, the Secretary shall submit to the appropriate committees of Congress a detailed plan to bring all Bureau and contract schools up to the level required by the applicable standards established under this section. Such plan shall include, but not be limited to, detailed information on the status of each school's educational program in relation to the applicable standards established under this section, specific cost estimates for meeting such standards at each school, and specific time lines for bringing each school up to the level required by such standards. Failure to implement or meet such standards shall not serve as the basis for taking any personnel action against any individual if (1) the failure is related to inadequate resources (as determined under sections 2008 and 2009 of this title), and (2) the Secretary has not submitted the information required by this subsection and has not requested sufficient funds to cover the cost (as determined under such sections) of meeting such standards at the school concerned.

(g) Closure or consolidation of Bureau schools; standards and procedures; report to Congress; effective date

(1) Except as specifically required by statute, no school operated by the Bureau of Indian Affairs on January 1, 1984, may be closed or its program curtailed unless done according to the requirements of this subsection, except that, in those cases where the tribal governing body, or the local school board concerned (if so designated by the tribal governing body), requests closure or consolidation, the requirements of this subsection shall not apply.

(2) The Secretary shall, by regulation, promulgate standards and procedures for the closing or consolidation of Bureau schools in accordance with the requirements of this subsection.

(3) Such standards and procedures shall require that, whenever closure or consolidation of a school is under consideration or review by any division of the Bureau or the Department of the Interior, the affected tribe, tribal governing body, designated local school board, and parents will be notified as soon as such consideration or review begins and kept fully and currently informed with respect to such consideration or review. Copies of any such notices and information shall be transmitted promptly to the Congress and published in the Federal Register.

(4) Prior to ordering any such school closing or consolidation, the Secretary shall insure[1] that a study is made of each Indian child's educational and (where applicable) social needs and that adequate alternative services are guaranteed. Such a study shall include a description of the consultation conducted between the potential service provider, current service provider, parents, tribal representative of the tribe involved, and the Director of the Bureau of Indian Affairs, Office of Indian Education Programs, with regard to such child.

(5) Prior to taking any action to close or consolidate any such school, the Secretary shall make a full report to Congress describing the plans made (including schedules and plans for follow-up studies on the students affected), and the study and consultations undertaken pursuant to paragraph (4) of this subsection. No action may be taken in furtherance of any such proposed school closing or consolidation (including any action which would prejudice the personnel or programs of such school) until the end of the academic year following the academic year in which such report is made.

(h) Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary, for academic program costs, in order to bring all Bureau and contract schools up to the level required by the applicable standards established under this section.

(As amended Pub. L. 98-511, title V, § 502, Oct. 19, 1984, 98 Stat. 2391.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (e)(2), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-511, § 502(a), added requirement for a jointly developed standard on immunization for childhood diseases, including in-school immunization.

Subsec. (d). Pub. L. 98-511, § 502(b), substituted provision requiring submission of proposal for alternative standards taking into account specific needs of the tribe's children and for provision authorizing revision of standards to take into account the specific needs of the tribe's children.

Subsec. (e). Pub. L. 98-511, § 502(c), designated existing provisions as par. (1), struck out second sentence which declared that the Secretary should not refuse to enter into a contract with respect to any contract school on the basis of failure to meet standards, and added pars. (2) and (3).

Subsec. (f). Pub. L. 98-511, § 502(d), added provision that failure to implement or meet the standards shall not serve as the basis for taking any personnel action against any individual under the prescribed conditions.

Subsecs. (g), (h). Pub. L. 98-511, § 502(e), added subsec. (g) and redesignated former subsec. (g) as (h).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of Title 20, Education.

SHORT TITLE OF 1984 AMENDMENT

Section 501(a) of title V of Pub. L. 98-511 provided that: "This title [enacting sections 2020 to 2023 of this title, amending sections 2001, 2004, 2006, 2008, 2009, 2011, 2012, 2016, 2018 of this title and sections 241aa to 241ff, 1211a, 1221g, 3385, 3385a, and 3385b of Title 20, Education, and enacting provisions set out as a note under section 241ff of Title 20] may be cited as the 'Indian Education Amendments of 1984'."

RESTRICTION ON USE OF FUNDS FOR FISCAL YEAR 1985

Pub. L. 98-473, title I, § 101(c) [title I, § 100], Oct. 12, 1984, 98 Stat. 1837, 1850, provided: "That none of the funds contained in this Act [Department of the Interior and Related Agencies Appropriations Act, 1985, as enacted by Pub. L. 98-473] may be used to implement the provisions of sections 501 through 512 of title V of S. 2496 as agreed to by the Senate on October 3, 1984 (legislative day of September 24, 1984) [sections 501 through 512 of Pub. L. 98-511, which amended this chapter]."

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[1] So in original. Probably should be "ensure".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2003, 2008, 2016 of this title; title 20 section 241bb-1.

§ 2002. National criteria for dormitory situations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2003, 2008, 2016 of this title.

§ 2004. School boundaries

(a) Separate attendance areas

The Secretary shall, in accordance with this section, establish separate geographical attendance areas for each Bureau school.

(b) Time for proposals; acceptance or rejection

No attendance area shall be established with respect to any such school unless the tribal governing body or the local school board concerned (if so designated by the tribal governing body) has been given one year from October 19, 1984, to propose such boundaries. Such proposed boundaries shall be accepted unless the Secretary finds, after consultation with such body or board, that such boundaries do not reflect the needs of the Indian students to be served or do not provide adequate stability to all of the programs affected.

(c) Reservation attendance area

In any case where there is only one Bureau operated program located on an Indian reservation, the attendance area for the program shall be the boundaries of the reservation served, and those students residing near the reservation shall also receive services from such program.

(d) Superintendent for education; coordinating and consulting functions

The Bureau of Indian Affairs shall include in the final rules the requirement that each superintendent for education coordinate and consult with the affected tribes and relevant school boards in the establishment of such geographic boundaries.

(As amended Pub. L. 98-511, title V, § 503, Oct. 19, 1984, 98 Stat. 2393.)

AMENDMENTS

1984—Pub. L. 98-511 amended section generally, substituting school boundaries provisions for provision for funding of studies conducted under sections 2001(a) and 2002(a).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of Title 20, Education.

§ 2005. Facilities construction

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2006, 2016 of this title.

§ 2006. Bureau of Indian Affairs education functions

[*See main edition for text of* (*a*)]

(b) Direction and supervision of personnel operations by Director; separate support services not required

The Director of the Office shall direct and supervise the operations of all personnel directly and substantially involved with provision of education services by the Bureau, including (but not limited to) school or institution custodial or maintenance personnel. All contract functions relating to education (including those pursuant to the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]) shall be supervised by the Director of the Office. Subject to the provisions in subsection (c) of this section, nothing in this Act shall be construed to require the provision of separate support services for Indian education.

(c) Functions of education personnel in Bureau agencies under direction and supervision of Director; services for Bureau-operated boarding schools located off reservation

Education personnel located in Bureau agencies, who are under the direction and supervision of the Director of the Office in accordance with the first sentence of subsection (b) of this section, shall—

(1) monitor and evaluate Bureau education programs,

(2) provide all services and support functions for education programs with respect to personnel matters involving staffing actions and functions, and

(3) provide technical and coordinating assistance in areas such as procurement, contracting, budgeting, personnel, and curriculum.

However, in the case of boarding schools located off reservation operated by the Bureau, education personnel located in area offices of the Bureau shall provide such services, under the direction and supervision of the Director of the Office.

(d) Annual budget provision for construction and priorities among projects; distribution of appropriated funds; operation and maintenance of educational facilities; implementation date

(1) The Assistant Secretary shall submit in the annual Budget a plan—

(A) for school facilities to be constructed under the system required by section 2005(c) of this title; and

(B) for establishing priorities among projects and for the improvement and repair of education facilities, which together shall form the basis for the distribution of appropriated funds.

(2) The Assistant Secretary shall establish a program, including the distribution of appropriated funds, for the operation and maintenance of education facilities. Such program shall be implemented by the Director of the Office. Such program shall include, but not be limited to—

(A) a method of computing the amount necessary for each education facility;

(B) similar treatment of all Bureau and contract schools; and

(C) the allocation of appropriated funds from the Director of the Office directly to the agency superintendents for education, or to the area education program administrators in the case of multitribal boarding schools located off reservation.

The agency superintendents for education, or the area education program administrator in the case of multitribal boarding schools located off reservation, shall make arrangements for the maintenance of education facilities with the local supervisors of the Bureau maintenance personnel who are under the authority of the agency superintendent or area directors, respectively. The local supervisors of Bureau maintenance personnel shall take appropriate action to implement the decisions made in this regard by the agency superintendents for education and by the area education program administrators, except that no funds from this program may be expended or transferred by an agency superintendent for education or by an area education program administrator unless such superintendent or administrator is assured that the necessary maintenance has been, or will be, provided in a reasonable manner. Subject to the requirements of subsection (b) of this section, nothing in this Act shall be construed to require the provision of separate operations and maintenance personnel for the Office.

(3) The Director of the Office shall supervise all Bureau education facilities, including local Bureau housing constructed for the purpose of housing Bureau personnel at the school site.

(4) The requirements of this subsection shall be implemented within 270 days following October 19, 1984.

(e) "Functions" defined

For the purpose of this section the term "functions" includes powers and duties.

(As amended Pub. L. 98-511, title V, § 504, Oct. 19, 1984, 98 Stat. 2393.)

References in Text

The Indian Self-Determination and Education Assistance Act, referred to in subsec. (b), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 450 of this title and Tables.

This Act, referred to in subsecs. (a), (b), and (d)(2), means Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2143, as amended, known as the Education Amendments of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 20, Education, and Tables.

Amendments

1984—Subsec. (b). Pub. L. 98-511, § 504(a), (b), substituted "All contract functions relating to education (including those pursuant to the Indian Self-Determination and Education Assistance Act [25 U.S.C. 450 et seq.]) shall be supervised by the Director of the Office." for "The Assistant Secretary for Indian Affairs shall provide for the adequate coordination between the affected Bureau offices and the Office in order to facilitate the expeditious consideration of all contract functions relating to education.", and "Subject to the provisions in subsection (c) of this section, nothing" for "Nothing".

Subsec. (c). Pub. L. 98-511, § 504(c), added par. (2) and redesignated former par. (2) as (3).

Subsecs. (d), (e). Pub. L. 98-511, § 504(d), added subsec. (d) and redesignated former subsec. (d) as (e).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of Title 20, Education.

§ 2008. Allotment formula

(a) Regulations establishing formula for minimum annual amount of funds for each school; considerations; revision

The Secretary shall establish, by regulation adopted in accordance with section 2018 of this title, a formula for determining the minimum annual amount of funds necessary to sustain each Bureau or contract school. In establishing such formula, the Secretary shall consider—

(1) the number of Indian students served and size of the school;

(2) special cost factors, such as—

(A) isolation of the school;

(B) need for special staffing, transportation, or educational programs;

(C) food and housing costs;

(D) maintenance and repair costs associated with the physical condition of the educational facilities;

(E) special transportation and other costs of isolated and small schools;

(F) the costs of boarding arrangements, where determined necessary by a tribal governing body or designated local school board;

(G) costs associated with greater lengths of service by educational personnel;

(H) special programs for gifted and talented students; and

(I) costs associated with operating education and recreational programs on a 12-month basis;

(3) the cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located;

(4) such other relevant factors as the Secretary determines are appropriate.

Upon the establishment of the standards required by sections 2001 and 2002 of this title, the Secretary shall revise the formula established under this subsection to reflect the cost and funding standards so established.

[*See main edition for text of* (*b*)]

(c) Implementation of formula; restriction of formula amounts for fiscal years 1980 and 1981; equal allowance for local school board training and activities; amount for administration and indirect costs

(1) The formula established under subsection (a) of this section shall be implemented for fiscal year 1980 and each succeeding fiscal year, except that—

(A) for fiscal year 1980, no school shall as a consequence of such formula receive less than 90 per centum, nor more than 120 per centum, of the funds it received from Bureau education funds for fiscal year 1979;

(B) for fiscal year 1981, no school shall as a consequence of such formula receive less than 70 per centum, nor more than 170 per centum, of the funds it received from Bureau education funds for fiscal year 1979; and

(C) for fiscal year 1982 and any succeeding fiscal year the formula shall be fully implemented.

(2) All Bureau and contract schools receiving funds under this section shall receive an equal amount as an allowance for local school board training and activities including, notwithstanding any other provision of law, meeting expenses and the cost of membership in or support of organizations engaged in activities on behalf of Indian education.

(3) The Secretary shall, subject to appropriations, provide to all contract schools an amount for administrative and indirect costs which is at least equal to the amount which would be expended by the Secretary if such school were directly operated by the Secretary. The Secretary shall take such actions as are necessary to provide contract schools with the full amount as determined by this paragraph without reducing funds available under subsection (a) of this section.

[*See main edition for text of* (*d*)]

(e) Fund for monetary awards and quality step increases; payments not affecting allotments

The Director of the Office shall establish a separate fund from which monetary awards and quality step increases for employees shall be paid. Such payments shall not affect school allotments under this section.

(As amended Pub. L. 98-511, title V, § 505, Oct. 19, 1984, 98 Stat. 2394.)

AMENDMENTS

1984—Subsec. (a)(2)(D) to (I). Pub. L. 98-511, § 505(a), struck out subpar. (D) which provided for consideration of overhead costs for administration of contracted education functions in establishing allotment formula, redesignated subpar. (E) as (D), and added subpars. (E) to (I).

Subsec. (c). Pub. L. 98-511, § 505(b), designated existing provisions as par. (1), redesignated former pars. (1) to (3) as subpars. (A) to (C), respectively, and added pars. (2) and (3).

Subsec. (e). Pub. L. 98-511, § 505(c), added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2001, 2009 of this title.

§ 2009. Uniform direct funding and support

(a) Regulations establishing direct funding and support system for schools; criteria; notice of funding; fiscal year availability of funds; transition to forward funding method of distribution; publication of school allotments; expenditures for supplies and equipment with or without competitive bidding

(1) Within six months after November 1, 1978, the Secretary shall establish, by regulation adopted in accordance with section 2018 of this title, a system for the direct funding and support of all Bureau and contract schools. Such system shall allot funds, in accordance with section 2008 of this title.

(2)(A) For the purpose of affording adequate notice of funding available pursuant to the allotments made by this section, amounts appropriated in an appropriation Act for any fiscal year shall become available for obligation by the affected schools on July 1 of the fiscal year in which they are appropriated without further action by the Secretary, and shall remain available for obligation through the succeeding fiscal year. In order to effect a transition to the forward funding method of distribution described in the preceding sentence, there are authorized to be appropriated, in an appropriation Act or Acts for the same fiscal year, two separate appropriations for such allotments, the first of which shall not be subject to the preceding sentence.

(B) The Secretary shall, on the basis of the amount appropriated in accordance with this paragraph—

(i) publish, on July 1 preceding the fiscal year for which the funds are appropriated, allotments to each affected school made under this section of 85 percent of such appropriation; and

(ii) publish, no later than September 30 of such preceding fiscal year, the allotments to be made under this section of the remaining 15 percent of such appropriation, adjusted to reflect actual student attendance.

(3) Notwithstanding any law or regulation governing procurement by Federal agencies, the supervisor of each school receiving funds under this section shall, subject to school board approval, have the authority to expend no more than 10 percent of the funds allotted by this section to procure supplies and equipment, with or without competitive bidding.

(b) Local financial plans for expenditure of allotted funds by Bureau schools; preparation, revision, etc.

In the case of all Bureau schools, allotted funds shall be expended on the basis of local financial plans which shall be prepared by the local school supervisor in active consultation with the local school board for each school, and the local school board for each school shall have the authority to ratify, reject, or amend such financial plan, and expenditures thereunder, and, on its own determination or in response to the supervisor of the school, to revise such financial plan to meet needs not foreseen at the time of preparation of the financial plan.

The supervisor of the school may appeal any such action of the local school board to the superintendent for education of the Bureau agency by filing a written statement describing the action and the reasons the supervisor believes such action should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the superintendent may, for good cause, overturn the action of the local school board. The superintendent shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such action.

(c) Funds for self-determination grants; prerequisites for use

Funds for self-determination grants under section 450h(a)(2) of this title shall not be used for providing technical assistance and training in the field of education by the Bureau unless such services are provided in accordance with a plan, agreed to by the tribe or tribes affected and the Bureau, under which control of education programs is intended to be transferred to such tribe or tribes within a specific period of time negotiated under such agreement. The Secretary shall institute a program for funding tribal divisions of education and the development of tribal codes of education.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-511, title V, §§ 506, 507(a), Oct. 19, 1984, 98 Stat. 2395, 2396.)

Amendments

1984—Subsec. (a). Pub. L. 98-511, § 506(a)(1), (2), struck out provision respecting notification of affected schools of approximate allotment not later than the end of the school year preceding the year for which allotment was being made, designated existing provisions, as so amended, as par. (1), and added pars. (2) and (3).

Subsec. (b). Pub. L. 98-511, § 507(a), inserted provisions respecting filing a statement of reasons for overturning school board determinations, including provision for copies to the school board, opportunity for the board to respond to the appeal, and transmission of the opinion identifying the reasons for overturning school board action.

Subsec. (c). Pub. L. 98-511, § 506(b), required the Secretary to institute a program for funding tribal divisions of education and the development of tribal codes of education.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of Title 20, Education.

Section Referred to in Other Sections

This section is referred to in sections 2001, 2016 of this title.

§ 2011. Education personnel

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Regulatory requirements respecting appointment of educators; administrative procedures applicable to appointment, etc.

[*See main edition for text of* (*1*)]

(2)(A) The supervisor of a school may appeal to the appropriate agency superintendent for education any determination by the local school board for the school that an individual be employed, or not be employed, in an education position in the school (other than that of supervisor) by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the superintendent may, for good cause, overturn the determination of the local school board. The superintendent shall transmit the determination of such appeal in the form of a written opinion to such board and to such supervisor identifying the reasons for overturning such determination.

(B) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the local school board for the school that an individual be employed, or not be employed, as the supervisor of a school by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the local school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the local school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such superintendent identifying the reasons for overturning such determination.

(3) The superintendent for education of an agency office of the Bureau may appeal to the Director of the Office any determination by the agency school board that an individual be employed, or not be employed, in an education position in such agency office by filing a written statement describing the determination and the reasons the supervisor believes such determination should be overturned. A copy of such statement shall be submitted to the agency school board and such board shall be afforded an opportunity to respond, in writing, to such appeal. After reviewing such written appeal and response, the Director may, for good cause, overturn the determination of the agency school board. The Director shall transmit the determination of such appeal in the form of a written opinion to such board and to such superintendent identifying the reasons for overturning such determination.

[*See main edition for text of* (*4*) *and* (*5*); (*e*) *to* (*l*)]

(m) Nonapplicability to educator of dual compensation provisions during recess period employment; prerequisites

In the case of any educator employed in an education position described in subsection (n)(1)(A) of this section who—

(1) is employed at the close of a school year,

(2) agrees in writing to serve in such a position for the next school year, and

(3) is employed in another position during the recess period immediately preceding such next school year, or during such recess period receives additional compensation referred to in subsection (g)(2) or (g)(3)[6] of this section,

section 5533 of title 5, relating to dual compensation, shall not apply to such educator by reason of any such employment during a recess period for[7] any such receipt of additional compensation.

[*See main edition for text of* (*n*) *and* (*o*)]

(As amended Pub. L. 98–511, title V, § 507(b), Oct. 19, 1984, 98 Stat. 2396.)

CODIFICATION

Subsec. (m) of this section is set out in this supplement to correct error in the main edition.

AMENDMENTS

1984—Subsec. (d)(2), (3). Pub. L. 98–511 revised par. (2) to require in appeals from local school board determinations respecting employment in a nonsupervisory education position by the supervisor to the agency superintendent for education and from determinations respecting employment in supervisory positions by the agency superintendent for education to the Director of the Office, the filing of statement of reasons for overturning local school board determinations, including provision for copies to the school board, opportunity for the board to respond to the appeal, and transmission of the opinion identifying the reasons for overturning school board determinations; and revised par. (3) to require the same procedure on appeal from agency school board determinations respecting employment in an education position by the agency superintendent for education to the Director of the Office.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98–511, set out as a note under section 2701 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 472a, 2021, 2022, 2023 of this title.

§ 2012. Management information system; establishment, scope, etc.

The Secretary shall establish within the Office, within one year after October 19, 1984, a computerized management information system, which shall provide information to the Office. Such information shall include but shall not be limited to—

[*See main edition for text of* (*1*) *to* (*7*)]

(As amended Pub. L. 98–511, title V, § 508, Oct. 19, 1984, 98 Stat. 2397.)

AMENDMENTS

1984—Pub. L. 98–511 substituted "within the Office" for "within the Bureau", and "within one year after October 19, 1984" for "within one year after November 1, 1978", and struck out "to all agency and area offices of the Bureau and" after "shall provide information".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98–511, set out as a note under section 2701 of Title 20, Education.

§ 2016. Annual reports to Congressional committees; contents; audits

(a) The Secretary shall submit to each appropriate committee of the Congress a detailed annual report on the state of education within the Bureau and any problems encountered in the field of education during the year. Such report shall contain suggestions for improving the Bureau educational system and increasing local Indian control of such system. Such report shall also include the current status of tribally controlled community colleges. The annual budget submission for the Bureau's education programs shall, among other things, include (1) information on the funds provided previously private schools under section 458d of this title and recommendations with respect to the future use of such funds; (2) the needs and costs of operation and maintenance of tribally controlled community colleges eligible for assistance under the Tribally Controlled Community College Assistance Act of 1978 (92 Stat. 1325; 25 U.S.C. 1801 et seq.) and recommendations with respect to meeting such needs and costs; and (3) the plans required by section 2001(f), and 2002(c);[8] and 2005(b) of this title.

(b) The Inspector General of the Department of the Interior shall establish a system to ensure that financial and compliance audits are conducted of the Bureau, the Office, and each Bureau school at least once in every three years. Audits of Bureau schools shall be based upon the extent to which such school has complied with its local financial plan under section 2009 of this title.

(As amended Pub. L. 98–511, title V, § 509, Oct. 19, 1984, 98 Stat. 2397.)

REFERENCES IN TEXT

The Tribally Controlled Community College Assistance Act of 1978, referred to in subsec. (a), is Pub. L. 95–471, Oct. 17, 1978, 92 Stat. 1325, as amended, which is classified principally to chapter 20 (§ 1801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

AMENDMENTS

1984—Pub. L. 98–511 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98–511, set out as a note under section 2701 of Title 20, Education.

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[6] So in original. Probably should be "subsection (h)(2) or (h)(3)".

[7] So in original. Probably should be "or".

[8] So in original. The semicolon probably should be a comma.

§ 2018. Regulations implementing administrative, etc., provisions; applicability; promulgation, submission, and effect

Regulations required to be adopted under sections 2006 through 2017 of this title shall be deemed rules of general applicability prescribed for the administration of an applicable program for the purposes of section 1232 of title 20 and shall be promulgated, submitted for congressional review, and take effect in accordance with the provisions of such section. Such regulations shall contain, immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority upon which such provision is based.

(As amended Pub. L. 98-511, title V, § 510, Oct. 19, 1984, 98 Stat. 2397.)

AMENDMENTS

1984—Pub. L. 98-511 required substantive regulatory provisions to be followed by citations to legal authorities for such provisions.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-511 effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as a note under section 2701 of Title 20, Education.

§ 2020. Voluntary services

Notwithstanding section 1342 of title 31, an officer or employee of the Bureau or the Office may, subject to the approval of the local school board concerned, accept voluntary services on behalf of Bureau and contract schools. Nothing in this chapter shall be construed to require Federal employees to work without compensation or to allow the use of volunteer services to displace or replace Federal employees.

(Pub. L. 95-561, title XI, § 1140, as added Pub. L. 98-511, title V, § 511, Oct. 19, 1984, 98 Stat. 2397.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this title", meaning title XI (§§ 1101-1152) of Pub. L. 95-561, which is classified principally to this chapter. For complete classification of title XI to the Code, see Tables.

EFFECTIVE DATE

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of Title 20, Education.

§ 2021. Proration of pay

(a) Annual election of basis for payments without loss of pay or benefits

Notwithstanding any other provision of law, the Secretary, at the election of the employee, shall prorate the salary of an employee employed in an education position for the academic school-year over the entire twelve month period. Each educator employed for the academic school-year shall annually elect to be paid on a twelve month basis or for those months while school is in session. No educator shall suffer a loss of pay or benefits because of such election.

(b) Change of election

During the course of such year the employee may change election once.

(c) Lump sum payment

That portion of the employee's pay which would be paid between academic school years may be paid in lump sum at the election of the employee.

(d) "Educator" and "education position" defined; personnel within section

For the purposes of this section the terms "educator" and "education position" have the meaning contained in section 2011(n)(1) and (n)(2) of this title. This section applies to those individuals employed under the provisions of section 2011 of this title or title 5.

(Pub. L. 95-561, title XI, § 1141, as added Pub. L. 98-511, title V, § 512, Oct. 19, 1984, 98 Stat. 2398.)

CODIFICATION

Another section 1141 of Pub. L. 95-561, amended sections 241bb, 1221g, and 3385 to 3385b of Title 20, Education.

EFFECTIVE DATE

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of Title 20, Education.

§ 2022. Extracurricular activities

(a) Stipend; election; supplement to base pay

Notwithstanding any other provision of law, the Secretary shall provide a stipend in lieu of overtime premium pay or compensatory time off. Any employee of the Bureau who performs additional activities to provide services to students or otherwise support the school's academic and social programs may elect to be compensated for all such work on the basis of the stipend. Such stipend shall be paid as a supplement to the employee's base pay.

(b) Amount of stipend; area level

The amount of such stipends shall be determined at the area level.

(c) Alternative to stipend

If an employee elects not to be compensated through the stipend established by this section, the appropriate provisions of title 5 shall apply.

(d) Personnel within section

This section applies to all Bureau employees, whether employed under section 2011 of this title or title 5.

(Pub. L. 95-561, title XI, § 1142, as added Pub. L. 98-511, title V, § 512, Oct. 19, 1984, 98 Stat. 2393.)

CODIFICATION

Another section 1142 of Pub. L. 95-561, amended sections 241aa and 241cc of Title 20, Education.

EFFECTIVE DATE

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984

Amendment note under section 2701 of Title 20, Education.

§ 2023. Housing

(a) Rental rates; proceeds for improvement and repair of quarters

The Secretary shall continue to apply rental rates for employee housing in accordance with all applicable laws and regulations. Proceeds from rental receipts shall be used for the improvement and repair of employee quarters.

(b) Waiver of rentals; finality of decision

Notwithstanding any other provision of law, the agency superintendent for education, or (for boarding schools located off-reservation) the area education program administrator, shall have the authority to waive up to 90 percent of the rental rate for educators on schoolwide basis to aid the school in recruiting and retaining educators. Decisions on rent waivers will be made after consultation with the appropriate level school board and the employees. Such superintendent's or administrator's decision (as the case may be) on the need for this assistance in recruitment and retention is final and not reviewable.

(c) Waiver of rentals during non-session periods and non-pay status

During periods when schools are not in session and educators have been placed in non-pay status, all rents payable by those educators shall be waived.

(d) "Educator" defined; personnel within section

For the purposes of this section the term "educator" has the meaning contained in section 2011(n)(1) of this title. This section applies to those individuals employed under both the provisions of section 2011 of this title and title 5.

(Pub. L. 95-561, title XI, § 1143, as added Pub. L. 98-511, title V, § 512, Oct. 19, 1984, 98 Stat. 2398.)

CODIFICATION

Another section 1143 of Pub. L. 95-561 amended section 241bb of Title 20, Education.

EFFECTIVE DATE

Section effective Oct. 19, 1984, see section 711(a) of Pub. L. 98-511, set out as an Effective Date of 1984 Amendment note under section 2701 of Title 20, Education.

CHAPTER 24—INDIAN LAND CONSOLIDATION

Sec.
2211. Governing body of tribe; construction of chapter as not vesting with authority not authorized by tribal constitution or bylaws.

§ 2203. Adoption of land consolidation plan with approval of Secretary

(a) Statement of purpose; sales or exchanges: terms and conditions

Notwithstanding any other provision of law, any tribe, acting through its governing body, is authorized, with the approval of the Secretary to adopt a land consolidation plan providing for the sale or exchange of any tribal lands or interest in lands for the purpose of eliminating undivided fractional interests in Indian trust or restricted lands or consolidating its tribal landholdings: *Provided*, That—

(1) the sale price or exchange value received by the tribe for land or interests in land covered by this section shall be no less than within 10 per centum of the fair market value as determined by the Secretary;

(2) if the tribal land involved in an exchange is of greater or lesser value than the land for which it is being exchanged, the tribe may accept or give cash in such exchange in order to equalize the values of the property exchanged;

(3) any proceeds from the sale of land or interests in land or proceeds received by the tribe to equalize an exchange made pursuant to this section shall be used exclusively for the purchase of other land or interests in land;

(4) the Secretary shall maintain a separate trust account for each tribe selling or exchanging land pursuant to this section consisting of the proceeds of the land sales and exchanges and shall release such funds only for the purpose of buying lands under this section; and

(5) any tribe may retain the mineral rights to such sold or exchanged lands and the Secretary shall assist such tribe in determining the value of such mineral rights and shall take such value into consideration in determining the fair market value of such lands.

(b) Conveyancing requirement; specific findings for nonexecution

The Secretary must execute such instrument of conveyance needed to effectuate a sale or exchange of tribal lands made pursuant to an approved tribal land consolidation plan unless he makes a specific finding that such sale or exchange is not in the best interest of the tribe or is not in compliance with the tribal land consolidation plan.

(As amended Pub. L. 98-608, § 1(1), Oct. 30, 1984, 98 Stat. 3171.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-608 amended subsec. (a) generally, substituting ": *Provided*, That—" for the period at the end thereof and adding the five numbered pars., thereby correcting errors originally contained in this section as enacted by Pub. L. 97-459, the text of which had a portion of section 204 appearing in section 206 (classified to section 2205 of this title) as the result of inadvertent error in the execution of committee amendments (see House Report No. 97-908, Sept. 30, 1982) to the bill. Pub. L. 97-459 enacted subsec. (a) as ending with "tribal landholdings.", and included the portion of section 204 containing the proviso and the five numbered pars. within the text of section 206.

Subsec. (b). Pub. L. 98-608 included subsec. (b) within this section and substituted a period for the dash following "tribal land consolidation plan", thereby correcting errors originally contained in this section as enacted by Pub. L. 97-459, which, as the result of inadvertent error in the execution of committee amendments (see House Report No. 97-908, Sept. 30, 1982) to the bill, enacted subsec. (b) as part of section 206(b) of Pub. L. 97-459 and ended it with "tribal land consolidation plan—".

§ 2204. Purchase of trust or restricted or controlled lands at no less than fair market value; requisite conditions

Any Indian tribe may purchase at no less than the fair market value part or all of the interests in any tract of trust or restricted land within that tribe's reservation or otherwise subject to that tribe's jurisdiction with the consent of the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of over 50 per centum of the undivided interests in such tract: *Provided*, That—

(1) any Indian owning any undivided interest, and in actual use and possession of such tract for at least three years preceding the tribal initiative, may purchase such tract by matching the tribal offer;

(2) if, at any time within five years following the date of acquisition of such land by an individual pursuant to this section, such property is offered for sale or a petition is filed with the Secretary for removal of the property from trust or restricted status, the tribe shall have 180 days from the date it is notified of such offer or petition to acquire such property by paying to the owner the fair market value as determined by the Secretary;

(3) all purchases and sales initiated under this section shall be subject to approval by the Secretary.

(As amended Pub. L. 98-608, § 1(2), Oct. 30, 1984, 98 Stat. 3171.)

AMENDMENTS

1984—Pub. L. 98-608 amended section generally, substituting "the owners of such interests. The tribe may purchase all of the interests in such tract with the consent of the owners of over 50 per centum of the undivided interests in such tract" for "of over 50 per centum of the owners or with the consent of the owners of over 50 per centum of undivided interests in such tract" before the proviso.

Par. (1). Pub. L. 98-608 redesignated par. (2) as (1), and in par. (1) as so redesignated added "for at least three years preceding the tribal initiative," before "may purchase such tract". Former par. (1), which provided that no such tract shall be acquired by any Indian or tribe over the objections of three or less owners owning 50 per centum or more of the total interest in such tract, was struck out.

Par. (2). Pub. L. 98-608 added par. (2). Former par. (2) redesignated (1).

Pars. (3), (4). Pub. L. 98-608 redesignated par. (4) as (3), and in par. (3), as so redesignated, substituted "subject to approval" for "approved" and struck out former par. (3), which provided that "this section shall not apply to any tract of land owned by less than fifteen persons; and".

§ 2205. Descent and distribution of trust or restricted or controlled lands; tribal ordinance barring nonmembers of tribe or non-Indians from inheritance by devise or descent; limitation on life estate

(a) Descent or distribution

Notwithstanding any other provision of law, any Indian tribe, subject to approval by the Secretary, may adopt its own code of laws to govern descent and distribution of trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction, and may provide that nonmembers of the tribe or non-Indians shall not be entitled to receive by devise or descent any interest or [1] trust or restricted lands within that tribe's reservation or otherwise subject to that tribe's jurisdiction: *Provided*, That in the event a tribe takes such action—

(1) if an Indian dies intestate, the surviving non-Indian or nonmember spouse and/or children may elect to receive a life estate in as much of the trust or restricted lands as such person or persons would have been entitled to take in the absence of such restriction on eligibility for inheritance and the remainder shall vest in the Indians or tribal members who would have been heirs in the absence of a qualified person taking a life estate;

(2) if an intestate Indian descendent has no heir to whom interests in trust or restricted lands may pass, such interests shall escheat to the tribe, subject to any non-Indian or nonmember spouse and/or children's rights as described in paragraph (1) of this section;

(3) if an Indian decedent has devised interests in trust or restricted lands to persons who are ineligible for such an inheritance by reason of a tribal ordinance enacted pursuant to this section, the devise shall be voided only if, while the estate is pending before the Secretary for probate, the tribe acquires such interests by paying to the Secretary, on behalf of the devisees, the fair market value of such interests as determined by the Secretary as of the date of the decedent's death: *Provided*, That any non-Indian or nonmember spouse and/or children of such decedent who have been devised such interests may retain, at their option, a life estate in such interests.

Any ineligible devisee shall also have the right to renounce his or her devise in favor of a person or persons who are eligible to inherit.

(b) Life estate; limitation

The right to receive a life estate under the provisions of this section shall be limited to—

(1) a spouse and/or children who, if they had been eligible, would have inherited an ownership interest of 10 per centum or more in the tract of land; or

(2) a spouse and/or children who occupied the tract as a home at the time of the decedent's death.

(As amended Pub. L. 98-608, § 1(3), Oct. 30, 1984, 98 Stat. 3172.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-608 amended subsec. (a) generally, designating existing provisions as subsec. (a), in subsec. (a) as so designated substituting provisions allowing adoption of a code of laws by an Indian tribe to govern descent and distribution of trust or restricted lands within the reservation or jurisdiction of the tribe, subject to the Secretary's approval for former provisions which allowed tribes to act "by appropriate action of its governing body", and adding the proviso and the numbered pars. (1) to (3) and the sentence following par. (3). Amendment by Pub. L. 98-608 corrected errors originally contained in this section as enacted by Pub. L. 97-459, which as the result of inadvertent error in the execution of committee amendments (see House Report No. 97-908, Sept. 30, 1982) to the bill, contained provisions set out following the proviso and preceding final pars. (1) to (3), such provisions consisting of pars. (1) to (5) and subsec. (b), which were intended to be part of section 204 of Pub. L. 97-459, which is classified to section 2203 of this title.

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[1] So in original. Probably should be "in".

Subsec. (a)(1). Pub. L. 98-608 substituted provisions allowing election of life estate with remainder vesting in Indians or tribal members who would have been heirs for former provisions which provided for entitlement to life estate.

Subsec. (b). Pub. L. 98-608 added subsec. (b).

§ 2206. Escheat to tribe of trust or restricted or controlled lands; fractional interest; Indian tribal code

(a) Escheat to tribe; rebuttable presumption

No undivided interest in any tract of trust or restricted land within a tribe's reservation or otherwise subject to a tribe's jurisdiction shall descend by intestacy or devise but shall escheat to that tribe if such interest represents 2 per centum or less of the total acreage in such tract and is incapable of earning $100 in any one of the five years from the date of decedent's death. Where the fractional interest has earned to its owner less than $100 in any one of the five years before the decedent's death, there shall be a rebuttable presumption that such interest is incapable of earning $100 in any one of the five years following the death of the decedent.

(b) Escheatable fractional interest

Nothing in this section shall prohibit the devise of such an escheatable fractional interest to any other owner of an undivided fractional interest in such parcel or tract of trust or restricted land.

(c) Adoption of Indian tribal code

Notwithstanding the provisions of subsection (a) of this section, any Indian tribe may, subject to the approval of the Secretary, adopt its own code of laws to govern the disposition of interests that are escheatable under this section, and such codes or laws shall take precedence over the escheat provisions of subsection (a) of this section, provided, the Secretary shall not approve any code or law that fails to accomplish the purpose of preventing further descent or fractionation of such escheatable interests.

(As amended Pub. L. 98-608, § 1(4), Oct. 30, 1984, 98 Stat. 3172.)

AMENDMENTS

1984—Pub. L. 98-608 amended section generally, designating existing provisions as subsec. (a), striking out "fractional" before "interest in any tract", substituting "descend" for "descendent" before "by intestacy or devise", and "is incapable of earning $100 in any one of the five years from the date of decedent's death" for "has earned to its owner less than $100 in the preceding year before it is due to escheat", and adding the second sentence and subsecs. (b) and (c).

§ 2211. Governing body of tribe; construction of chapter as not vesting with authority not authorized by tribal constitution or by-laws

Nothing in this chapter shall be construed as vesting the governing body of an Indian tribe with any authority which is not authorized by the constitution and by-laws or other organizational document of such tribe.

(Pub. L. 97-459, title II, § 212, as added Pub. L. 98-608, § 1(5), Oct. 30, 1984, 98 Stat. 3173.)

REFERENCES IN TEXT

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 97-459, Jan. 12, 1983, 96 Stat. 2515, as amended, title II of which is classified to this chapter. For complete classification of this Act to the Code, see Tables.

CHAPTER 25—OLD AGE ASSISTANCE CLAIMS SETTLEMENT

Sec.

2301. Definitions.
2302. Payment of claims.
  (a) Authority of Secretary.
  (b) Minimum amount for payment.
2303. Notice.
  (a) Publication; list of trust estates; unauthorized disbursements; Federal Register.
  (b) Secretary to provide information to affected tribes, bands, or groups.
  (c) Submission of additional unauthorized disbursement claims.
  (d) Publication of additional unauthorized disbursement claims.
2304. Identification of right to payment and expedited claim payment.
  (a) Search of records.
  (b) Payment without filing of claim.
  (c) Notification.
2305. Discharge and barring of claims.
  (a) Payment and acceptance.
  (b) Claims filed prior to October 19, 1984.
2306. Authorization of appropriations.
2307. Treatment of funds.

§ 2301. Definitions

For purposes of this chapter, the term—

(1) "Secretary" means the Secretary of the Interior;

(2) "unauthorized disbursement" means a disbursement made from the trust estate of a deceased Indian which was made by the Secretary to a State or a political subdivision of a State for the purpose of reimbursing the State or political subdivision for any old age assistance made to the deceased Indian before death in violation of Federal laws governing Indian trust property; and

(3) "trust estate" means that portion of the estate that consists of real or personal property, title to which is held by the United States for the benefit of the Indian or which may not be alienated without the consent of the Secretary.

(Pub. L. 98-500, § 2, Oct. 19, 1984, 98 Stat. 2317.)

SHORT TITLE

Section 1 of Pub. L. 98-500 provided: "That this Act [enacting this chapter] may be cited as the 'Old Age Assistance Claims Settlement Act'."

§ 2302. Payment of claims

(a) Authority of Secretary

The Secretary is authorized and directed to determine the portion of any unauthorized disbursement to which any individual under this chapter is entitled, and to pay to such individual the amount which the Secretary determines such individual to be entitled. Any payment under this provision shall include interest at a rate of 5 per centum per annum, simple interest, from the date on which such disbursement was made from the trust estate of the deceased Indian.

(b) Minimum amount for payment

No payment shall be made under subsection (a) of this section with respect to any unauthorized disbursement from the trust estate of a deceased Indian if the total amount of unauthorized disbursement from such trust estate was less than $50.

(Pub. L. 98-500, § 3, Oct. 19, 1984, 98 Stat. 2317.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2304 of this title.

§ 2303. Notice

(a) Publication; list of trust estates; unauthorized disbursements; Federal Register

Within one hundred and eighty days after October 19, 1984, the Secretary shall publish in the Federal Register a list of all trust estates from which unauthorized disbursements are known to have been made, including the amount of the unauthorized disbursement made from each such trust estate.

(b) Secretary to provide information to affected tribes, bands, or groups

Within thirty days after the publication of this list, the Secretary shall provide a copy of this chapter and a copy of the Federal Register containing this list, or such parts as may be pertinent, to each Indian tribe, band, or group the rights of whose members may be affected by this chapter.

(c) Submission of additional unauthorized disbursement claims

Any tribe, band or group of Indians, or any individual Indian shall have one hundred and eighty days after the date of the publication in the Federal Register of the list provided for in subsection (b) of this section to submit to the Secretary any additional unauthorized disbursement claims not contained on the list.

(d) Publication of additional unauthorized disbursement claims

Not more than thirty days after the expiration of the one hundred and eighty day period provided for in subsection (c) of this section, the Secretary shall publish in the Federal Register a list containing the additional unauthorized disbursement claims submitted during such period.

(Pub. L. 98-500, § 4, Oct. 19, 1984, 98 Stat. 2317.)

§ 2304. Identification of right to payment and expedited claim payment

(a) Search of records

The Secretary shall conduct a search of the records of the Department of the Interior to identify individuals who are entitled to any portion of the unauthorized disbursements which were made and to ascertain the amount of such unauthorized disbursements to which each of such individuals is entitled.

(b) Payment without filing of claim

In any case in which the Secretary ascertains the name and location of any individual who is entitled to any portion of an unauthorized disbursement and determines the amount of such unauthorized disbursement to which such individual is entitled, the Secretary shall pay such amount, including interest thereon as provided in section 2302 of this title, to such individual immediately without requiring such individual to file a formal claim for payment.

(c) Notification

The Secretary shall use the best available means of notifying each individual who is identified in the search conducted under subsection (a) of this section of the right of such individual to receive payment under this chapter. The means of notification available to the Secretary shall include—

(1) notice provided directly to such individual;

(2) notification of the next of kin of such individual;

(3) notification of the chairman or chief executive officer of the tribe of which such individual is a member or of which the deceased Indian was a member; and

(4) publication of notice in newspapers of general circulation in the appropriate area.

(Pub. L. 98-500, § 5, Oct. 19, 1984, 98 Stat. 2318.)

§ 2305. Discharge and barring of claims

(a) Payment and acceptance

The payment and acceptance of any claim, after its determination in accordance with this chapter, shall be a full discharge to the United States or any State or political subdivision thereof of all claims and demands touching any of the matters involved in the controversy.

(b) Claims filed prior to October 19, 1984

The provisions of this chapter shall not affect claims arising from any unauthorized disbursement which were filed in any court of competent jurisdiction prior to October 19, 1984.

(Pub. L. 98-500, § 6, Oct. 19, 1984, 98 Stat. 2318.)

§ 2306. Authorization of appropriations

(a) There are authorized to be appropriated for the purpose of carrying out the provisions of this chapter $2,500,000 for each of the fiscal years 1986 and 1987, and such sums as may be necessary for any subsequent fiscal year. The amounts appropriated under the authority of this subsection shall remain available without fiscal year limitation for purposes of carrying out the provisions of this chapter until all claims filed under this chapter have been resolved.

(b) Funds necessary to pay the expenses of administering this chapter shall be appropriated and expended under the authority of the

Act of November 2, 1921 (42 Stat. 208; 25 U.S.C. 13), popularly known as the Snyder Act.

(Pub. L. 98-500, § 7, Oct. 19, 1984, 98 Stat. 2318.)

REFERENCES IN TEXT

The Act of November 2, 1921, referred to in subsec. (b), is act Nov. 2, 1921, ch. 115, 42 Stat. 208, as amended, popularly known as the Snyder Act, which is classified to section 13 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 13 of this title and Tables.

§ 2307. Treatment of funds

Funds distributed under the provisions of this chapter shall not be considered as income or resources nor otherwise utilized as the basis for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled under the Social Security Act [42 U.S.C. 301 et seq.] or, except for per capita shares in excess of $2,000, any Federal or federally assisted program.

(Pub. L. 98-500, § 8, Oct. 19, 1984, 98 Stat. 2319.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

TITLE 26—INTERNAL REVENUE CODE

INTERNAL REVENUE TITLE

TITLE REFERRED TO IN OTHER SECTIONS

This title is referred to in title 2 sections 60c-1, 65c, 651; title 10 section 2401; title 12 sections 3413, 3607; title 15 sections 78kkk, 631b; title 16 section 470b; title 18 section 4043; title 20 sections 1087-1, 1087ee; title 22 section 3307; title 25 section 1716; title 29 sections 1002, 1301, 1453, 1706; title 30 section 1473; title 31 sections 1324, 3105, 3106, 3124, 3701, 3711, 3718; title 36 sections 1514, 1614, 1714, 1814, 1914, 2014, 2114, 2214, 2314, 2414, 2514, 2614, 2714, 2814, 2915, 3014, 3114; title 40 section 270a; title 42 sections 401, 408, 416, 4636, 5055, 8217; title 45 section 231m; title 46 App. section 1177; title 49 section 326.

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Amendments

1984—Pub. L. 98-369, div. A, title IV, § 474(r)(29)(D), July 18, 1984, 98 Stat. 844, struck out "and tax-free covenant bonds" at the end of item for chapter 3.

Subtitle Referred to in Other Sections

This subtitle is referred to in sections 810, 2107, 3402, 3502, 3507, 3508, 4911, 4999, 6011, 6012, 6013, 6039B, 6075, 6111, 6164, 6201, 6211, 6212, 6213, 6214, 6229, 6231, 6315, 6401, 6404, 6420, 6421, 6427, 6501, 6511, 6601, 6611, 6621, 6653, 6682, 6694, 6695, 6696, 6702, 6871, 6901, 6905, 7001, 7463, 7701, 7851, 7852, 7872 of this title; title 22 section 1627; title 25 sections 1729, 1754; title 31 section 3105; title 42 section 411; title 45 section 231m; title 48 section 1421i; title 50 App. section 2017e.

CHAPTER 1—NORMAL TAXES AND SURTAXES

Chapter Referred to in Other Sections

This chapter is referred to in sections 1501, 3402, 3406, 4977, 4990, 4994, 6013, 6017A, 6038, 6039C, 6050E, 6096, 6103, 6161, 6166, 6166A, 6167, 6201, 6211, 6361, 6362, 6404, 6428, 6651, 6654, 6655, 6683, 7216, 7611, 7654, 7701 of this title; title 7 sections 1926, 1929a; title 12 section 3018; title 15 section 1870; title 22 section 277d-23; title 25 section 1486; title 30 section 1141; title 31 section 555; title 42 sections 291j-7, 300e-7, 300q-2, 411, 1382, 1440, 5308, 5919, 8755, 8833; title 45 section 602; title 46 App. sections 1177, 1279c; title 48 section 1574b.

Subchapter A—Determination of Tax Liability

PART I—TAX ON INDIVIDUALS

§ 1. Tax imposed

Tax Tables for Taxable Year Beginning in 1985

Revenue Procedure 84-79 provided:

Section 1. Purpose

The purpose of this revenue procedure is to provide the income tax cost-of-living adjustment (indexing) factor as determined pursuant to section 1(f)(3) of the Internal Revenue Code for taxable years beginning in 1985. It also sets forth the application of the factor to the tax tables, the zero bracket amount, the personal exemption amount, and the tax return exemption amount.

Sec. 2. Background

Section 104 of the Economic Recovery Tax Act of 1981 (ERTA), 1981-2 C.B. 256, 267-68, instituted, for taxable years beginning after December 31, 1984, adjustments to prevent inflation-caused income tax increases. It provides that the tax tables, the zero bracket amount, the personal exemption amount, and the tax return exemption amount are to be adjusted (indexed) each calendar year by a cost-of-living factor determined under a prescribed method.

Sec. 3. Cost-of-living adjustment factor

Based on the method prescribed in section 1(f) of the Code, the cost-of-living adjustment factor for taxable years beginning in 1985 has been determined to be 4.0766913 percent, the percentage by which the average CPI for the 12 months ending in September 1984 (308.0583333) exceeds the average CPI for the 12 months ending in September 1983 (295.9916667).

Sec. 4. Application of factor to sections 1, 63, 151, 6012, and 6013 of the Code

.01 The following adjusted tax tables are prescribed in lieu of the tables contained in paragraph (3) of subsections (a), (b), (c), (d), and (e) of section 1 of the Code with respect to taxable years beginning in 1985:

Table 1—Section 1(a)(3).—Married Individuals Filing Joint Returns and Surviving Spouses.—

If taxable income is:	*The tax is:*
Not over $3,540	*No tax.*
Over $3,540 but not over $5,720.	*11% of the excess over $3,540.*
Over $5,720 but not over $7,910.	*$239.80 plus 12% of the excess over $5,720.*
Over $7,910 but not over $12,390.	*$502.60 plus 14% of the excess over $7,910.*
Over $12,390 but not over $16,650.	*$1,129.80 plus 16% of the excess over $12,390.*
Over $16,650 but not over $21,020.	*$1,811.40 plus 18% of the excess over $16,650.*
Over $21,020 but not over $25,600.	*$2,598.00 plus 22% of the excess over $21,020.*
Over $25,600 but not over $31,120.	*$3,605.60 plus 25% of the excess over $25,600.*
Over $31,120 but not over $36,630.	*$4,985.60 plus 28% of the excess over $31,120.*
Over $36,630 but not over $47,670.	*$6,528.40 plus 33% of the excess over $36,630.*
Over $47,670 but not over $62,450.	*$10,171.60 plus 38% of the excess over $47,670.*
Over $62,450 but not over $89,090.	*$15,788.00 plus 42% of the excess over $62,450.*
Over $89,090 but not over $113,860.	*$26,976.80 plus 45% of the excess over $89,090.*
Over $113,860 but not over $169,020.	*$38,123.30 plus 49% of the excess over $113,860.*
Over $169,020	*$65,151.70 plus 50% of the excess over $169,020.*

Table 2—Section 1(b)(3).—Heads of Households.—

If taxable income is:	*The tax is:*
Not over $2,390	*No tax.*
Over $2,390 but not over $4,580.	*11% of the excess over $2,390.*
Over $4,580 but not over $6,760.	*$240.90 plus 12% of the excess over $4,580.*
Over $6,760 but not over $9,050.	*$502.50 plus 14% of the excess over $6,760.*
Over $9,050 but not over $12,280.	*$823.10 plus 17% of the excess over $9,050.*
Over $12,280 but not over $15,610.	*$1,372.20 plus 18% of the excess over $12,280.*
Over $15,610 but not over $18,940.	*$1,971.60 plus 20% of the excess over $15,610.*
Over $18,940 but not over $24,460.	*$2,637.60 plus 24% of the excess over $18,940.*
Over $24,460 but not over $29,970.	*$3,962.40 plus 28% of the excess over $24,460.*
Over $29,970 but not over $35,490.	*$5,505.20 plus 32% of the excess over $29,970.*
Over $35,490 but not over $46,520.	*$7,271.60 plus 35% of the excess over $35,490.*
Over $46,520 but not over $63,070.	*$11,132.10 plus 42% of the excess over $46,520.*
Over $63,070 but not over $85,130.	*$18,083.10 plus 45% of the excess over $63,070.*
Over $85,130 but not over $112,720.	*$28,010.10 plus 48% of the excess over $85,130.*
Over $112,720	*$41,253.30 plus 50% of the excess over $112,720.*

Table 3—Section 1(c)(3).—Unmarried Individuals (Other Than Surviving Spouses and Heads of Households).—

If taxable income is:	*The tax is:*
Not over $2,390	No tax.
Over $2,390 but not over $3,540.	11% of the excess over $2,390.
Over $3,540 but not over $4,580.	$126.50 plus 12% of the excess over $3,540.
Over $4,580 but not over $6,760.	$251.30 plus 14% of the excess over $4,580.
Over $6,760 but not over $8,850.	$556.50 plus 15% of the excess over $6,760.
Over $8,850 but not over $11,240.	$870.00 plus 16% of the excess over $8,850.
Over $11,240 but not over $13,430.	$1,252.40 plus 18% of the excess over $11,240.
Over $13,430 but not over $15,610.	$1,646.60 plus 20% of the excess over $13,430.
Over $15,610 but not over $18,940.	$2,082.60 plus 23% of the excess over $15,610.
Over $18,940 but not over $24,460.	$2,848.50 plus 26% of the excess over $18,940.
Over $24,460 but not over $29,970.	$4,283.70 plus 30% of the excess over $24,460.
Over $29,970 but not over $35,490.	$5,936.70 plus 34% of the excess over $29,970.
Over $35,490 but not over $43,190.	$7,813.50 plus 38% of the excess over $35,490.
Over $43,190 but not over $57,550.	$10,739.50 plus 42% of the excess over $43,190.
Over $57,550 but not over $85,130.	$16,770.70 plus 48% of the excess over $57,550.
Over $85,130	$30,009.10 plus 50% of the excess over $85,130.

Table 4—Section 1(d)(3).—Married Individuals Filing Separate Returns.—

If taxable income is:	*The tax is:*
Not over $1,770	No tax.
Over $1,770 but not over $2,860.	11% of the excess over $1,770.
Over $2,860 but not over $3,955.	$119.90 plus 12% of the excess over $2,860.
Over $3,955 but not over $6,195.	$251.30 plus 14% of the excess over $3,955.
Over $6,195 but not over $8,325.	$564.90 plus 16% of the excess over $6,195.
Over $8,325 but not over $10,510.	$905.70 plus 18% of the excess over $8,325.
Over $10,510 but not over $12,800.	$1,299.00 plus 22% of the excess over $10,510.
Over $12,800 but not over $15,560.	$1,802.80 plus 25% of the excess over $12,800.
Over $15,560 but not over $18,315.	$2,492.80 plus 28% of the excess over $15,560.
Over $18,315 but not over $23,835.	$3,264.20 plus 33% of the excess over $18,315.
Over $23,835 but not over $31,225.	$5,085.80 plus 38% of the excess over $23,835.
Over $31,225 but not over $44,545.	$7,894.00 plus 42% of the excess over $31,225.
Over $44,545 but not over $56,930.	$13,488.40 plus 45% of the excess over $44,545.
Over $56,930 but not over $84,510.	$19,061.65 plus 49% of the excess over $56,930.
Over $84,510	$32,575.85 plus 50% of the excess over $84,510.

Table 5—Section 1(e)(3).—Estates and Trusts.—

If taxable income is:	*The tax is:*
Not over $1,090	11% of taxable income.
Over $1,090 but not over $2,185.	$119.90 plus 12% of the excess over $1,090.
Over $2,185 but not over $4,425.	$251.30 plus 14% of the excess over $2,185.
Over $4,425 but not over $6,555.	$564.90 plus 16% of the excess over $4,425.
Over $6,555 but not over $8,740.	$905.70 plus 18% of the excess over $6,555.
Over $8,740 but not over $11,030.	$1,299.00 plus 22% of the excess over $8,740.
Over $11,030 but not over $13,790.	$1,802.80 plus 25% of the excess over $11,030.
Over $13,790 but not over $16,545.	$2,492.80 plus 28% of the excess over $13,790.
Over $16,545 but not over $22,065.	$3,264.20 plus 33% of the excess over $16,545.
Over $22,065 but not over $29,455.	$5,085.80 plus 38% of the excess over $22,065.
Over $29,455 but not over $42,775.	$7,894.00 plus 42% of the excess over $29,455.
Over $42,775 but not over $55,160.	$13,488.40 plus 45% of the excess over $42,775.
Over $55,160 but not over $82,740.	$19,061.65 plus 49% of the excess over $55,160.
Over $82,740	$32,575.85 plus 50% of the excess over $82,740.

.02 The following adjusted "zero bracket amounts" are set forth for purposes of section 63(d)(1) of the Code:

If the applicable tax table is:	*The amount is:*
Table 1	$3,540
Table 2	$2,390
Table 3	$2,390
Table 4	$1,770

.03 For purposes of the personal "exemption amount" under section 151(f) of the Code, the adjusted amount is $1,040.

.04 The following adjusted amounts are set forth for purposes of section 6012 of the Code:

1. The section 6012(a)(1)(D)(i) "zero bracket amount" is $2,390 for section 6012(a)(1)(A)(i) and $3,540 for sections 6012(a)(1)(A)(ii) and (iii).

2. The section 6012(a)(1)(D)(ii) "exemption amount" is $1,040.

3. The section 6012(a)(1)(A)(i) "sum of the exemption amount plus the zero bracket amount" is $3,430 ($1,040 + $2,390).

4. The section 6012(a)(1)(A)(ii) "sum of the exemption amount plus the zero bracket amount" is $4,580 ($1,040 + $3,540).

5. The section 6012(a)(1)(A)(iii) "sum of twice the exemption amount plus the zero bracket amount" is $5,620 ((2 × $1,040) + $3,540).

.05 For purposes of section 6013(b)(3) of the Code, the adjusted "exemption amount" is $1,040.

Sec. 5. Effective Date

This revenue procedure is effective January 1, 1985, for any taxable year beginning in 1985.

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-369, § 1(a), July 18, 1984, 98 Stat. 494, provided that: "This Act [see Tables for classification] may be cited as the 'Deficit Reduction Act of 1984'."

Pub. L. 98-369, div. A (§§ 5-1082), § 5(a), July 18, 1984, 98 Stat. 494, provided that: "This division [see Tables for classification] may be cited as the 'Tax Reform Act of 1984'."

SHORT TITLE OF 1983 AMENDMENTS

Pub. L. 98-76, title II, § 201, Aug. 12, 1983, 97 Stat. 419, provided that: "This title [enacting sections 3321 to 3323 and 6050G of this title, amending sections 72, 86, 105, 3201, 3202, 3211, 3221, 3231, 6157, 6201, 6317, 6513, and 6601 of this title and section 430 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under sections 72, 105, 3201, 3321, and 6302 of this title and section 231n of Title 45, Railroads] may be cited as the 'Railroad Retirement Revenue Act of 1983'."

Pub. L. 98-67, title I, § 101(a), Aug. 5, 1983, 97 Stat. 369, provided that: "This title [enacting sections 3406 and 6705 of this title, amending sections 31, 274, 275, 643, 661, 3402, 3403, 3502, 3507, 6011, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6652, 6653, 6654, 6676, 6678, 6682, 7205, 7215, 7431, 7654, and 7701 of this title, repealing sections 3451 to 3456 of this title, enacting provisions set out as notes under sections 31, 3451, and 6011 of this title, and repealing provisions set out as a note under section 3451 of this title] may be cited as the 'Interest and Dividend Tax Compliance Act of 1983'."

CROSS REFERENCES

Effect of change of rate of tax, see section 15 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 3, 15, 63, 402, 511, 641, 871, 876, 877, 891, 962, 1301, 1398, 6014, 6361, 6428 of this title.

§ 2. Definitions and special rules

[*See main edition for text of* (*a*)]

(b) Definition of head of household

(1) In general

For purposes of this subtitle, an individual shall be considered a head of a household if, and only if, such individual is not married at the close of his taxable year, is not a surviving spouse (as defined in subsection (a)), and either—

(A) maintains as his home a household which constitutes for more than one-half of such taxable year the principal place of abode, as a member of such household, of—

(i) a son, stepson, daughter, or stepdaughter of the taxpayer, or a descendant of a son or daughter of the taxpayer, but if such son, stepson, daughter, stepdaughter, or descendant is married at the close of the taxpayer's taxable year, only if the taxpayer is entitled to a deduction for the taxable year for such person under section 151 (or would be so entitled but for paragraph (2) or (4) of section 152(e)), or

[*See main edition for text of* (*ii*), (*B*)]

For purposes of this paragraph, an individual shall be considered as maintaining a household only if over half of the cost of maintaining the household during the taxable year is furnished by such individual.

[*See main edition for text of* (*2*) *and* (*3*); (*c*) *to* (*e*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 423(c)(2), 98 Stat. 801.)

AMENDMENTS

1984—Subsec. (b)(1)(A). Pub. L. 98-369, § 423(c)(2)(A), substituted "which constitutes for more than one-half of such taxable year" for "which constitutes for such taxable year".

Subsec. (b)(1)(A)(i). Pub. L. 98-369, § 423(c)(2)(B), inserted "(or would be so entitled but for paragraph (2) or (4) of section 152(e))".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 423(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 2, 43, 44A, 105, 143, 152, and 213 of this title] shall apply to taxable years beginning after December 31, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 32, 55, 1302, 1304, 3402, 6012, 6013 of this title; title 38 section 503.

PART II—TAX ON CORPORATIONS

§ 11. Tax imposed

[*See main edition for text of* (*a*)]

(b) Amount of tax

The amount of the tax imposed by subsection (a) shall be the sum of—

[*See main edition for text of* (*1*) *to* (*5*)]

In the case of a corporation with taxable income in excess of $1,000,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (A) 5 percent of such excess, or (B) $20,250.

[*See main edition for text of* (*c*) *and* (*d*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 66(a), 98 Stat. 585.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 added "In the case of a corporation with taxable income in excess of $1,000,000 for any taxable year, the amount of tax determined under the preceding sentence for such taxable year shall be increased by the lesser of (A) 5 percent of such excess, or (B) $20,250."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 66(c) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendments made by this section [amending sections 11 and 1561 of this title] shall apply to taxable years beginning after December 31, 1983.

"(2) AMENDMENTS NOT TREATED AS CHANGED IN RATE OF TAX.—The amendments made by this subsection [probably should be "section"] shall not be treated as a change in a rate of tax for purposes of section 21 of the Internal Revenue Code of 1954."

CROSS REFERENCES

Effect of change of rate of tax, see section 15 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 80, 244, 247, 468A, 511, 527, 594, 801, 804, 821, 826, 831, 852, 857, 882, 891, 904, 907, 962, 1201, 1351, 1374, 1375, 1381, 1551, 1561, 4942, 6154, 6425, 6655 of this title.

§ 12. Cross references relating to tax on corporations

[*See main edition for text of (1) to (5)*]

(6) For limitation on benefits of graduated rate schedule provided in section 11(b), see section 1551.

(7) For minimum tax for tax preferences, see section 56.

(As amended July 18, 1984, Pub. L. 98–369, div. A, title I, § 474(r)(29)(E), 98 Stat. 844.)

AMENDMENTS

1984—Pars. (6) to (8). Pub. L. 98–369 redesignated pars. (7) and (8) as (6) and (7), respectively. Former par. (6), which referred to section 1451 for withholding of tax on tax-free covenant bonds, was deleted.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98–369, set out as a note under section 33 of this title.

PART III—CHANGES IN RATES DURING A TAXABLE YEAR

Sec.
15. Effect of changes.

AMENDMENTS

1984—Pub. L. 98–369, div. A, title IV, § 474(b)(3), July 18, 1984, 98 Stat. 830, substituted "15. Effect of changes" for "21. Effect of changes".

§ 15. Effect of changes

(a) General rule

If any rate of tax imposed by this chapter changes, and if the taxable year includes the effective date of the change (unless that date is the first day of the taxable year), then—

(1) tentative taxes shall be computed by applying the rate for the period before the effective date of the change, and the rate for the period on and after such date, to the taxable income for the entire taxable year; and

(2) the tax for such taxable year shall be the sum of that proportion of each tentative tax which the number of days in each period bears to the number of days in the entire taxable year.

(b) Repeal of tax

For purposes of subsection (a)—

(1) if a tax is repealed, the repeal shall be considered a change of rate; and

(2) the rate for the period after the repeal shall be zero.

(c) Effective date of change

For purposes of subsections (a) and (b)—

(1) if the rate changes for taxable years "beginning after" or "ending after" a certain date, the following day shall be considered the effective date of the change; and

(2) if a rate changes for taxable years "beginning on or after" a certain date, that date shall be considered the effective date of the change.

(d) Section not to apply to section 1 rate changes made by Economic Recovery Tax Act of 1981

This section shall not apply to any change in rates under section 1 attributable to the amendments made by section 101 of the Economic Recovery Tax Act of 1981 or subsection (f) of section 1 (relating to adjustments in tax tables so that inflation will not result in tax increases).

(Aug. 16, 1954, ch. 736, 68A Stat. 12, § 21; Feb. 26, 1964, Pub. L. 88–272, title I, § 132, 78 Stat. 30; Dec. 30, 1969, Pub. L. 91–172, title VIII, § 803(e), 83 Stat. 685; Dec. 10, 1971, Pub. L. 92–178, title II, § 205, 85 Stat. 511; Mar. 29, 1975, Pub. L. 94–12, title III, § 305(b)(2), 89 Stat. 45; Dec. 23, 1975, Pub. L. 94–164, § 4(d)(2), 89 Stat. 975; Oct. 4, 1976, Pub. L. 94–455, title IX, § 901(c)(2), 90 Stat. 1607; May 23, 1977, Pub. L. 95–30, title I, § 101(d)(2), 91 Stat. 133; Nov. 6, 1978, Pub. L. 95–600, title I, § 106, 92 Stat. 2776; Aug. 13, 1981, Pub. L. 97–34, title I, § 101(d)(3), 95 Stat. 184; renumbered § 15, July 18, 1984, Pub. L. 98–369, div. A, title IV, § 474(b)(1), 98 Stat. 830.)

REFERENCES IN TEXT

Section 101 of the Economic Recovery Tax Act of 1981, referred to in subsec. (d), is section 101 of Pub. L. 97–34, title I, Aug. 13, 1981, 95 Stat. 172. For amendments to section 1 of this title by section 101, see Short Title of 1981 Amendment note set out under section 1 of this title.

AMENDMENTS

1981—Subsec. (d). Pub. L. 97–34 substituted provisions that this section shall not apply to any change in rates under section 1 attributable to the amendments made by section 101 of the Economic Recovery Tax Act of 1981 or subsec. (f) of section 1 for provisions that had related to the changes made by section 303(b) of the Tax Reduction Act of 1975 in the surtax exemption.

Subsecs. (e), (f). Pub. L. 97–34 struck out subsecs. (e) and (f) which had related, respectively, to the changes made by the Tax Reduction and Simplification Act of 1977 and to the changes made by the Revenue Act of 1978.

1978—Subsec. (f). Pub. L. 95–600 added subsec. (f).

1977—Subsec. (d). Pub. L. 95–30, § 101(d)(2)(A), (B), redesignated subsec. (f) as (d). Former subsec. (d), which directed that, in applying subsec. (a) to a taxable year of an individual which was not a calendar year, each change made by the Tax Reform Act of 1969 in part I or in the application of part IV or V of subchapter B for purposes of the determination of taxable income should be treated as a change in a rate of tax, was struck out.

Subsec. (e). Pub. L. 95–30, § 101(d)(2)(A), (C), added subsec. (e). Former subsec. (e), which directed that, in applying subsec. (a) to a taxable year of an individual which was not a calendar year, each change made by the Revenue Act of 1971 in section 141 (relating to the standard deduction) and section 151 (relating to personal exemptions) should be treated as a change in a rate of tax, was struck out.

Subsec. (f). Pub. L. 95–30, § 101(d)(2)(B), redesignated subsec. (f) as (d).

1976—Subsec. (f). Pub. L. 94–455 substituted "in the surtax exemption and any change under section 11(d) in the surtax exemption" for "and the change made by section 3(c) of the Revenue Adjustment Act of 1975 in section 11(d) (relating to corporate surtax exemption)".

1975—Subsec. (f). Pub. L. 94–164 added reference to change made by section 3(c) of the Revenue Adjustment Act of 1975.

Pub. L. 94–12 added subsec. (f).

1971—Subsec. (e). Pub. L. 92–178 added subsec. (e).

1969—Subsec. (d). Pub. L. 91–172 substituted provisions covering changes made by the Tax Reform Act of 1969 in case of individuals for provisions covering changes made by Revenue Act of 1964.

1964—Subsec. (d). Pub. L. 88-272 amended subsection generally by substituting provisions relating to changes made by the Revenue Act of 1964, for provisions relating to taxable years beginning before Jan. 1, 1954, and ending after Dec. 31, 1953.

Effective Date of 1981 Amendment

Amendment by Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 101(f)(1) of Pub. L. 97-34, set out as a note under section 1 of this title.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-30 applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as a note under section 1 of this title.

Effective Date of 1976 Amendment

Amendment by Pub. L. 94-455 applicable with respect to taxable years ending after Dec. 31, 1975, see section 901(d) of Pub. L. 94-455, set out as a note under section 11 of this title.

Effective Date of 1975 Amendment

Amendment by Pub. L. 94-164 applicable to taxable years beginning after Dec. 31, 1975, see section 4(e) of Pub. L. 94-164, set out as an Effective and Termination Dates of 1975 Amendments note under section 11 of this title.

Effective Date of 1964 Amendment

Section 132 of Pub. L. 88-272 provided in part that the amendment to subsec. (d) of this section was effective with respect to taxable years ending after Dec. 31, 1963.

Section Referred to in Other Sections

This section is referred to in sections 441, 6013 of this title.

PART IV—CREDITS AGAINST TAX

Subpart
A. Nonrefundable personal credits.
B. Foreign tax credit, etc.
C. Refundable credits.
D. Business-related credits.
E. Rules for computing credit for investment in certain depreciable property.
F. Rules for computing targeted jobs credit.

Amendments

1984—Pub. L. 98-369, div. A, title IV, §§ 471(a), 474(n)(3), July 18, 1984, 98 Stat. 825, 834, substituted "Nonrefundable personal credits" for "Credits allowable" in item for subpart A, "Foreign tax credit, etc" for "Rules for computing credit for investment in certain depreciable property" in item for subpart B, "Refundable credits" for "Rules for computing credit for expense of work incentive programs" in tiem for subpart C, and "Business-related credits" for "Rules for computing credit for employment of certain new employees" in item for subpart D, and added items for subparts E and F.

Part Referred to in Other Sections

This part is referred to in sections 1374, 1375, 1398, 6096, 6154, 6362, 6425, 6654, 6655, 6682 of this title.

Subpart A—Nonrefundable Personal Credits

Sec.
21. Expenses for household and dependent care services necessary for gainful employment.
22. Credit for the elderly and the permanently and totally disabled.
23. Residential energy credit.
24. Contributions to candidates for public office.
25. Interest on certain home mortgages.
26. Limitation based on tax liability; definition of tax liability.

Amendments

1984—Pub. L. 98-369, div. A, title IV, §§ 471(b), 612(f), July 18, 1984, 98 Stat. 826, 913, substituted "Nonrefundable Personal Credits" for "Credits Allowable" as the subpart A heading, struck out the analysis of sections 31 through 45 formerly comprising subpart A, and inserted a new analysis of sections consisting of items 21 (formerly 44A), 22 (formerly 37), 23 (formerly 44C), 24 (formerly 41), and 25 and 26 (newly enacted).

1983—Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

Pub. L. 98-21, title I, § 122(c)(7), Apr. 20, 1983, 97 Stat. 87, added "and the permanently and totally disabled" to item 37.

Pub. L. 97-424, title V, § 515(b)(6)(D), Jan. 6, 1983, 96 Stat. 2181, substituted "and special fuels" for ", special fuels, and lubricating oil" after "gasoline" in item 39.

Pub. L. 97-414, § 4(c)(1), Jan. 4, 1983, 96 Stat. 2056, added item 44H.

1982—Pub. L. 97-248, title III, §§ 307(b)(3), 308(a), Sept. 3, 1982, 96 Stat. 590, 591, provided that, applicable to payments of interest, dividends, and partonage dividends paid or credited after June 30, 1983, item 31 is amended to read "Tax withheld on wages, interest, dividends, and patronage dividends". Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301-308) of title III of Pub. L. 97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 (this title) shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

1981—Pub. L. 97-34, title II, § 221(c)(2), title III, § 331(e)(2), Aug. 13, 1981, 95 Stat. 247, 295, added items 44F and 44G.

1980—Pub. L. 96-223, title II, §§ 231(b)(1), 232(b)(3)(B), Apr. 2, 1980, 94 Stat. 272, 276, added items 44D and 44E.

1978—Pub. L. 95-618, title I, § 101(b)(1), Nov. 9, 1978, 92 Stat. 3179, added item 44C.

1977—Pub. L. 95-30, title I, § 101(e)(1), title II, § 202(d)(1)(A), May 23, 1977, 91 Stat. 134, 147, added item 44B and struck out item 36 "Credit not allowed to individuals taking standard deduction".

1976—Pub. L. 94-455, title IV, § 401(a)(2)(D), title V, §§ 501(c)(2), 503(b)(5), 504(a)(2), title XIX, § 1901(b)(1)(Z), Oct. 4, 1976, 90 Stat. 1555, 1559, 1562, 1565, 1792, substituted in item 42 "General tax credit" for "Taxable income credit", struck out in item 36 "pay optional tax or", added in item 33 "possession tax credit", substituted in item 37 "Credit of the elderly for Retirement income", added item 44A, and deleted item 35 "Partially tax-exempt interest received by individuals".

1975—Pub. L. 94-164, § 3(a)(2), Dec. 23, 1975, 89 Stat. 973, substituted "Taxable income credit" for "Credit for personal exemptions" in item 42.

Pub. L. 94-12, title II, §§ 203(b)(1), 204(c), 208(d)(1), Mar. 29, 1975, 89 Stat. 30, 32, 35, renumbered item 42 as 45 and added item 42 applicable to taxable years ending after Dec. 31, 1974 but to cease to apply to taxable years ending after Dec. 31, 1975, item 43 applicable to taxable years beginning after Dec. 31, 1974 but before Jan. 1, 1976, and item 44.

1971—Pub. L. 92-178, title VI, § 601(c)(2), Dec. 10, 1971, 85 Stat. 557, added items 40 and 41, and redesignated former item 40 as 42.

1970—Pub. L. 91-258, title II, § 207(d)(10), May 21, 1970, 84 Stat. 249, inserted ", special fuels," after "gasoline" in item 39.

1965—Pub. L. 89-44, title VIII, § 809(d)(1), June 21, 1965, 79 Stat. 167, added item 39 and redesignated former item 39 as 40.

1964—Pub. L. 88-272, title II, § 201(d)(1), Feb. 26, 1964, 78 Stat. 32, deleted item 34.

1962—Pub. L. 87-834, § 2(g)(1), (2), Oct. 16, 1962, 76 Stat. 972, 973, added the headings of subparts A and B and item 38, and redesignated former item 38 as 39.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 28, 29, 30, 38, 47, 55, 56, 168, 665, 904, 6401, 6428 of this title.

§ 21. Expenses for household and dependent care services necessary for gainful employment

(a) Allowance of credit

(1) In general

In the case of an individual who maintains a household which includes as a member one or more qualifying individuals (as defined in subsection (b)(1)), there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the applicable percentage of the employment-related expenses (as defined in subsection (b)(2)) paid by such individual during the taxable year.

(2) Applicable percentage defined

For purposes of paragraph (1), the term "applicable percentage" means 30 percent reduced (but not below 20 percent) by 1 percentage point for each $2,000 (or fraction thereof) by which the taxpayer's adjusted gross income for the taxable year exceeds $10,000.

(b) Definitions of qualifying individual and employment-related expenses

For purposes of this section—

(1) Qualifying individual

The term "qualifying individual" means—

(A) a dependent of the taxpayer who is under the age of 15 and with respect to whom the taxpayer is entitled to a deduction under section 151(e),

(B) a dependent of the taxpayer who is physically or mentally incapable of caring for himself, or

(C) the spouse of the taxpayer, if he is physically or mentally incapable of caring for himself.

(2) Employment-related expenses

(A) In general

The term "employment-related expenses" means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are 1 or more qualifying individuals with respect to the taxpayer:

(i) expenses for household services, and

(ii) expenses for the care of a qualifying individual.

(B) Exception

Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of—

(i) a qualifying individual described in paragraph (1)(A), or

(ii) a qualifying individual (not described in paragraph (1)(A)) who regularly spends at least 8 hours each day in the taxpayer's household.

(C) Dependent care centers

Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer's household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if—

(i) such center complies with all applicable laws and regulations of a State or unit of local government, and

(ii) the requirements of subparagraph (B) are met.

(D) Dependent care center defined

For purposes of this paragraph, the term "dependent care center" means any facility which—

(i) provides care for more than six individuals (other than individuals who reside at the facility), and

(ii) receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

(c) Dollar limit on amount creditable

The amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(1) $2,400 if there is 1 qualifying individual with respect to the taxpayer for such taxable year, or

(2) $4,800 if there are 2 or more qualifying individuals with respect to the taxpayer for such taxable year.

(d) Earned income limitation

(1) In general

Except as otherwise provided in this subsection, the amount of the employment-related expenses incurred during any taxable year which may be taken into account under subsection (a) shall not exceed—

(A) in the case of an individual who is not married at the close of such year, such individual's earned income for such year, or

(B) in the case of an individual who is married at the close of such year, the lesser of such individual's earned income or the earned income of his spouse for such year.

(2) Special rule for spouse who is a student or incapable of caring for himself

In the case of a spouse who is a student or a qualifying individual described in subsection (b)(1)(C), for purposes of paragraph (1), such spouse shall be deemed for each month during which such spouse is a full-time student at an educational institution, or is such a qualifying individual, to be gainfully employed and to have earned income of not less than—

(A) $200 if subsection (c)(1) applies for the taxable year, or

(B) $400 if subsection (c)(2) applies for the taxable year.

In the case of any husband and wife, this paragraph shall apply with respect to only one spouse for any one month.

(e) Special rules

For purposes of this section—

(1) Maintaining household

An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and his spouse).

(2) Married couples must file joint return

If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and his spouse file a joint return for the taxable year.

(3) Marital status

An individual legally separated from his spouse under a decree of divorce or of separate maintenance shall not be considered as married.

(4) Certain married individuals living apart

If—

(A) an individual who is married and who files a separate return—

(i) maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and

(ii) furnishes over half of the cost of maintaining such household during the taxable year, and

(B) during the last 6 months of such taxable year such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(5) Special dependency test in case of divorced parents, etc.

If—

(A) paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, and

(B) such child is under the age of 15 or is physically or mentally incapable of caring for himself,

in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described in subparagraph (A) or (B) of subsection (b)(1) (whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying individual with respect to the noncustodial parent.

(6) Payments to related individuals

No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual—

(A) with respect to whom, for the taxable year, a deduction under section 151(e) (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or his spouse, or

(B) who is a child of the taxpayer (within the meaning of section 151(e)(3)) who has not attained the age of 19 at the close of the taxable year.

For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.

(7) Student

The term "student" means an individual who during each of 5 calendar months during the taxable year is a full-time student at an educational organization.

(8) Educational organization

The term "educational organization" means an educational organization described in section 170(b)(1)(A)(ii).

(f) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(Added Pub. L. 94-455, title V, § 504(a)(1), Oct. 4, 1976, 90 Stat. 1563, § 44A, and amended Pub. L. 95-600, title I, § 121(a), Nov. 6, 1978, 92 Stat. 2779; Pub. L. 97-34, title I § 124 (a)-(d), Aug. 13, 1981, 95 Stat. 197, 198; Pub. L. 98-21, title I, § 122(c)(1), Apr. 20, 1983, 97 Stat. 87; renumbered § 21 and amended Pub. L. 98-369, div. A, title IV, §§ 423(c)(4), 471(c), 474(c), July 18, 1984, 98 Stat. 801, 826, 830.)

PRIOR PROVISIONS

A prior section 21 was renumbered section 15 of this title.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 474(c)(2), (3), substituted "subsection (b)(1)" for "subsection (c)(1)" and "subsection (b)(2)" for "subsection (c)(2)".

Subsec. (b). Pub. L. 98-369, § 474(c)(1), redesignated subsec. (c) as (b). Former subsec. (b), which provided that the credit allowed by subsec. (a) could not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under sections 33, 37, 38, 40, 41, 42, and 44, was struck out.

Subsec. (c). Pub. L. 98-369, § 474(c)(1), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsec. (d). Pub. L. 98-369, § 474(c)(1), redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(2). Pub. L. 98-369, § 474(c)(4), substituted "subsection (b)(1)(C)" for "subsection (c)(1)(C)" in introductory provisions.

Subsec. (d)(2)(A). Pub. L. 98-369, § 474(c)(5), substituted "subsection (c)(1)" for "subsection (d)(1)".

Subsec. (d)(2)(B). Pub. L. 98-369, § 474(c)(6), substituted "subsection (c)(2)" for "subsection (d)(2).

Subsec. (e). Pub. L. 98-369, § 474(c)(1), redesignated subsec. (f) as (e). Former subsec. (e) redesignated (d).

Subsec. (e)(5). Pub. L. 98-369, § 474(c)(7), substituted "subsection (b)(1)" for "subsection (c)(1)" in provisions following subpar. (B).

Pub. L. 98-369, § 423(c)(4), amended par. (5) generally, substituting subpars. (A) and (B) reading:

"(A) paragraph (2) or (4) of section 152(e) applies to any child with respect to any calendar year, and

"(B) such child is under the age of 15 or is physically or mentally incapable of caring for himself," for former provisions:

"(A) a child (as defined in section 151(e)(3)) who is under the age of 15 or who is physically or mentally incapable of caring for himself receives over half of his support during the calendar year from his parents who are divorced or legally separated under a decree of divorce or separate maintenance or who are separated under a written separation agreement, and

"(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year."

and substituted in concluding text "(whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1)), and shall not be treated as a qualifying individual with respect to the noncustodial parent" for ", as the case may be, with respect to that parent who has custody for a longer period during such calendar year than the other parent, and shall not be treated as being a qualifying individual with respect to such other parent."

Subsecs. (f), (g). Pub. L. 98-369, § 474(c)(1), redesignated subsecs. (f) and (g) as (e) and (f), respectively.

1983—Subsec. (b)(2). Pub. L. 98-21 substituted "relating to credit for the elderly and the permanently and totally disabled" for "relating to credit for the elderly".

1981—Subsec. (a). Pub. L. 97-34, § 124(a), designated the existing provisions as par. (1), substituted "the applicable percentage" for "20 percent" in par. (1) as so designated, and added par. (2).

Subsec. (c)(2)(B). Pub. L. 97-34, § 124(c), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (c)(2)(C), (D). Pub. L. 97-34, § 124(d), added subpars. (C) and (D).

Subsec. (d)(1). Pub. L. 97-34, § 124(b)(1)(A), substituted "$2,400" for "$2,000".

Subsec. (d)(2). Pub. L. 97-34, § 124(b)(1)(B), substituted "$4,800" for "$4,000".

Subsec. (e)(2)(A). Pub. L. 97-34, § 124(b)(2)(A), substituted "$200" for "$166".

Subsec. (e)(2)(B). Pub. L. 97-34, § 124(b)(2)(B), substituted "$400" for "$333".

1978—Subsec. (f)(6). Pub. L. 95-600 substituted provision disallowing a credit for any amount paid by a taxpayer to an individual with respect to whom, for the taxable year, a deduction under section 151(e) is allowable either to the taxpayer or his spouse or who is a child of the taxpayer who has not attained the age of 19 at the close of the taxpayer year and defining "taxpayer year" for provision disallowing a credit for any amount paid by the taxpayer to an individual bearing a relationship described in section 152(a)(1) through (8), or a dependent described in section 152(a)(9), except that a credit was allowed for an amount paid by a taxpayer to an individual with respect to whom, for the taxable year of the taxpayer in which the service was performed, neither the taxpayer nor his spouse was entitled to a deduction under section 151(e), provided the service constituted employment within the meaning of section 3121(b).

Effective Date of 1984 Amendment

Section 475(a) of Pub. L. 98-369 provided that: "The amendments made by this title [probably means subtitle F, §§ 471 to 475, of title IV of Pub. L. 98-369, which enacted sections 25, 38, and 39 of this title, amended sections 12, 15, 21 to 24, 27 to 35, 37, 39 to 41, 44A, 44C to 44H, 45 to 48, 51, 52, 55, 56, 86, 87, 103, 108, 129, 168, 196, 213, 280C, 381, 383, 401, 404, 409, 441, 527, 642, 691, 874, 882, 901, 904, 936, 1016, 1033, 1351, 1366, 1374, 1375, 1441, 1442, 1451, 3507, 6013, 6096, 6201, 6211, 6213, 6362, 6401, 6411, 6420, 6421, 6427, 6501, 6511, 7701, 7871, 9502, and 9503 of this title, repealed sections 38 and 40 of this title and sections 44, 44B, 50A, 50B, and 53 of this title, and enacted provisions set out as notes under sections 30, 33, 46, and 48 of this title] shall apply to taxable years beginning after December 31, 1983, and to carrybacks from such years."

Amendment by section 423(c)(4) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98-369, set out as a note under section 2 of this title.

Effective Date of 1983 Amendment

Amendment by section 122 of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

Effective Date of 1981 Amendment

Section 124(f) of Pub. L. 97-34 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending this section and enacting section 129 of this title] shall apply to taxable years beginning after December 31, 1981.

"(2) The amendments made by subsection (e)(2) [amending sections 3121, 3306, and 3401 of this title and section 409 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1981."

Effective Date of 1978 Amendment

Section 121(b) of Pub. L. 95-600 provided that: "The amendment made by subsection (a) [amending subsec. (f)(6) of this section] shall apply to taxable years beginning after December 31, 1978."

Effective Date

Section applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 3 of this title.

Section Referred to in Other Sections

This section is referred to in sections 129, 213 of this title.

§ 22. Credit for the elderly and the permanently and totally disabled.

(a) General rule

In the case of a qualified individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 15 percent of such individual's section 22 amount for such taxable year.

(b) Qualified individual

For purposes of this section, the term "qualified individual" means any individual—

(1) who has attained age 65 before the close of the taxable year, or

(2) who retired on disability before the close of the taxable year and who, when he retired, was permanently and totally disabled.

(c) Section 22 amount

For purposes of subsection (a)—

(1) In general

An individual's section 22 amount for the taxable year shall be the applicable initial amount determined under paragraph (2), reduced as provided in paragraph (3) and in subsection (d).

(2) Initial amount

(A) In general

Except as provided in subparagraph (B), the initial amount shall be—

(i) $5,000 in the case of a single individual, or a joint return where only one spouse is a qualified individual,

(ii) $7,500 in the case of a joint return where both spouses are qualified individuals, or

(iii) $3,750 in the case of a married individual filing a separate return.

(B) Limitation in case of individuals who have not attained age 65

(i) In general

In the case of a qualified individual who has not attained age 65 before the close of the taxable year, except as provided in clause (ii), the initial amount shall not exceed the disability income for the taxable year.

(ii) Special rules in case of joint return

In the case of a joint return where both spouses are qualified individuals and at least one spouse has not attained age 65 before the close of the taxable year—

(I) if both spouses have not attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of such spouses' disability income, or

(II) if one spouse has attained age 65 before the close of the taxable year, the initial amount shall not exceed the sum of $5,000 plus the disability income for the taxable year of the spouse who has not attained age 65 before the close of the taxable year.

(iii) Disability income

For purposes of this subparagraph, the term "disability income" means the aggregate amount includable in the gross income of the individual for the taxable year under section 72 or 105(a) to the extent such amount constitutes wages (or payments in lieu of wages) for the period during which the individual is absent from work on account of permanent and total disability.

(3) Reduction

(A) In general

The reduction under this paragraph is an amount equal to the sum of the amounts received by the individual (or, in the case of a joint return, by either spouse) as a pension or annuity or as a disability benefit—

(i) which is excluded from gross income and payable under—

(I) title II of the Social Security Act,

(II) the Railroad Retirement Act of 1974, or

(III) a law administered by the Veterans' Administration, or

(ii) which is excluded from gross income under any provision of law not contained in this title.

No reduction shall be made under clause (i)(III) for any amount described in section 104(a)(4).

(B) Treatment of certain workmen's compensation benefits

For purposes of subparagraph (A), any amount treated as a social security benefit under section 86(d)(3) shall be treated as a disability benefit received under title II of the Social Security Act.

(d) Adjusted gross income limitation

If the adjusted gross income of the taxpayer exceeds—

(1) $7,500 in the case of a single individual,

(2) $10,000 in the case of a joint return, or

(3) $5,000 in the case of a married individual filing a separate return,

the section 22 amount shall be reduced by one-half of the excess of the adjusted gross income over $7,500, $10,000, or $5,000, as the case may be.

(e) Definitions and special rules

For purposes of this section—

(1) Married couple must file joint return

Except in the case of a husband and wife who live apart at all times during the taxable year, if the taxpayer is married at the close of the taxable year, the credit provided by this section shall be allowed only if the taxpayer and his spouse file a joint return for the taxable year.

(2) Marital status

Marital status shall be determined under section 143.

(3) Permanent and total disability defined

An individual is permanently and totally disabled if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. An individual shall not be considered to be permanently and totally disabled unless he furnishes proof of the existence thereof in such form and manner, and at such times, as the Secretary may require.

(f) Nonresident alien ineligible for credit

No credit shall be allowed under this section to any nonresident alien.

(Aug. 16, 1954, ch. 736, 68A Stat. 15, § 37; Aug. 9, 1955, ch. 659, § 1, 69 Stat. 591; Jan. 28, 1956, ch. 17, § 1, 70 Stat. 8; Oct. 10, 1962, Pub. L. 87-792, § 7(a), 76 Stat. 828; Oct. 24, 1962, Pub. L. 87-876, § 1, 76 Stat. 1199; Feb. 26, 1964, Pub. L. 88-272, title I, § 113(a), title II, §§ 201(d)(3), 202(a), 78 Stat. 24, 32, 33; Sept. 2, 1974, Pub. L. 93-406, title II, § 2002(g)(1), 88 Stat. 968; Oct. 4, 1976, Pub. L. 94-455, title V, § 503(a), title XIX, § 1901(c)(1), 90 Stat. 1559, 1803; Nov. 6, 1978, Pub. L. 95-600, title VII, §§ 701(a)(1)-(3), 703(j)(11), 92 Stat. 2897, 2942; Apr. 1, 1980, Pub. L. 96-222, title I, § 107(a)(1)(E)(i), 94 Stat. 222; Aug. 13, 1981, Pub. L. 97-34, title I, § 111(b)(4), 95 Stat. 194; Apr. 20, 1983, Pub. L. 98-21, title I, § 122(a), 97 Stat. 85; renumbered § 22 and amended July 18, 1984, Pub. L. 98-369, div. A, title IV, §§ 471(c), 474(d), 98 Stat. 826, 830.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(A)(i)(I), (B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

The Railroad Retirement Act of 1974, referred to in subsec. (c)(3)(A)(i)(II), is title I of Pub. L. 93-444, Oct. 16, 1974, 88 Stat. 1305, as amended, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see section 231t of Title 45 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 474(d)(1), substituted "section 22 amount" for "section 37 amount".

Subsec. (c). Pub. L. 98-369, § 474(d)(2), substituted "Section 22 amount" for "Section 37 amount" as the subsec. (c) heading.

Subsec. (c)(1). Pub. L. 98-369, § 474(d)(1), substituted "section 22 amount" for "section 37 amount".

Subsec. (d). Pub. L. 98-369, § 474(d)(3), amended subsec. generally, striking out the subsection heading "Limitations" and the designation "(1)" before "Adjusted gross income limitation" thereby making existing par. (1) the entire subsec. (d), redesignating existing subpars. (A), (B), and (C) as pars. (1), (2), and (3), respectively, and striking out provisions, formerly comprising par. (2), which had limited the amount of the credit allowed by this section for the taxable year to the amount of the tax imposed by this chapter for such taxable year.

1983—Pub. L. 98-21 added reference to the permanently and totally disabled in section catchline.

Subsec. (a). Pub. L. 98-21 amended subsec. (a) generally, substituting reference to a qualified individual for reference to an individual who has attained the age of 65 before the close of the taxable year.

Subsec. (b). Pub. L. 98-21 in amending section generally added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 98-21 in amending section generally, redesignated former subsec. (b) as (c) and, in (c) as so redesignated, added par. (2) and struck out former (2), which had provided that the initial amount was $2,500 in the case of a single individual, $2,500 in the case of a joint return where only one spouse was eligible for the credit under subsection (a), $3,750 in the case of a joint return where both spouses were eligible for the credit under subsection (a), or $1,875 in the case of a married individual filing a separate return, redesignated existing provisions as par. (3)(A), added "benefit" after "disability" therein, struck out former subpars. (A) to (C), which had specified sources of amounts received under title II of the Social Security Act, under the Railroad Retirement Act of 1935 or 1937, or otherwise excluded from gross income, added cls. (i) and (ii), substituted provision that no reduction would be made under cl. (i)(III) for any amount described in section 104(a)(4) for provision that no reduction would be made under former par. (3) for any amount excluded from gross income under section 72 (relating to annuities), 101 (relating to life insurance proceeds), 104 (relating to compensation for injuries or sickness), 105 (relating to amounts received under accident and health plans), 120 (relating to amounts received under qualified group legal services plans), 402 (relating to taxability of beneficiary of employees' trust), 403 (relating to taxation of employee annuities), or 405 (relating to qualified bond purchase plans), and added subpar. (B). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-21 in amending section generally redesignated former subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 98-21 in amending section generally, redesignated former subsec. (d) as (e) and in subsec. (e) as so redesignated struck out provision that the term "joint return" meant the joint return of a husband and wife made under section 6013 and added provisions defining permanent and total disability. Former subsec. (e), which had provided for an election of prior law with respect to public retirement system income, was struck out.

Subsec. (f). Pub. L. 98-21 reenacted subsec. (f) without change.

1981—Subsec. (e)(9)(B). Pub. L. 97-34 substituted "section 911(d)(2)" for "section 911(b)".

1978—Subsec. (e)(2). Pub. L. 95-600, § 701(a)(1), inserted "(and whose gross income includes income described in paragraph (4)(B))" after "who has not attained age 65 before the close of the taxable year".

Subsec. (e)(4)(B). Pub. L. 95-600, § 701(a)(2), (3)(B), as amended by Pub. L. 96-222, § 107(a)(1)(E)(i), inserted "and who performed the services giving rise to the pension or annuity (or is the spouse of the individual who performed the services)" after "before the close of the taxable year" and substituted reference to paragraph (9)(A) for reference to paragraph (8)(A).

Subsec. (e)(5)(B). Pub. L. 95-600, § 701(a)(3)(C), as amended by Pub. L. 96-222, § 107(a)(1)(E)(i), substituted reference to paragraph (9)(A) for reference to paragraph (8)(A).

Subsec. (e)(8), (9). Pub. L. 95-600, § 701(a)(3)(A), as amended by Pub. L. 96-222, § 107(a)(1)(E)(i), added par. (8) and redesignated former par. (8) as (9).

1976—Pub. L. 94-455, § 503(a), among other changes, substituted "Credits for the elderly" for "Retirement income" in section catchline and in text substituted provisions permitting taxpayers who have all types of income to be eligible for the tax credit for provisions permitting taxpayers who have only retirement income to be eligible for the tax credit, eliminated provisions requiring taxpayers to earn $600 for the previous ten years for tax credit eligibility and provisions relating variations in treatment of married couples, and added provisions broadening coverage of the tax credit relief to low and middle income taxpayers.

Pub. L. 94-455, § 1901(c)(1), purported to amend subsec. (f) of this section by striking out "a Territory". The amendment could not be executed in view of the prior general amendment of this section by section 503(a) of Pub. L. 94-455. Section 1901(c)(1) was repealed by section 703(j)(11) of Pub. L. 95-600.

1974—Subsec. (c)(1)(E), (F). Pub. L. 93-406 inserted reference in subpar. (E) to retirement bonds described in section 409 and added subpar. (F).

1964—Subsec. (a). Pub. L. 88-272, §§ 113(a), 201(d)(3), substituted "an amount equal to 17 percent, in the case of a taxable year beginning in 1964, or 15 percent, in the case of a taxable year beginning after December 31, 1964, of the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d));" for "an amount equal to the amount received by such individual as retirement income (as defined in subsection (c) and as limited by subsection (d)), multiplied by the rate provided in section 1 for the first $2,000 of taxable income;", and eliminated "section 34 (relating to credit for dividends received by individuals)", preceding "and section 35".

Subsecs. (i), (j). Pub. L. 88-272, § 202(a), added subsec. (i) and redesignated former subsec. (i) as (j).

1962—Subsec. (c)(1). Pub. L. 87-792 inserted provisions in subpar. (A) requiring inclusion, in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1), distributions by a trust described in section 401(a) which is exempt from tax under section 501(a), and added subpar. (E).

Subsec. (d). Pub. L. 87-876 increased the limit on retirement income from $1,200 to $1,524, lowered the age requirement in par. (2)(A) from 65 to 62, and substituted provisions in par. (2)(B) which reduce the amount of retirement income for individuals who reach age 62, by one-half the amount of earned income in excess of $1,200 but not in excess of $1,700, and by the amount received over $1,700, for provisions which reduced such income by the amount earned over $1,200 by persons having reached age 65, and which defined income as in subsec. (g) of this section.

1956—Subsec. (d)(2). Act Jan. 28, 1956, reduced from 75 to 72 the age at which there will be no limitation on earned income and increased from $900 to $1,200 the amount that an individual over 65 can earn without reducing the $1,200 on which the retirement credit is computed.

1955—Subsec. (f). Act Aug. 9, 1955, extended the retirement income tax credit to members of the Armed Forces.

Effective Date of 1984 Amendment

Amendment by section 474(d) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Effective Date of 1983 Amendment

Section 122(d) of Pub. L. 98-21 provided that:

"(1) In general.—The amendments made by this section [amending sections 37 [now 22], 41 [now 24], 44A [now 21], 46, 53, 85, 105, 128, 403, 415, 904, and 7871 of this title] shall apply to taxable years beginning after December 31, 1983.

"(2) Transitional rule.—If an individual's annuity starting date was deferred under section 105(d)(6) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this section [Apr. 20, 1983]), such deferral shall end on the first day of such individual's first taxable year beginning after December 31, 1983."

Effective Date of 1981 Amendment

Amendment by Pub. L. 97-34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97-34, set out as a note under section 911 of this title.

Effective Date of 1978 Amendment

Section 701(a)(4) of Pub. L. 95-600 provided that:

"(A) The amendments made by paragraphs (1) and (2) [amending subsec. (e)(2) and (4)(B) of this section] shall apply to taxable years beginning after December 31, 1975.

"(B) The amendments made by paragraph (3) [amending subsec. (e)(4)(B), (5)(B), (8), and (9) of this section] shall apply to taxable years beginning after December 31, 1977."

Effective Date of 1976 Amendment

Amendment by Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as a note under section 3 of this title.

Effective Date of 1974 Amendment

Amendment by Pub. L. 93-406 effective Jan. 1, 1974, see section 2002(i)(2) of Pub. L. 93-406, set out as an Effective Date note under section 4973 of this title.

Effective Date of 1964 Amendment

Amendment of subsec. (a) by section 113(a) of Pub. L. 88-272, except for purposes of section 21 [now 15] of this title, effective with respect to taxable years beginning after Dec. 31, 1963, see section 131 of Pub. L. 88-272, set out as a note under section 1 of this title.

Section 201(e) of Pub. L. 88-272 provided that: "The amendments made by subsection (a) [amending section 34 of this title] shall apply with respect to taxable years ending after December 31, 1963. The amendment made by subsection (b) [repealing section 34 of this title] shall apply with respect to taxable years ending after December 31, 1964. The amendment made by subsection (c) [amending section 116(a) of this title] shall apply with respect to taxable years beginning after December 31, 1963. The amendments made by subsection (d) [amending sections 35, 37 [now 22], 46, 116(c)(3), 584, 642, 702, 854, 857, 871, 1375, and 6014 of this title] shall apply with respect to dividends received after December 31, 1964, in taxable years ending after such date".

Section 202(b) of Pub. L. 88-272 provided that: "The amendments made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1963."

Effective Date of 1962 Amendments

Section 2 of Pub. L. 87-876 provided that: "The amendment made by the first section of this Act [amending subsec. (d) of this section] shall apply only to taxable years ending after the date of the enactment of this Act [Oct. 24, 1962]."

Section 8 of Pub. L. 87-792 provided that: "The amendments made by this Act [enacting sections 405 and 6047 of this title, and amending sections 37 [now 22], 62, 72, 101, 104, 105, 172, 401 to 404, 503, 805, 1361, 2039, 2517, 3306, 3401 and 7207 of this title] shall apply to taxable years beginning after December 31, 1962."

Effective Date of 1956 Amendment

Section 2 of act Jan. 28, 1956, provided that: "The amendment made by the first section of this Act [amending subsec. (d)(2)] shall apply only with respect to taxable years beginning after December 31, 1955."

Effective Date of 1955 Amendment

Section 2 of act Aug. 9, 1955, provided that: "The amendment made by this Act [amending subsec. (f)] shall be applicable to taxable years beginning after December 31, 1954."

Determination of Retirement Income Credit Under Provisions as They Existed Prior to Amendment by Pub. L. 94-455 Election

Pub. L. 95-30, title IV, § 403, May 23, 1977, 91 Stat. 155, provided that: "A taxpayer may elect (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) to determine the amount of his credit under section 37 [now 22] of the Internal Revenue Code of 1954 for his first taxable year beginning in 1976 under the provisions of such section as they existed before the amendment made by section 503 of the Tax Reform Act of 1976 [Pub. L. 94-455]."

Cross References

Dividends received credit not allowed on distributions of electing small business corporations, see section 1375 of this title.

Disallowance of credit where tax is computed by Secretary or his delegate, see section 6014 of this title.

Section Referred to in Other Sections

This section is referred to in sections 86, 151, 422A of this title.

§ 23. Residential energy credit

(a) General rule

In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the qualified energy conservation expenditures, plus

(2) the qualified renewable energy source expenditures.

(b) Qualified expenditures

For purposes of subsection (a)—

(1) Energy conservation

In the case of any dwelling unit, the qualified energy conservation expenditures are 15 percent of so much of the energy conservation expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $2,000.

(2) Renewable energy source

In the case of any dwelling unit, the qualified renewable energy source expenditures are 40 percent of so much of the renewable energy source expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $10,000.

(3) Prior expenditures by taxpayer on same residence taken into account

If for any prior year a credit was allowed to the taxpayer under this section with respect to any dwelling unit by reason of energy conservation expenditures or renewable energy source expenditures, paragraph (1) or (2) (whichever is appropriate) shall be applied for the taxable year with respect to such dwelling unit by reducing each dollar amount contained in such paragraph by the prior year expenditures taken into account under such paragraph.

(4) Minimum dollar amount

No credit shall be allowed under this section with respect to any return for any taxable year if the amount which would (but for this paragraph) be allowed with respect to such return is less than $10.

(5) Carryforward of unused credit

(A) In general

If the credit allowable under subsection (a) for any taxable year exceeds the limitation imposed by section 26(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section and section 25), such excess shall be carried to the succeeding taxable year and added to the credit allowable under subsection (a) for such succeeding taxable year.

(B) No carryforward to taxable years beginning after December 31, 1987

No amount may be carried under subparagraph (A) to any taxable year beginning after December 31, 1987.

(c) Definitions and special rules

For purposes of this section—

(1) Energy conservation expenditures

The term "energy conservation expenditure" means an expenditure made on or after April 20, 1977, by the taxpayer for insulation or any other energy-conserving component (or for the original installation of such insulation or other component) installed in or on a dwelling unit—

(A) which is located in the United States,

(B) which is used by the taxpayer as his principal residence, and

(C) the construction of which was substantially completed before April 20, 1977.

(2) Renewable energy source expenditure

(A) In general

The term "renewable energy source expenditure" means an expenditure made on or after April 20, 1977, by the taxpayer for renewable energy source property installed in connection with a dwelling unit—

(i) which is located in the United States, and

(ii) which is used by the taxpayer as his principal residence.

(B) Certain labor and other costs included

The term "renewable energy source expenditure" includes—

(i) expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of renewable energy source property, and

(ii) expenditures for an onsite well drilled for any geothermal deposit (as defined in section 613(e)(3)), but only if the taxpayer has not elected under section 263(c) to deduct any portion of such expenditures.

(C) Swimming pool, etc., used as storage medium

The term "renewable energy source expenditure" does not include any expenditure properly allocable to a swimming pool used as an energy storage medium or to any other energy storage medium which has a primary function other than the function of such storage.

(D) Certain solar panels

No solar panel installed as a roof (or portion thereof) shall fail to be treated as renewable energy source property solely because it constitutes a structural component of the dwelling on which it is installed.

(3) Insulation

The term "insulation" means any item—

(A) which is specifically and primarily designed to reduce when installed in or on a dwelling (or water heater) the heat loss or gain of such dwelling (or water heater),

(B) the original use of which begins with the taxpayer,

(C) which can reasonably be expected to remain in operation for at least 3 years, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations, and

(ii) are in effect at the time of the acquisition of the item.

(4) Other energy-conserving component

The term "other energy-conserving component" means any item (other than insulation)—

(A) which is—

(i) a furnace replacement burner designed to achieve a reduction in the amount of fuel consumed as a result of increased combustion efficiency,

(ii) a device for modifying flue openings designed to increase the efficiency of operation of the heating system,

(iii) an electrical or mechanical furnace ignition system, which replaces a gas pilot light,

(iv) a storm or thermal window or door for the exterior of the dwelling,

(v) an automatic energy-saving setback thermostat,

(vi) caulking or weatherstripping of an exterior door or window,

(vii) a meter which displays the cost of energy usage, or

(viii) an item of the kind which the Secretary specifies by regulations as increasing the energy efficiency of the dwelling,

(B) the original use of which begins with the taxpayer,

(C) which can reasonably be expected to remain in operation for at least 3 years, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations, and

(ii) are in effect at the time of the acquisition of the item.

(5) Renewable energy source property

The term "renewable energy source property" means property—

(A) which, when installed in connection with a dwelling, transmits or uses—

(i) solar energy, energy derived from the geothermal deposits (as defined in section 613(e)(3)), or any other form of renewable energy which the Secretary specifies by regulations, for the purpose of heating or cooling such dwelling or providing hot water or electricity for use within such dwelling, or

(ii) wind energy for nonbusiness residential purposes,

(B) the original use of which begins with the taxpayer,

(C) which can reasonably be expected to remain in operation for at least 5 years, and

(D) which meets the performance and quality standards (if any) which—

(i) have been prescribed by the Secretary by regulations, and

(ii) are in effect at the time of the acquisition of the property.

(6) Regulations

(A) Criteria; certification procedures

The Secretary shall by regulations—

(i) establish the criteria which are to be used in (I) prescribing performance and quality standards under paragraphs (3), (4), and (5), or (II) specifying any item under paragraph (4)(A)(viii) or any form of renewable energy under paragraph (5)(A)(i), and

(ii) establish a procedure under which a manufacturer of an item may request the Secretary to certify that the item will be treated, for purposes of this section, as insulation, an energy-conserving component, or renewable energy source property.

(B) Consultation

Performance and quality standards regulations and other regulations shall be prescribed by the Secretary under paragraphs (3), (4), and (5) and under this paragraph only after consultation with the Secretary of Energy, the Secretary of Housing and Urban Development, and other appropriate Federal officers.

(C) Action on requests

(i) In general

The Secretary shall make a final determination with respect to any request filed under subparagraph (A)(ii) for specifying an item under paragraph (4)(A)(viii) or for specifying a form of renewable energy under paragraph (5)(A)(i) within 1 year after the filing of the request, together with any information required to be filed with such request under subparagraph (A)(ii).

(ii) Reports

Each month the Secretary shall publish a report of any request which has been denied during the preceding month and the reasons for the denial.

(D) Effective date

(i) In general

In the case of any item or energy source specified under paragraph (4)(A)(viii) or (5)(A)(i), the credit allowed by subsection (a) shall apply with respect to expenditures which are made on or after the date on which final notice of such specification is published in the Federal Register.

(ii) Expenditures taken into account in following taxable years

The Secretary may prescribe by regulations that expenditures made on or after the date referred to in clause (i) and before the close of the taxable year in which such date occurs shall be taken into account in the following taxable year.

(7) When expenditures made; amount of expenditures

(A) In general

Except as provided in subparagraph (B), an expenditure with respect to an item shall be treated as made when original installation of the item is completed.

(B) Renewable energy source expenditures

In the case of renewable energy source expenditures in connection with the construction or reconstruction of a dwelling, such expenditures shall be treated as made when the original use of the constructed or reconstructed dwelling by the taxpayer begins.

(C) Amount

The amount of any expenditure shall be the cost thereof.

(D) Allocation in certain cases

If less than 80 percent of the use of an item is for nonbusiness residential purposes, only that portion of the expenditures for such item which is properly allocable to use for nonbusiness residential purposes shall be taken into account. For purposes of this subparagraph, use for a swimming pool shall be treated as use which is not for residential purposes.

(8) Principal residence

The determination of whether or not a dwelling unit is a taxpayer's principal residence shall be made under principles similar to those applicable to section 1034, except that—

(A) no ownership requirement shall be imposed, and

(B) the period for which a dwelling is treated as the principal residence of the taxpayer shall include the 30-day period ending on the first day on which it would (but for this subparagraph) be treated as his principal residence.

(9) Limitations on Secretarial authority

(A) In general

The Secretary shall not specify any item under paragraph (4)(A)(viii) or any form of renewable energy under paragraph (5)(A)(i) unless the Secretary determines that—

(i) there will be a reduction in oil or natural gas consumption as a result of such specification, and such reduction is sufficient to justify any resulting decrease in Federal revenues,

(ii) such specification will not result in an increased use of any item which is known to be, or reasonably suspected to be, environmentally hazardous or a threat to public health or safety, and

(iii) available Federal subsidies do not make such specification unnecessary or inappropriate (in the light of the most advantageous allocation of economic resources).

(B) Factors taken into account

In making any determination under subparagraph (A)(i), the Secretary (after consultation with the Secretary of Energy)—

(i) shall make an estimate of the amount by which the specification will reduce oil and natural gas consumption, and

(ii) shall determine whether such specification compares favorably, on the basis of the reduction in oil and natural gas consumption per dollar of cost to the Federal Government (including revenue loss), with other Federal programs in existence or being proposed.

(C) Factors taken into account in making estimates

In making any estimate under subparagraph (B)(i), the Secretary shall take into account (among other factors)—

(i) the extent to which the use of any item will be increased as a result of the specification,

(ii) whether sufficient capacity is available to increase production to meet any increase in demand caused by such specification,

(iii) the amount of oil and natural gas used directly or indirectly in the manufacture of such item and other items necessary for its use, and

(iv) the estimated useful life of such item.

(10) Property financed by subsidized energy financing

(A) Reduction of qualified expenditures

For purposes of determining the amount of energy conservation or renewable energy source expenditures made by any individual with respect to any dwelling unit, there shall not be taken into account expenditures which are made from subsidized energy financing.

(B) Dollar limits reduced

Paragraph (1) or (2) of subsection (b) (whichever is appropriate) shall be applied with respect to such dwelling unit for any taxable year of such taxpayer by reducing each dollar amount contained in such paragraph (reduced as provided in subsection (b)(3)) by an amount equal to the sum of—

(i) the amount of the expenditures which were made by the taxpayer during such taxable year or any prior taxable year with respect to such dwelling unit and which were not taken into account by reason of subparagraph (A), and

(ii) the amount of any Federal, State, or local grant received by the taxpayer during such taxable year or any prior taxable year which was used to make energy conservation or renewable energy source expenditures with respect to the dwelling unit and which was not included in the gross income of such taxpayer.

(C) Subsidized energy financing

For purposes of subparagraph (A), the term "subsidized energy financing" means financing provided under a Federal, State, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

(d) Special rules

For purposes of this section—

(1) Dollar amounts in case of joint occupancy

In the case of any dwelling unit which is jointly occupied and used during any calendar year as a principal residence by 2 or more individuals—

(A) the amount of the credit allowable under subsection (a) by reason of energy conservation expenditures or by reason of renewable energy source expenditures (as the case may be) made during such calendar year by any of such individuals with respect to such dwelling unit shall be determined by treating all of such individuals as one taxpayer whose taxable year is such calendar year; and

(B) there shall be allowable with respect to such expenditures to each of such individuals a credit under subsection (a) for the taxable year in which such calendar year ends in an amount which bears the same ratio to the amount determined under subparagraph (A) as the amount of such expenditures made by such individual during such calendar year bears to the aggregate of such expenditures made by all of such individuals during such calendar year.

(2) Tenant-stockholder in cooperative housing corporation

In the case of an individual who is a tenant-stockholder (as defined in section 216) in a cooperative housing corporation (as defined in such section), such individual shall be treated as having made his tenant-stockholder's proportionate share (as defined in section 216(b)(3)) of any expenditures of such corporation.

(3) Condominiums

(A) In general

In the case of an individual who is a member of a condominium management association with respect to a condominium which he owns, such individual shall be treated as having made his proportionate share of any expenditures of such association.

(B) Condominium management association

For purposes of this paragraph, the term "condominium management association" means an organization which meets the requirements of paragraph (1) of section 528(c) (other than subparagraph (E) thereof) with respect to a condominium project substantially all of the units of which are used as residences.

(4) Joint ownership of energy items

(A) In general

Any expenditure otherwise qualifying as an energy conservation expenditure or a renewable energy source expenditure shall not be treated as failing to so qualify merely because such expenditure was made with respect to 2 or more dwelling units.

(B) Limits applied separately

In the case of any expenditure described in subparagraph (A), the amount of the credit allowable under subsection (a) shall (subject to paragraph (1)) be computed separately with respect to the amount of the expenditure made by each individual.

(5) 1977 expenditures allowed for 1978

(A) No credit for taxable years beginning before 1978

No credit shall be allowed under this section for any taxable year beginning before January 1, 1978.

(B) 1977 expenditures allowed for 1978

In the case of the taxpayer's first taxable year beginning after December 31, 1977, this section shall be applied by taking into account the period beginning April 20, 1977, and ending on the last day of such first taxable year.

(e) Basis adjustments

For purposes of this subtitle, if a credit is allowed under this section for any expenditure with respect to any property, the increase in the basis of such property which would (but for this subsection) result from such expenditure shall be reduced by the amount of the credit so allowed.

(f) Termination

This section shall not apply to expenditures made after December 31, 1985.

(Added Pub. L. 95-618, title I, § 101(a), Nov. 9, 1978, 92 Stat. 3175, § 44C, and amended Pub. L. 96-223, title II, §§ 201, 202(a)-(d), 203(a), Apr. 2, 1980, 94 Stat. 256, 258; renumbered § 23 and amended Pub. L. 98-369, div. A, title IV, §§ 471(c), 474(e), title VI, § 612(e)(2), July 18, 1984, 98 Stat. 826, 831, 912.)

AMENDMENTS

1984—Subsec. (b)(5). Pub. L. 98-369, § 474(e), redesignated par. (6) as (5), and in par. (5), as so redesignated, substituted "Carryforward of unused credit" for "Carryover of unused credit" in the paragraph heading, in subpar. (A) substituted "limitation imposed by section 25(a) for such taxable year reduced by the sum of the credits allowable under this subpart (other than this section), such excess" for "limitation imposed by paragraph (5) for such taxable year, such excess", in subpar. (B) substituted "carryforward" for "carryover" in the heading. Former par. (5), which provided that the credit allowed by subsection (a) could not exceed the tax imposed by this chapter for the taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than credits allowable by sections 31, 39, and 43, was struck out.

Subsec. (b)(5)(A). Pub. L. 98-369, § 612(e)(2), substituted "section 26(a)" for "section 25(a)" and "(other than this section and section 25)" for "(other than this section)".

Subsec. (b)(6). Pub. L. 98-369, § 474(e), redesignated par. (6) as (5).

1980—Subsec. (b)(2). Pub. L. 96-223, § 202(a), substituted "40 percent of so much of the renewable energy source expenditures made by the taxpayer during the taxable year with respect to such unit as does not exceed $10,000" for "the following percentages of the renewable energy source expenditures made by the taxpayer during the taxable year with respect to such unit: (A) 30 percent of so much of such expenditures as does not exceed $2,000, plus (B) 20 percent of so much of such expenditures as exceeds $2,000 but does not exceed $10,000".

Subsec. (c)(2)(B). Pub. L. 96-223, § 202(c), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (c)(2)(D). Pub. L. 96-223, § 202(d), added subpar. (D).

Subsec. (c)(5)(A)(i). Pub. L. 96-223, § 202(b), substituted "providing hot water or electricity" for "providing hot water".

Subsec. (c)(6)(C), (D). Pub. L. 96-223, § 201(b)(2), added subpars. (C) and (D).

Subsec. (c)(9), (10). Pub. L. 96-223, §§ 201(b)(1), 203(a)(1), added pars. (9) and (10).

Subsec. (d)(4), (5). Pub. L. 96-223, § 201(a), added par. (4) and redesignated former par. (4) as (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(e) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 612(e)(2) of Pub. L. 98-369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98-369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 202(e) of Pub. L. 96-223 provided that:

"(1) SUBSECTION (a).—The amendment made by subsection (a) [amending subsec. (b)(2) of this section] shall apply to taxable years beginning after December 31, 1979.

"(2) SUBSECTIONS (b), (c), AND (d).—The amendments made by subsections (b), (c), and (d) [amending subsec. (c)(2)(B) and (c)(5)(A) and enacting subsec. (c)(2)(D) of this section] shall apply to expenditures made after December 31, 1979, in taxable years ending after such date."

Section 203(c) of Pub. L. 96-223 provided that: "The amendments made by this section [enacting subsec. (c)(10) of this section and section 6050D of this title] shall apply to taxable years beginning after December 31, 1980, but only with respect to financing or grants made after such date."

EFFECTIVE DATE

Section 101(c) of Pub. L. 95-618 provided that: "The amendments made by this section [enacting this section and amending sections 56, 1016 and 6096 of this title] shall apply to taxable years ending on or after April 20, 1977."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 55, 1016 of this title; title 12 sections 3604, 3607, 3613.

§ 24. Contributions to candidates for public office

(a) General rule

In the case of an individual, there shall be allowed, subject to the limitations of subsection (b), as a credit against the tax imposed by this chapter for the taxable year, an amount equal to one-half of all political contributions and all newsletter fund contributions, payment of which is made by the taxpayer within the taxable year.

(b) Limitations

(1) Maximum credit

The credit allowed by subsection (a) for a taxable year shall not exceed $50 ($100 in the case of a joint return under section 6013).

(2) Verification

The credit allowed by subsection (a) shall be allowed, with respect to any political contribution or newsletter fund contribution, only if such contribution is verified in such manner as the Secretary shall prescribe by regulations.

(c) Definitions

For purposes of this section—

(1) Political contribution

The term "political contribution" means a contribution or gift of money to—

(A) an individual who is a candidate for nomination or election to any Federal, State, or local elective public office in any primary, general, or special election, for use by such individual to further his candidacy for nomination or election to such office;

(B) any committee, association, or organization (whether or not incorporated) organized and operated exclusively for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals who are candidates for nomination or election to any Federal, State, or local elective public office, for use by such committee, association, or organization to further the candidacy of such individual or individuals for nomination or election to such office;

(C) the national committee of a national political party;

(D) the State committee of a national political party as designated by the national committee of such party; or

(E) a local committee of a national political party as designated by the State committee of such party designated under subparagraph (D).

(2) Candidate

The term "candidate" means, with respect to any Federal, State, or local elective public office, an individual who—

(A) publicly announces before the close of the calendar year following the calendar year in which the contribution or gift is made that he is a candidate for nomination or election to such office; and

(B) meets the qualifications prescribed by law to hold such office.

(3) National political party

The term "national political party" means—

(A) in the case of contributions made during a taxable year of the taxpayer in which the electors of President and Vice President are chosen, a political party presenting candidates or electors for such offices on the official election ballot of ten or more States, or

(B) in the case of contributions made during any other taxable year of the taxpayer, a political party which met the qualifications described in subparagraph (A) in the last preceding election of a President and Vice President.

(4) State and local

The term "State" means the various States and the District of Columbia; and the term "local" means a political subdivision or part thereof, or two or more political subdivisions or parts thereof, of a State.

(5) Newsletter fund contribution

The term "newsletter fund contribution" means a contribution or gift of money to a fund established and maintained by an individual who holds, has been elected to, or is a candidate for nomination or election to, any Federal, State, or local elective public office for use by such individual exclusively for the preparation and circulation of a newsletter.

(d) Cross references

(1) For disallowance of credits to estates and trusts, see section 642(a)(2).

(2) For treatment of Indian tribal governments as States (and the political subdivisions of Indian tribal governments as political subdivisions of States), see section 7871.

(Added Pub. L. 92-178, title VII, § 701(a), Dec. 10, 1971, 85 Stat. 560, § 41, and amended Pub. L. 93-625, §§ 11(a)-(c), (e), 12(a), Jan. 3, 1975, 88 Stat. 2119, 2120; Pub. L. 94-455, title V, § 503(b)(4), title XIX, §§ 1901(b)(1)(B), (H)(ii), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1562, 1790, 1791, 1834; Pub. L. 95-600, title I, § 113(c), Nov. 6, 1978, 92 Stat. 2778; Pub. L. 97-473, title II, § 202(b)(1), Jan. 14, 1983, 96 Stat. 2609; Pub. L. 98-21, title I, § 122(c)(1), Apr. 20, 1983, 97 Stat. 87; renumbered § 24 and amended Pub. L. 98-369, div. A, title IV, §§ 471(c), 474(f), July 18, 1984, 98 Stat. 826, 831.)

Amendments

1984—Subsec. (b)(2), (3). Pub. L. 98-369, § 474(f), redesignated par. (3) as (2). Former par. (2), which limited the credit allowed by subsection (a) to the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under sections 33, 37, and 38, was struck out.

1983—Subsec. (b)(2). Pub. L. 98-21 substituted "relating to credit for the elderly and the permanently and totally disabled" for "relating to credit for the elderly".

Subsec. (d). Pub. L. 97-473 designated existing provisions as par. (1) and added par. (2).

1978—Subsec. (b)(1). Pub. L. 95-600 substituted "$50" and "$100" for "$25" and "$50", respectively.

1976—Subsec. (b)(2). Pub. L. 94-455, § 503(b)(4), substituted "credit for the elderly" for "retirement income", and § 1901(b)(1)(B) struck out "section 35 (relating to partially tax-exempt interest)," after "(relating to foreign tax credit),".

Subsec. (b)(3). Pub. L. 94-455, § 1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (d). Pub. L. 94-455, § 1901(b)(1)(H)(ii), substituted "section 642(a)(2)" for "section 642(a)(3)".

1975—Subsec. (a). Pub. L. 93-625, § 11(a), included in the tax credit an amount equal to one half of all newsletter fund contributions.

Subsec. (b)(1). Pub. L. 93-625, § 12(a), doubled amount of maximum credit.

Subsec. (b)(3). Pub. L. 93-625, § 11(b), inserted "or newsletter fund contribution" after "political contribution" where first appearing and deleted "political" before "contribution" appearing thereafter.

Subsec. (c)(2)(A). Pub. L. 93-625, § 11(e), substituted "publicly announces before the close of the calendar year following the calendar year in which the contribution or gift is made" for "has publicly announced".

Subsec. (c)(5). Pub. L. 93-625, § 11(c), added par. (5).

Effective Date of 1984 Amendment

Amendment by section 474(f) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Effective Date of 1983 Amendments

Amendment of subsec. (b)(2) by Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

For effective date of amendment by Pub. L. 97-473, see section 204(1) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

Effective Date of 1978 Amendment

Section 113(d) of Pub. L. 95-600 provided that: "The amendments made by this section [amending subsec. (b)(1) of this section and section 642(i) to (k) of this title and repealing section 218 of this title] shall apply with respect to contributions the payment of which is made after December 31, 1978, in taxable years beginning after such date."

Effective Date of 1976 Amendment

Amendment of subsecs. (b)(2), (d) by section 1901(b)(1)(B), (H)(ii) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment of subsec. (b)(2) by section 503(b)(4) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1975, see section 508 of Pub. L. 94-455, set out as a note under section 3 of this title.

Effective Date of 1975 Amendment

Section 11(f) of Pub. L. 93-625 provided that: "The amendments made by this section [amending sections 41 [now 24] and 218 of this title] shall apply to any contribution payment of which is made after December 31, 1974, in taxable years beginning after such date."

Section 12(c) of Pub. L. 93-625 provided that: "The amendments made by subsections (a) and (b) [amending sections 41 [now 24] and 218 of this title] shall apply with respect to any contribution the payment of which is made after December 31, 1974, in taxable years beginning after such date."

Effective Date

Section 703 of Pub. L. 92-178 provided that: "The amendments made by this title [enacting sections 41 [now 24], 218, and 642(a)(3), (i) of this title] shall apply to taxable years ending after December 31, 1971, but only with respect to political contributions, payment of which is made after such date."

Section Referred to in Other Sections

This section is referred to in sections 527, 642, 7871 of this title.

§ 25. Interest on certain home mortgages

(a) Allowance of credit

(1) In general

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the product of—

(A) the certificate credit rate, and

(B) the interest paid or incurred by the taxpayer during the taxable year on the remaining principal of the certified indebtedness amount.

(2) Limitation where credit rate exceeds 20 percent

(A) In general

If the certificate credit rate exceeds 20 percent, the amount of the credit allowed to the taxpayer under paragraph (1) for any taxable year shall not exceed $2,000.

(B) Special rule where 2 or more persons hold interests in residence

If 2 or more persons hold interests in any residence, the limitation of subparagraph (A) shall be allocated among such persons in proportion to their respective interests in the residence.

(b) Certificate credit rate; certified indebtedness amount

For purposes of this section—

(1) Certificate credit rate

The term "certificate credit rate" means the rate of the credit allowable by this section which is specified in the mortgage credit certificate.

(2) Certified indebtedness amount

The term "certified indebtedness amount" means the amount of indebtedness which is—

(A) incurred by the taxpayer—

(i) to acquire the principal residence of the taxpayer,

(ii) as a qualified home improvement loan (as defined in section 103A(l)(6)) with respect to such residence, or

(iii) as a qualified rehabilitation loan (as defined in section 103A(l)(7)) with respect to such residence, and

(B) specified in the mortgage credit certificate.

(c) Mortgage credit certificate; qualified mortgage credit certificate program

For purposes of this section—

(1) Mortgage credit certificate

The term "mortgage credit certificate" means any certificate which—

(A) is issued under a qualified mortgage credit certificate program by the State or political subdivision having the authority to issue a qualified mortgage bond to provide financing on the principal residence of the taxpayer,

(B) is issued to the taxpayer in connection with the acquisition, qualified rehabilitation, or qualified home improvement of the taxpayer's principal residence,

(C) specifies—

(i) the certificate credit rate, and

(ii) the certified indebtedness amount, and

(D) is in such form as the Secretary may prescribe.

(2) Qualified mortgage credit certificate program

(A) In general

The term "qualified mortgage credit certificate program" means any program—

(i) which is established by a State or political subdivision thereof for any calendar year for which it is authorized to issue qualified mortgage bonds,

(ii) under which the issuing authority elects (in such manner and form as the Secretary may prescribe) not to issue an amount of qualified mortgage bonds which it may otherwise issue during such calendar year under section 103A,

(iii) under which the indebtedness certified by mortgage credit certificates meets the requirements of the following subsections of section 103A (as modified by subparagraph (B) of this paragraph):

(I) subsection (d) (relating to residence requirements),

(II) subsection (e) (relating to 3-year requirement),

(III) subsection (f) (relating to purchase price requirement),

(IV) subsection (h) (relating to portion of loans required to be placed in targeted areas), and

(V) paragraph (1) of subsection (j) (relating to other requirements),

(iv) under which no mortgage credit certificate may be issued with respect to any residence any of the financing of which is provided from the proceeds of a qualified mortgage bond or a qualified veterans' mortgage bond,

(v) except to the extent provided in regulations, which is not limited to indebtedness incurred from particular lenders,

(vi) except to the extent provided in regulations, which provides that a mortgage credit certificate is not transferrable, and

(vii) if the issuing authority allocates a block of mortgage credit certificates for use in connection with a particular development, which requires the developer to furnish to the issuing authority and the homebuyer a certificate that the price for the residence is no higher than it would be without the use of a mortgage credit certificate.

(B) Modifications of section 103A

Under regulations prescribed by the Secretary, in applying section 103A for purposes of subclauses (II) and (IV) of subparagraph (A)(iii)—

(i) each qualified mortgage certificate credit program shall be treated as a separate issue,

(ii) the product determined by multiplying—

(I) the certified indebtedness amount of each mortgage credit certificate issued under such program, by

(II) the certificate credit rate specified in such certificate,

shall be treated as proceeds of such issue and the sum of such products shall be treated as the total proceeds of such issue, and

(iii) paragraph (1) of section 103A(e) shall be applied by substituting "100 percent" for "90 percent or more".

Clause (iii) shall not apply if the issuing authority submits a plan to the Secretary for administering the 90-percent requirement of section 103A(e)(1) and the Secretary is satisfied that such requirement will be met under such plan.

(d) Determination of certificate credit rate

For purposes of this section—

(1) In general

The certificate credit rate specified in any mortgage credit certificate shall not be less than 10 percent or more than 50 percent.

(2) Aggregate limit on certificate credit rates

(A) In general

In the case of each qualified mortgage credit certificate program, the sum of the products determined by multiplying—

(i) the certified indebtedness amount of each mortgage credit certificate issued under such program, by

(ii) the certificate credit rate with respect to such certificate,

shall not exceed 20 percent of the nonissued bond amount.

(B) Nonissued bond amount

For purposes of subparagraph (A), the term "nonissued bond amount" means, with respect to any qualified mortgage credit certificate program, the amount of qualified mortgage bonds which the issuing authority is otherwise authorized to issue and elects not to issue under subsection (c)(2)(A)(ii).

(3) Additional limit in certain cases

In the case of a qualified mortgage credit certificate program in a State which—

(A) has a State ceiling (as defined in section 103A(g)(4)) for the year an election is made that exceeds 20 percent of the average annual aggregate principal amount of mortgages executed during the immediately preceding 3 calendar years for single family owner-occupied residences located within the jurisdiction of such State, or

(B) issued qualified mortgage bonds in an aggregate amount less than $150,000,000 for calendar year 1983,

the certificate credit rate for any mortgage credit certificate shall not exceed 20 percent unless the issuing authority submits a plan to the Secretary to ensure that the weighted average of the certificate credit rates in such mortgage credit certificate program does not exceed 20 percent and the Secretary approves such plan.

(e) Special rules and definitions

For purposes of this section—

(1) Carryforward of unused credit

(A) In general

If the credit allowable under subsection (a) for any taxable year exceeds the applicable tax limit for such taxable year, such excess shall be a carryover to each of the 3 succeeding taxable years and, subject to the limitations of subparagraph (B), shall be added to the credit allowable by subsection (a) for such succeeding taxable year.

(B) Limitation

The amount of the unused credit which may be taken into account under subparagraph (A) for any taxable year shall not exceed the amount by which the applicable tax limit for such taxable year exceeds the sum of the amounts which, by reason of this paragraph, are carried to such taxable year and are attributable to taxable years before the unused credit year.

(C) Applicable tax limit

For purposes of this paragraph, the term "applicable tax limit" means the limitation imposed by section 26(a) for the taxable year reduced by the sum of the credits allowable under this subpart (other than this section).

(2) Indebtedness not treated as certified where certain requirements not in fact met

Subsection (a) shall not apply to any indebtedness if all the requirements of subsection (d)(1), (e), (f), and (j) of section 103A and clauses (iv), (v), and (vii) of subsection (c)(2)(A), were not in fact met with respect to such indebtedness. Except to the extent provided in regulations, the requirements described in the preceding sentence shall be treated as met if there is a certification, under penalty of perjury, that such requirements are met.

(3) Period for which certificate in effect

(A) In general

Except as provided in subparagraph (B), a mortgage credit certificate shall be treated as in effect with respect to interest attributable to the period—

(i) beginning on the date such certificate is issued, and

(ii) ending on the earlier of the date on which—

(I) the certificate is revoked by the issuing authority, or

(II) the residence to which such certificate relates ceases to be the principal residence of the individual to whom the certificate relates.

(B) Certificate invalid unless indebtedness incurred within certain period

A certificate shall not apply to any indebtedness which is incurred after the close of the second calendar year following the calendar year for which the issuing authority made the applicable election under subsection (c)(2)(A)(ii).

(C) Notice to Secretary when certificate revoked

Any issuing authority which revokes any mortgage credit certificate shall notify the Secretary of such revocation at such time and in such manner as the Secretary shall prescribe by regulations.

(4) Reissuance of mortgage credit certificates

The Secretary may prescribe regulations which allow the administrator of a mortgage credit certificate program to reissue a mortgage credit certificate specifying a certified mortgage indebtedness that replaces the outstanding balance of the certified mortgage indebtedness specified on the original certificate to any taxpayer to whom the original certificate was issued, under such terms and conditions as the Secretary determines are necessary to ensure that the amount of the credit allowable under subsection (a) with respect to such reissued certificate is equal to or less than the amount of credit which would be allowable under subsection (a) with respect to the original certificate for any taxable year ending after such reissuance.

(5) Public notice that certificates will be issued

At least 90 days before any mortgage credit certificate is to be issued after a qualified mortgage credit certificate program, the issuing authority shall provide reasonable public notice of—

(A) the eligibility requirements for such certificate,

(B) the methods by which such certificates are to be issued, and

(C) such other information as the Secretary may require.

(6) Interest paid or accrued to related persons

No credit shall be allowed under subsection (a) for any interest paid or accrued to a person who is a related person to the taxpayer (within the meaning of section 103(b)(6)(C)(i)).

(7) Principal residence

The term "principal residence" has the same meaning as when used in section 1034.

(8) Qualified rehabilitation and home improvement

(A) Qualified rehabilitation

The term "qualified rehabilitation" has the meaning given such term by section 103A(*l*)(7)(B).

(B) Qualified home improvement

The term "qualified home improvement" means an alteration, repair, or improvement described in section 103A(*l*)(6).

(9) Qualified mortgage bond

The term "qualified mortgage bond" has the meaning given such term by section 103A(c)(1).

(10) Manufactured housing

For purposes of this section, the term "single family residence" includes any manufactured home which has a minimum of 400 square feet of living space and a minimum width in excess of 102 inches and which is of a kind customarily used at a fixed location. Nothing in the preceding sentence shall be construed as providing that such a home will be taken into account in making determinations under section 103A.

(f) Reduction in aggregate amount of qualified mortgage bonds which may be issued where certain requirements not met

(1) In general

If for any calendar year any mortgage credit certificate program which satisfies procedural requirements with respect to volume limitations prescribed by the Secretary fails to meet the requirements of paragraph (2) of subsection (d), such requirements shall be treated as satisfied with respect to any certified indebtedness of such program, but the applicable State ceiling under paragraph (4) of section 103A(g) for the State in which such program operates shall be reduced by 1.25 times the correction amount with respect to such failure. Such reduction shall be applied to such State ceiling for the calendar year following the calendar year in which the Secretary determines the correction amount with respect to such failure.

(2) Correction amount

(A) In general

For purposes of paragraph (1), the term "correction amount" means an amount equal to the excess credit amount divided by 0.20.

(B) Excess credit amount

(i) In general

For purposes of subparagraph (A)(ii), the term "excess credit amount" means the excess of—

(I) the credit amount for any mortgage credit certificate program, over

(II) the amount which would have been the credit amount for such program had such program met the requirements of paragraph (2) of subsection (d).

(ii) Credit amount

For purposes of clause (i), the term "credit amount" means the sum of the products determined under clauses (i) and (ii) of subsection (d)(2)(A).

(3) Special rule for States having constitutional home rule cities

In the case of a State having one or more constitutional home rule cities (within the meaning of section 103A(g)(5)(C)), the reduction in the State ceiling by reason of paragraph (1) shall be allocated to the constitutional home rule city, or to the portion of the State not within such city, whichever caused the reduction.

(4) Exception where certification program

The provisions of this subsection shall not apply in any case in which there is a certification program which is designed to insure [1] that the requirements of this section are met and which meets such requirements as the Secretary may by regulations prescribe.

(5) Waiver

The Secretary may waive the application of paragraph (1) in any case in which he determines that the failure is due to reasonable cause.

(g) Reporting requirements

Each person who makes a loan which is a certified indebtedness amount under any mortgage credit certificate shall file a report with the Secretary containing—

(1) the name, address, and social security account number of the individual to which the certificate was issued,

(2) the certificate's issuer, date of issue, certified indebtedness amount, and certificate credit rate, and

(3) such other information as the Secretary may require by regulations.

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[1] So in original. Probably should be "ensure".

Each person who issues a mortgage credit certificate shall file a report showing such information as the Secretary shall by regulations prescribe. Any such report shall be filed at such time and in such manner as the Secretary may require by regulations.

(h) Termination

No election may be made under subsection (c)(2)(A)(ii) for any calendar year after 1987.

(i) Regulations; contracts

(1) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section, including regulations which may require recipients of mortgage credit certificates to pay a reasonable processing fee to defray the expenses incurred in administering the program.

(2) Contracts

The Secretary is authorized to enter into contracts with any person to provide services in connection with the administration of this section.

(Added Pub. L. 98-369, div. A, title VI, § 612(a), July 18, 1984, 98 Stat. 905.)

PRIOR PROVISIONS

A prior section 25 was renumbered section 26 of this title.

EFFECTIVE DATE

Section 612(g) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting sections 25 and 6708 of this title, redesignating former section 25 as 26, and amending sections 23, 28 to 30, 38, 55, 103A, 163, 168, and 901 of this title] shall apply to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984.

"(2) ELECTIONS.—The amendments made by this section shall apply to elections under section 25(c)(2)(A)(ii) of the Internal Revenue Code of 1954 (as added by this section) for calendar years after 1983."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23, 55, 103A, 163, 6708 of this title.

§ 26. Limitation based on tax liability; definition of tax liability

(a) Limitation based on amount of tax

The aggregate amount of credits allowed by this subpart for the taxable year shall not exceed the taxpayer's tax liability for such taxable year.

(b) Tax liability

For purposes of this section—

(1) In general

The term "tax liability" means the tax imposed by this chapter for the taxable year.

(2) Exception for certain taxes

For purposes of paragraph (1), any tax imposed by any of the following provisions shall not be treated as tax imposed by this chapter:

(A) section 56 (relating to corporate minimum tax),

(B) subsection (m)(5)(B), (*o*)(2), or (q) of section 72 (relating to additional tax on certain distributions),

(C) section 408(f) (relating to additional tax on income from certain retirement accounts),

(D) section 531 (relating to accumulated earnings tax),

(E) section 541 (relating to personal holding company tax),

(F) section 1351(d)(1) (relating to recoveries of foreign expropriation losses),

(G) section 1374 (relating to tax on certain capital gains of S corporations), and

(H) section 1375 (relating to tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts).

(c) Similar rule for alternative minimum tax for taxpayers other than corporations

For treatment of tax imposed by section 55 as not imposed by this chapter, see section 55(c).

(Added § 25, renumbered § 26, Pub. L. 98-369, div. A, title IV, § 472, title VI, § 612(a), July 18, 1984, 98 Stat. 827, 905.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

TREATMENT OF TAX IMPOSED UNDER FORMER SECTION 409(c)

Section 491(f)(5) of Pub. L. 98-369 provided that: "For purposes of section 26(b) of the Internal Revenue Code of 1954 (as amended by this Act), any tax imposed by section 409(c) of such Code (as in effect before its repeal by this section) shall be treated as a tax imposed by section 408(f) of such Code."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23, 25, 28, 29, 30, 38, 39, 55, 163, 168, 901 of this title.

SUBPART B—FOREIGN TAX CREDIT, ETC.

Sec.
27. Taxes of foreign countries and possessions of the United States; possession tax credit.
28. Clinical testing expenses for certain drugs for rare diseases or conditions.
29. Credit for producing fuel from a nonconventional source.
30. Credit for increasing research activities.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 471(b), July 18, 1984, 98 Stat. 826, added the subpart B heading and the analysis of sections for subpart B consisting of items 27 (formerly 33), 28 (formerly 44H), 29 (formerly 44D), and 30 (formerly 44F). Former subpart B was redesignated E.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 38, 47, 55, 56, 168, 6401 of this title.

§ 27. Taxes of foreign countries and possessions of the United States; possession tax credit

(a) Foreign tax credit

The amount of taxes imposed by foreign countries and possessions of the United States shall be allowed as a credit against the tax imposed by this chapter to the extent provided in section 901.

(b) Section 936 credit

In the case of a domestic corporation, the amount provided by section 936 (relating to Puerto Rico and possession tax credit) shall be allowed as a credit against the tax imposed by this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 13, § 33; Oct. 4, 1976, Pub. L. 94–455, title X, § 1051(a), 90 Stat. 1643; renumbered § 27, July 18, 1984, Pub. L. 98-369, div. A, title IV, § 471(c), 98 Stat. 826.)

AMENDMENTS

1976—Pub. L. 94–455 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1976 AMENDMENT

Section 1051(i) of Pub. L. 94–455 provided that:

"(1) Except as provided by paragraph (2), the amendments made by this section [enacting section 936 of this title, and amending sections 33 [now 27], 48(a)(2)(B), 116(b)(2), 243(b)(1), (5), 246(a), 861(a)(2)(A), 901(d), (g), (h), 904(b)(4), 931(a), (c) to (f), 1504(b)(4) and 6091(b)(2)(B) of this title] shall apply to taxable years beginning after December 31, 1975, except that 'qualified possession source investment income' as defined in section 936(d)(2) of the Internal Revenue Code of 1954 shall include income from any source outside the United States if the taxpayer establishes to the satisfaction of the Secretary of the Treasury or his delegate that the income from such sources was earned before October 1, 1976.

"(2) The amendment made by subsection (d)(2) [enacting section 901(g) of this title] shall not apply to any tax imposed by a possession of the United States with respect to the complete liquidation occurring before January 1, 1979, of a corporation to the extent that such tax is attributable to earnings and profits accumulated by such corporation during periods ending before January 1, 1976."

CROSS REFERENCES

Foreign tax credit, see section 901 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28, 29, 30, 55, 56, 108, 691, 921, 1351 of this title.

§ 28. Clinical testing expenses for certain drugs for rare diseases or conditions

(a) General rule

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the qualified clinical testing expenses for the taxable year.

(b) Qualified clinical testing expenses

For purposes of this section—

(1) Qualified clinical testing expenses

(A) In general

Except as otherwise provided in this paragraph, the term "qualified clinical testing expenses" means the amounts which are paid or incurred by the taxpayer during the taxable year which would be described in subsection (b) of section 30 if such subsection were applied with the modifications set forth in subparagraph (B).

(B) Modifications

For purposes of subparagraph (A), subsection (b) of section 30 shall be applied—

(i) by substituting "clinical testing" for "qualified research" each place it appears in paragraphs (2) and (3) of such subsection, and

(ii) by substituting "100 percent" for "65 percent" in paragraph (3)(A) of such subsection.

(C) Exclusion for amounts funded by grants, etc.

The term "qualified clinical testing expenses" shall not include any amount to the extent such amount is funded by any grant, contract, or otherwise by another person (or any governmental entity).

(D) Special rule

For purposes of this paragraph, section 30 shall be deemed to remain in effect for periods after December 31, 1985.

(2) Clinical testing

(A) In general

The term "clinical testing" means any human clinical testing—

(i) which is carried out under an exemption for a drug being tested for a rare disease or condition under section 505(i) of the Federal Food, Drug, and Cosmetic Act (or regulations issued under such section),

(ii) which occurs—

(I) after the date of such drug is designated under section 526 of such Act, and

(II) before the date on which an application with respect to such drug is approved under section 505(b) of such Act, and

(iii) which is conducted by or on behalf of the taxpayer to whom the designation under such section 526 applies.

(B) Testing must be related to use for rare disease or condition

Human clinical testing shall be taken into account under subparagraph (A) only to the extent such testing is related to the use of a drug for the rare disease or condition for which it was designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

(c) Coordination with credit for increasing research expenditures

(1) In general

Except as provided in paragraph (2), any qualified clinical testing expenses for a taxable year to which an election under this section applies shall not be taken into account for purposes of determining the credit allowable under section 30 for such taxable year.

(2) Expenses included in determining base period research expenses

Any qualified clinical testing expenses for any taxable year which are qualified research expenses (within the meaning of section 30(b)) shall be taken into account in determining base period research expenses for purposes of applying section 30 to subsequent taxable years.

(d) Definition and special rules

(1) Rare disease or condition

For purposes of this section, the term "rare disease or condition" means any disease or condition which occurs so infrequently in the United States that there is no reasonable expectation that the cost of developing and making available in the United States a drug for such disease or condition will be recovered from sales in the United States of such drug. Determinations under the preceding sentence with respect to any drug shall be made on the basis of the facts and circumstances as of the date such drug is designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

(2) Limitation based on amount of tax

The credit allowed by this section for any taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under subpart A and section 27.

(3) Special limitations on foreign testing

(A) In general

No credit shall be allowed under this section with respect to any clinical testing conducted outside the United States unless—

(i) such testing is conducted outside the United States because there is an insufficient testing population in the United States, and

(ii) such testing is conducted by a United States person or by any other person who is not related to the taxpayer to whom the designation under section 526 of the Federal Food, Drug, and Cosmetic Act applies.

(B) Special limitation for corporations to which section 934(b) or 936 applies

No credit shall be allowed under this section with respect to any clinical testing conducted by a corporation to which section 934(b) applies or to which an election under section 936 applies.

(4) Certain rules made applicable

Rules similar to the rules of paragraphs (1) and (2) of section 30(f) shall apply for purposes of this section.

(5) Election

This section shall apply to any taxpayer for any taxable year only if such taxpayer elects (at such time and in such manner as the Secretary may by regulations prescribe) to have this section apply for such taxable year.

(e) Termination

This section shall not apply to any amount paid or incurred after December 31, 1987.

(Added Pub. L. 97–414, § 4(a), Jan. 4, 1983, 96 Stat. 2053, § 44H, and renumbered § 28 and amended Pub. L. 98–369, div. A, title IV, §§ 471(c), 474(g), title VI, § 612(e)(1), July 18, 1984, 98 Stat. 826, 831, 912.)

References in Text

Section 505(i) of the Federal Food, Drug, and Cosmetic Act, referred to in subsec. (b)(2)(A)(i), is classified to section 355(i) of Title 21, Food and Drugs.

Section 526 of such Act, referred to in subsecs. (b)(2)(A)(ii)(I), (b)(2)(A)(iii), (b)(2)(B), (d)(1), and (d)(3)(A)(ii), is classified to section 360bb of Title 21.

Section 505(b) of such Act, referred to in subsec. (b)(2)(A)(ii)(II), is classified to section 355(b) of Title 21.

Amendments

1984—Subsec. (b)(1)(A), (B), (D). Pub. L. 98–369, § 474(g)(1)(A), substituted "section 30" for "section 44F".

Subsec. (c)(1). Pub. L. 98–369, § 474(g)(1)(A), substituted "section 30" for "section 44F".

Subsec. (c)(2). Pub. L. 98–369, § 474(g)(1)(A), (B), substituted "section 30" for "section 44F" and "section 30(b)" for "section 44F(b)".

Subsec. (d)(2). Pub. L. 98–369, § 612(e)(1), substituted "section 26(b)" for "section 25(b)".

Pub. L. 98–369, § 474(g)(2), amended par. (2) generally, substituting "shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b), reduced by the sum of the credits allowable under subpart A and section 27" for "shall not exceed the amount of the tax imposed by this chapter for the taxable year reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)".

Subsec. (d)(4). Pub. L. 98–369, § 474(g)(1)(C), substituted "section 30(f)" for "section 44F(f)".

Effective Date of 1984 Amendment

Amendment by section 474(g) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369, applicable to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Effective Date

Section 4(d) of Pub. L. 97–414 provided that: "The amendments made by this section [enacting this section and amending sections 280C and 6096 of this title] shall apply to amounts paid or incurred after December 31, 1982, in taxable years ending after such date."

Section Referred to in Other Sections

This section is referred to in sections 29, 30 of this title; title 42 section 236.

§ 29. Credit for producing fuel from a nonconventional source

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to—

(1) $3, multiplied by

(2) the barrel-of-oil equivalent of qualified fuels—

(A) sold by the taxpayer to an unrelated person during the taxable year, and

(B) the production of which is attributable to the taxpayer.

(b) Limitations and adjustments

(1) Phaseout of credit

The amount of the credit allowable under subsection (a) shall be reduced by an amount which bears the same ratio to the amount of the credit (determined without regard to this paragraph) as—

(A) the amount by which the reference price for the calendar year in which the sale occurs exceeds $23.50, bears to

(B) $6.

(2) Credit and phaseout adjustment based on inflation

The $3 amount in subsection (a) and the $23.50 and $6 amounts in paragraph (1) shall each be adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. In the case of gas from a tight formation, the $3 amount in subsection (a) shall not be adjusted.

(3) Credit reduced for grants, tax-exempt bonds, and subsidized energy financing

(A) In general

The amount of the credit allowable under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1) and (2)) shall be reduced by the amount which is the product of the amount so determined for such year and a fraction—

(i) the numerator of which is the sum, for the taxable year and all prior taxable years, of—

(I) grants provided by the United States, a State, or a political subdivision of a State for use in connection with the project,

(II) proceeds of any issue of State or local government obligations used to provide financing for the project the interest on which is exempt from tax under section 103, and

(III) the aggregate amount of subsidized energy financing (within the meaning of section 48(*l*)(11)(C)) provided in connection with the project, and

(ii) the denominator of which is the aggregate amount of additions to the capital account for the project for the taxable year and all prior taxable years.

(B) Amounts determined at close of year

The amounts under subparagraph (A) for any taxable year shall be determined as of the close of the taxable year.

(4) Credit reduced for energy credit

The amount allowable as a credit under subsection (a) with respect to any project for any taxable year (determined after the application of paragraphs (1), (2), and (3)) shall be reduced by the excess of—

(A) the aggregate amount allowed under section 38 for the taxable year or any prior taxable year by reason of the energy percentage with respect to property used in the project, over

(B) the aggregate amount recaptured with respect to the amount described in subparagraph (A)—

(i) under section 47 for the taxable year or any prior taxable year, or

(ii) under this paragraph for any prior taxable year.

The amount recaptured under section 47 with respect to any property shall be appropriately reduced to take into account any reduction in the credit allowed by this section by reason of the preceding sentence.

(5) Application with other credits

The credit allowed by subsection (a) for a taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under subpart A and sections 27 and 28.

(c) Definition of qualified fuels

For purposes of this section—

(1) In general

The term "qualified fuels" means—

(A) oil produced from shale and tar sands,

(B) gas produced from—

(i) geopressured brine, Devonian shale, coal seams, or a tight formation, or

(ii) biomass,

(C) liquid, gaseous, or solid synthetic fuels produced from coal (including lignite), including such fuels when used as feedstocks,

(D) qualifying processed wood fuels, and

(E) steam produced from solid agricultural byproducts (not including timber byproducts).

(2) Gas from geopressured brine, etc.

(A) In general

Except as provided in subparagraph (B), the determination of whether any gas is produced from geopressured brine, Devonian shale, coal seams, or a tight formation shall be made in accordance with section 503 of the Natural Gas Policy Act of 1978.

(B) Special rules for gas from tight formations

The term "gas produced from a tight formation" shall only include—

(i) gas the price of which is regulated by the United States, and

(ii) gas for which the maximum lawful price applicable under the Natural Gas Policy Act of 1978 is at least 150 percent of the then applicable price under section 103 of such Act.

(3) Biomass

The term "biomass" means any organic material which is an alternate substance (as defined in section 48(*l*)(3)(B)) other than coal (including lignite) or any product of such coal.

(4) Qualifying processed wood fuel

(A) In general

The term "qualifying processed wood fuel" means any processed solid wood fuel (other than charcoal, fireplace products, or a product used for ornamental or recreational purposes) which has a Btu content per unit of volume or weight, determined without regard to any nonwood elements, which is at least 40 percent greater per unit of volume or weight than the Btu content of the wood from which it is produced (determined immediately before the processing).

(B) Election

A taxpayer shall elect, at such time and in such manner as the Secretary by regulations may prescribe, as to whether Btu content per unit shall be determined for purposes of this paragraph on a volume or weight basis. Any such election—

(i) shall apply to all production from a facility; and

(ii) shall be effective for the taxable year with respect to which it is made and for all subsequent taxable years and, once made, may be revoked only with the consent of the Secretary.

(5) Agricultural byproduct steam

Steam produced from solid agricultural byproducts which is used by the taxpayer in his trade or business shall be treated as having been sold by the taxpayer to an unrelated person on the date on which it is used.

(d) Other definitions and special rules

For purposes of this section—

(1) Only production within the United States taken into account

Sales shall be taken into account under this section only with respect to qualified fuels the production of which is within—

(A) the United States (within the meaning of section 638(1)), or

(B) a possession of the United States (within the meaning of section 638(2)).

(2) Computation of inflation adjustment factor and reference price

(A) In general

The Secretary shall, not later than April 1 of each calendar year, determine and publish in the Federal Register the inflation adjustment factor and the reference price for the preceding calendar year in accordance with this paragraph.

(B) Inflation adjustment factor

The term "inflation adjustment factor" means, with respect to a calendar year, a fraction the numerator of which is the GNP implicit price deflator for the calendar year and the denominator of which is the GNP implicit price deflator for calendar year 1979. The term "GNP implicit price deflator" means the first revision of the implicit price deflator for the gross national product as computed and published by the Department of Commerce.

(C) Reference price

The term "reference price" means with respect to a calendar year the Secretary's estimate of the annual average wellhead price per barrel for all domestic crude oil the price of which is not subject to regulation by the United States.

(3) Production attributable to the taxpayer

In the case of a property or facility in which more than 1 person has an interest, except to the extent provided in regulations prescribed by the Secretary, production from the property or facility (as the case may be) shall be allocated among such persons in proportion to their respective interests in the gross sales from such property or facility.

(4) Special rules applicable to gas from geopressured brine, Devonian shale, coal seams, or a tight formation

(A) Credit allowed only for new production

The amount of the credit allowable under subsection (a) shall be determined without regard to any production attributable to a property from which gas from Devonian shale, coal seams, geopressured brine, or a tight formation was produced in marketable quantities before January 1, 1980.

(B) Reference price and application of phaseout for Devonian shale

(i) Reference price for Devonian shale

For purposes of this section, the term "reference price" for gas from Devonian shale sold during calendar years 1980, 1981, and 1982 shall be the average wellhead price per thousand cubic feet for such year of high cost natural gas (as defined in section 107(c)(2), (3), and (4) of the Natural Gas Policy Act of 1978 and determined under section 503 of that Act) as estimated by the Secretary after consultation with the Federal Energy Regulatory Commission.

(ii) Different phaseout to apply for 1980, 1981, and 1982

For purposes of applying paragraphs (1) and (2) of subsection (b) with respect to sales during calendar years 1980, 1981, and 1982 of gas from Devonian shale, "$4.05" shall be substituted for "$23.50" and "$1.03" shall be substituted for "$6.00".

(5) Phaseout does not apply for first 3 years of production from facility producing qualifying processed wood or steam from solid agricultural byproducts

In the case of a facility for the production of—

(A) qualifying processed wood fuel,

or

(B) steam from solid agricultural byproducts,

paragraph (1) of subsection (b) shall not apply with respect to the amount of the credit allowable under subsection (a) for fuels sold during the 3-year period beginning on the date the facility is placed in service.

(6) Barrel-of-oil equivalent

The term "barrel-of-oil equivalent" with respect to any fuel means that amount of such fuel which has a Btu content of 5.8 million; except that in the case of qualified fuels described in subparagraph (C), (D), or (E) of subsection (c)(1), the Btu content shall be determined without regard to any material from a source not described in such subparagraph.

(7) Barrel defined

The term "barrel" means 42 United States gallons.

(8) Related persons

Persons shall be treated as related to each other if such persons would be treated as a single employer under the regulations prescribed under section 52(b).

(9) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(e) Application with the Natural Gas Policy Act of 1978

(1) No credit if section 107 of the Natural Gas Policy Act of 1978 is utilized

Subsection (a) shall apply with respect to any natural gas described in subsection (c)(1)(B)(i) which is sold during the taxable year only if such natural gas is sold at a lawful price which is determined without regard to the provisions of section 107 of the Natural Gas Policy Act of 1978 and subtitle B of title I of such Act.

(2) Treatment of this section

For purposes of section 107(d) of the Natural Gas Policy Act of 1978, this section shall not be treated as allowing any credit, exemption, deduction, or comparable adjustment applicable to the computation of any Federal tax.

(f) Application of section

(1) In general

Except as provided in paragraph (2), this section shall apply with respect to qualified fuels—

(A) which are—

(i) produced from a well drilled after December 31, 1979, and before January 1, 1990, or

(ii) produced in a facility placed in service after December 31, 1979, and before January 1, 1990, and

(B) which are sold after December 31, 1979, and before January 1, 2001.

(2) Special rules applicable to qualified processed wood and solid agricultural byproduct steam

(A) Credit allowed only for certain production

In the case of qualifying processed wood fuel and steam from solid agricultural byproducts, this section shall apply only with respect to—

(i) qualifying processed wood fuel produced in facilities placed in service after December 31, 1979, and before January 1, 1982, which is sold before the later of—

(I) October 1, 1983, or

(II) the date which is 3 years after the date on which the facility is placed in service; and

(ii) steam produced in facilities placed in service after December 31, 1979, from solid agricultural byproducts which is sold before January 1, 1985.

(B) Expanded production of steam treated as new facility production

For purposes of this subsection and subsection (d)(5), in the case of a facility for the production of steam from solid agricultural byproducts which was placed in service before January 1, 1980, any production of steam attributable to an expansion of the capacity of the facility to produce such steam through placing additional or replacement equipment in service after December 31, 1979, shall be treated as if it were produced by a facility placed in service on the date on which such equipment is placed in service.

(Added Pub. L. 96-223, title II, § 231(a), Apr. 2, 1980, 94 Stat. 268, § 44D, and amended Pub. L. 97-34, title VI § 611(a), Aug. 13, 1981, 95 Stat. 339; Pub. L. 97-354, § 5(a)(1), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97-448, title II, § 202(a), Jan. 12, 1983, 96 Stat. 2396; renumbered § 29 and amended Pub. L. 98-369, div. A, title IV, §§ 471(c), 474(h), title VI, § 612(e)(1), title VII, § 722(d)(1), (2), July 18, 1984, 98 Stat. 826, 831, 912, 973.)

References in Text

The Natural Gas Policy Act of 1978, referred to in subsecs. (c)(2)(A), (B)(ii), (d)(4)(B)(i), and (e), is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350, as amended, which is classified generally to chapter 60 (§ 3301 et seq.) of Title 15, Commerce and Trade. Subtitle B of title I of the Natural Gas Policy Act of 1978 is classified generally to part B of subchapter I (§ 3331 et seq.) of chapter 60 of Title 15. Sections 103, 107, and 503 of the Natural Gas Policy Act of 1978 are classified to sections 3313, 3317, and 3413 of Title 15, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

Amendments

1984—Subsec. (b)(1)(A). Pub. L. 98-369, § 722(d)(1), substituted "in which the sale occurs" for "in which the taxable year begins".

Subsec. (b)(2). Pub. L. 98-369, § 722(d)(2), substituted "in which the sale occurs" for "in which a taxable year begins".

Subsec. (b)(5). Pub. L. 98-369, § 612(e)(1), substituted "section 26(b)" for "section 25(b)".

Pub. L. 98-369, § 474(h), amended par. (5) generally, substituting "shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27 and 28" for "shall not exceed the tax imposed by this chapter for such taxable year, reduced by the sum of the credits allowable under a section of this subpart having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)".

1983—Subsec. (f)(1)(B), (2)(A)(i). Pub. L. 97-448 substituted "December 31, 1979" for "December 3, 1979".

1982—Subsec. (d)(9). Pub. L. 97-354 substituted "Pass-thru in the case of estates and trusts" for "Pass-through in the case of subchapter S corporations, etc." in par. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

1981—Subsec. (e). Pub. L. 97-34 substituted provisions respecting application with the Natural Gas Policy Act of 1978 for prior provision reading "If the taxpayer makes an election under section 107(d) of the Natural Gas Policy Act of 1978 to have subsections (a) and (b) of section 107 of that Act, and subtitle B of title I of that Act, apply with respect to gas described in subsection (c)(1)(B)(i) produced from any well on a property, then the credit allowable by subsection (a) shall not be allowed with respect to any gas produced on that property."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(h) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98-369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see setion 612(g) of Pub. L. 98-369, set out as an Effective Date note under section 25 of this title.

Section 722(d)(3) of Pub. L. 98-369 provided that: "The amendments made by this subsection [amending subsec. (b)(1), (2) of this section] shall apply to taxable years ending after December 31, 1979."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Crude Oil Windfall Profit Tax Act of 1980, Pub. L. 96-223 to which such amendment relates, see section 203(a) of Pub. L. 97-448, set out as a note under section 4986 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 611(b) of Pub. L. 97-34 provided that: "The amendment made by this section [amending subsec. (e) of this section] shall apply to taxable years ending after December 31, 1979."

EFFECTIVE DATE

Section 231(c) of Pub. L. 96-223 provided that: "The amendments made by this section [enacting this section and amending section 6096(b) of this title] shall apply to taxable years ending after December 31, 1979."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30, 280C of this title.

§ 30. Credit for increasing research activities

(a) General rule

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 25 percent of the excess (if any) of—

(1) the qualified research expenses for the taxable year, over

(2) the base period research expenses.

(b) Qualified research expenses

For purposes of this section—

(1) Qualified research expenses

The term "qualified research expenses" means the sum of the following amounts which are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business of the taxpayer—

(A) in-house research expenses, and

(B) contract research expenses.

(2) In-house research expenses

(A) In general

The term "in-house research expenses" means—

(i) any wages paid or incurred to an employee for qualified services performed by such employee,

(ii) any amount paid or incurred for supplies used in the conduct of qualified research, and

(iii) any amount paid or incurred to another person for the right to use personal property in the conduct of qualified research.

Clause (iii) shall not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) receives or accrues any amount from any other person for the right to use substantially identical personal property.

(B) Qualified services

The term "qualified services" means services consisting of—

(i) engaging in qualified research, or

(ii) engaging in the direct supervision or direct support of research activities which constitute qualified research.

If substantially all of the services performed by an individual for the taxpayer during the taxable year consists of services meeting the requirements of clause (i) or (ii), the term "qualified services" means all of the services performed by such individual for the taxpayer during the taxable year.

(C) Supplies

The term "supplies" means any tangible property other than—

(i) land or improvements to land, and

(ii) property of a character subject to the allowance for depreciation.

(D) Wages

(i) In general

The term "wages" has the meaning given such term by section 3401(a).

(ii) Self-employed individuals and owner-employees

In the case of an employee (within the meaning of section 401(c)(1)), the term "wages" includes the earned income (as defined in section 401(c)(2)) of such employee.

(iii) Exclusion for wages to which new jobs or win credit applies

The term "wages" shall not include any amount taken into account in determining the targeted jobs credit under section 51(a).

(3) Contract research expenses

(A) In general

The term "contract research expenses" means 65 percent of any amount paid or incurred by the taxpayer to any person (other than an employee of the taxpayer) for qualified research.

(B) Prepaid amounts

If any contract research expenses paid or incurred during any taxable year are attributable to qualified research to be conducted after the close of such taxable year, such amount shall be treated as paid or incurred during the period during which the qualified research is conducted.

(c) Base period research expenses

For purposes of this section—

(1) In general

The term "base period research expenses" means the average of the qualified research expenses for each year in the base period.

(2) Base period

(A) In general

For purposes of this subsection, the term "base period" means the 3 taxable years immediately preceding the taxable year for which the determination is being made (hereinafter in this subsection referred to as the "determination year").

(B) Transitional rules

Subparagraph (A) shall be applied—

(i) by substituting "first taxable year" for "3 taxable years" in the case of the first determination year ending after June 30, 1981, and

(ii) by substituting "2" for "3" in the case of the second determination year ending after June 30, 1981.

(3) Minimum base period research expenses

In no event shall the base period research expenses be less than 50 percent of the qualified research expenses for the determination year.

(d) Qualified research

For purposes of this section the term "qualified research" has the same meaning as the term research or experimental has under section 174, except that such term shall not include—

(1) qualified research conducted outside the United States,

(2) qualified research in the social sciences or humanities, and

(3) qualified research to the extent funded by any grant, contract, or otherwise by another person (or any governmental entity).

(e) Credit available with respect to certain basic research by colleges, universities, and certain research organizations

(1) In general

65 percent of any amount paid or incurred by a corporation (as such term is defined in section 170(e)(4)(D)) to any qualified organization for basic research to be performed by such organization shall be treated as contract research expenses. The preceding sentence shall apply only if the amount is paid or incurred pursuant to a written research agreement between the corporation and the qualified organization.

(2) Qualified organization

For purposes of this subsection the term "qualified organization" means—

(A) any educational organization which is described in section 170(b)(1)(A)(ii) and which is an institution of higher education (as defined in section 3304(f)), and

(B) any other organization which—

(i) is described in section 501(c)(3) and exempt from tax under section 501(a),

(ii) is organized and operated primarily to conduct scientific research, and

(iii) is not a private foundation.

(3) Basic research

The term "basic research" means any original investigation for the advancement of scientific knowledge not having a specific commercial objective, except that such term shall not include—

(A) basic research conducted outside the United States, and

(B) basic research in the social sciences or humanities.

(4) Special rules for grants to certain funds

(A) In general

For purposes of this subsection, a qualified fund shall be treated as a qualified organization and the requirements of paragraph (1) that the basic research be performed by the qualified organization shall not apply.

(B) Qualified fund

For purposes of subparagraph (A), the term "qualified fund" means any organization which—

(i) is described in section 501(c)(3) and exempt from tax under section 501(a) and is not a private foundation,

(ii) is established and maintained by an organization established before July 10, 1981, which meets the requirements of clause (i),

(iii) is organized and operated exclusively for purposes of making grants pursuant to written research agreements to organizations described in paragraph (2)(A) for purposes of basic research, and

(iv) makes an election under this paragraph.

(C) Effect of election

(i) In general

Any organization which makes an election under this paragraph shall be treated as a private foundation for purposes of this title (other than section 4940, relating to excise tax based on investment income).

(ii) Election revocable only with consent

An election under this paragraph, once made, may be revoked only with the consent of the Secretary.

(f) Special rules

For purposes of this section—

(1) Aggregation of expenditures

(A) Controlled group of corporations

In determining the amount of the credit under this section—

(i) all members of the same controlled group of corporations shall be treated as a single taxpayer, and

(ii) the credit (if any) allowable by this section to each such member shall be its proportionate share of the increase in qualified research expenses giving rise to the credit.

(B) Common control

Under regulations prescribed by the Secretary, in determining the amount of the credit under this section—

(i) all trades or businesses (whether or not incorporated) which are under common control shall be treated as a single taxpayer, and

(ii) the credit (if any) allowable by this section to each such person shall be its proportionate share of the increase in qualified research expenses giving rise to the credit.

The regulations prescribed under this subparagraph shall be based on principles similar to the principles which apply in the case of subparagraph (A).

(2) Allocations

(A) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(B) Allocation in the case of partnerships

In the case of partnerships, the credit shall be allocated among partners under regulations prescribed by the Secretary.

(3) Adjustments for certain acquisitions, etc.

Under regulations prescribed by the Secretary—

(A) Acquisitions

If, after June 30, 1980, a taxpayer acquires the major portion of a trade or business of another person (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section for any taxable year ending after such acquisition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such acquisition shall be increased by so much of such expenses paid or incurred by the predecessor with respect to the acquired trade or business as is attributable to the protion of such trade or business or separate unit acquired by the taxpayer.

(B) Dispositions

If, after June 30, 1980—

(i) a taxpayer disposes of the major portion of any trade or business or the major portion of a separate unit of a trade or business in a transaction to which subparagraph (A) applies, and

(ii) the taxpayer furnished the acquiring person such information as is necessary for the application of subparagraph (A),

then, for purposes of applying this section for any taxable year ending after such disposition, the amount of qualified research expenses paid or incurred by the taxpayer during periods before such disposition shall be decreased by so much of such expenses as is attributable to the portion of such trade or business or separate unit disposed of by the taxpayer.

(C) Increase in base period

If during any of the 3 taxable years following the taxable year in which a disposition to which subparagraph (B) applies occurs, the disposing taxpayer (or a person with whom the taxpayer is required to aggregate expenditures under paragraph (1)) reimburses the acquiring person (or a person required to so aggregate expenditures with such person) for research on behalf of the taxpayer, then the amount of qualified research expenses of the taxpayer for the base period for such taxable year shall be increased by the lesser of—

(i) the amount of the decrease under subparagraph (B) which is allocable to such base period, or

(ii) the product of the number of years in the base period, multiplied by the amount of the reimbursement described in this subparagraph.

(4) Short taxable years

In the case of any short taxable year, qualified research expenses shall be annualized in such circumstances and under such methods as the Secretary may prescribe by regulation.

(5) Controlled group of corporations

The term "controlled group of corporations" has the same meaning given to such term by section 1563(a), except that—

(A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a)(1), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(g) Limitation based on amount of tax

(1) Liability for tax

(A) In general

Except as provided in subparagraph (B), the credit allowed by subsection (a) for any taxable year shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 26(b)), reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29.

(B) Special rule for passthrough of credit

In the case of an individual who—

(i) owns an interest in an unincorporated trade or business,

(ii) is a partner in a partnership,

(iii) is a beneficiary of an estate or trust, or

(iv) is a shareholder in an S corporation,

the credit allowed by subsection (a) for any taxable year shall not exceed the lesser of the amount determined under subparagraph (A) for the taxable year or an amount (separately computed with respect to such person's interest in such trade or business or entity) equal to the amount of tax attributable to that portion of a person's taxable income which is allocable or apportionable to the person's interest in such trade or business or entity.

(2) Carryback and carryover of unused credit

(A) Allowance of credit

If the amount of the credit determined under this section for any taxable year exceeds the limitation provided by paragraph (1) for such taxable year (hereinafter in this paragraph referred to as the "unused credit year"), such excess shall be—

(i) a research credit carryback to each of the 3 taxable years preceding the unused credit year, and

(ii) a research credit carryover to each of the 15 taxable years following the unused credit year,

and shall be added to the amount allowable as a credit by this section for such years. If any portion of such excess is a carryback to a taxable year beginning before July 1, 1981, this section shall be deemed to have been in effect for such taxable year for purposes of allowing such carryback as a credit under this section. The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 18 taxable years to which (by reason of clauses (i) and (ii)) such credit may be carried, and then to each of the other 17 taxable years to the extent that, because of the limitation contained in subparagraph (B), such unused credit may not be added for a prior taxable year to which such unused credit may be carried.

(B) Limitation

The amount of the unused credit which may be added under subparagraph (A) for any preceding or succeeding taxable year shall not exceed the amount by which the limitation provided by paragraph (1) for such taxable year exceeds the sum of—

(i) the credit allowable under this section for such taxable year, and

(ii) the amounts which, by reason of this paragraph, are added to the amount allowable for such taxable year and which are attributable to taxable years preceding the unused credit year.

(Added Pub. L. 97-34, title II, § 221(a), Aug. 13, 1981, 95 Stat. 241, § 44F, and amended Pub. L. 97-354, § 5(a)(3), Oct. 19, 1982, 96 Stat. 1692, Pub. L. 97-448, title I, § 102(b)(2), Jan. 12, 1983, 96 Stat. 2372; renumbered § 30 and amended Pub. L. 98-369, div. A, title IV, §§ 471(c), 474(i)(1), title VI, § 612(e)(1), July 18, 1984, 98 Stat. 826, 831, 912.)

AMENDMENTS

1984—Subsec. (b)(2)(D)(iii). Pub. L. 98-369, § 474(i)(1)(A), substituted "in determining the targeted jobs credit under section 51(a)" for "in computing the credit under section 40 or 44B".

Subsec. (g)(1)(A). Pub. L. 98-369, § 612(e)(1), substituted "section 26(b)" for "section 25(b)".

Pub. L. 98-369, § 474(i)(1)(B), amended subpar. (A) generally, substituting "shall not exceed the taxpayer's tax liability for the taxable year (as defined in section 25(b)), reduced by the sum of the credits allowable under subpart A and sections 27, 28, and 29" for "shall not exceed the amount of the tax imposed by this chapter reduced by the sum of the credits allowable under a section of this part having a lower number or letter designation than this section, other than the credits allowable by sections 31, 39, and 43. For purposes of the preceding sentence, the term 'tax imposed by this chapter' shall not include any tax treated as not imposed by this chapter under the last sentence of section 53(a)".

1983—Subsec. (b)(2)(A). Pub. L. 97-448 added provision that cl. (iii) would not apply to any amount to the extent that the taxpayer (or any person with whom the taxpayer must aggregate expenditures under subsection (f)(1)) received or accrued any amount from any other person for the right to use substantially identical personal property.

1982—Subsec. (f)(2)(A). Pub. L. 97-354, § 5(a)(3)(A), substituted "Pass-thru in the case of estates and trusts" for "Pass-through in the case of subchapter S corporations, etc." in subpar. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

Subsec. (g)(1)(B)(iv). Pub. L. 97-354, § 5(a)(3)(B), substituted "an S corporation" for "an electing small business corporation (within the meaning of section 1371(b))".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(i)(1) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98-369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98-369, set out as an Effective Date note under section 25 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 102(h)(2) of Pub. L. 97-448 provided in part that the amendment by such subsection is effective only with respect to amounts paid or incurred after March 31, 1982.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

EFFECTIVE AND TERMINATION DATES

Section 221(d) of Pub. L. 97-34 provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section of amending sections 55, 381, 383, 6096, 6411, and 6511 of this title] shall apply to amounts paid or incurred after June 30, 1981, and before January 1, 1986.

"(2) TRANSITIONAL RULE.—

"(A) IN GENERAL.—If, with respect to the first taxable year to which the amendments made by this section apply and which ends in 1981 or 1982, the taxpayer may only take into account qualified research expenses paid or incurred during a portion of such taxable year, the amount of the qualified research expenses taken into account for the base period of such taxable year shall be the amount which bears the same ratio to the total qualified research expenses for such base period as the number of months in such portion of such taxable year bears to the total number of months in such taxable year. A similar rule shall apply in the case of a taxpayer's first taxable year ending after December 31, 1985.

"(B) DEFINITIONS.—For purposes of the preceding sentence, the terms 'qualified research expenses' and 'base period' have the meanings given to such terms by section 44F [now 30] of the Internal Revenue Code of 1954 (as added by this section)."

NEW SECTION 30 TREATED AS CONTINUATION OF OLD SECTION 44F

Section 474(l)(2) of Pub. L. 98-369 provided that: "For purposes of determining—

"(A) whether any excess credit under old section 44F [now 30] for a taxable year beginning before January 1, 1984, is allowable as a carryover under new section 30, and

"(B) the period during which new section 30 is in effect,

new section 30 shall be treated as a continuation of old section 44F (and shall apply only to the extent old section 44F would have applied)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28, 55, 103, 108, 280C, 381, 383, 936, 6411, 6511 of this title.

SUBPART C—REFUNDABLE CREDITS

Sec.

31. Tax withheld on wages.
32. Earned income.
33. Tax withheld at source on nonresident aliens and foreign corporations.
34. Certain uses of gasoline and special fuels.
35. Overpayments of tax.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 471(b), July 18, 1984, 98 Stat. 826, added subpart C heading and the analysis of sections for subpart C consisting of items 31, 32 (formerly 43), 33 (formerly 32), 34 (formerly 39), and 35 (formerly 45). Former subpart C, setting out the rules for computing credit for expenses of work incentive programs, was repealed.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 6096, 6401 of this title.

§ 31. Tax withheld on wages

(a) Wage withholding for income tax purposes

(1) In general

The amount withheld as tax under chapter 24 shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle.

(2) Year of credit

The amount so withheld during any calendar year shall be allowed as a credit for the taxable year beginning in such calendar year. If more than one taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(b) Credit for special refunds of social security tax

(1) In general

The Secretary may prescribe regulations providing for the crediting against the tax imposed by this subtitle of the amount determined by the taxpayer or the Secretary to be allowable under section 6413(c) as a special refund of tax imposed on wages. The amount allowed as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402.

(2) Year of credit

Any amount to which paragraph (1) applies shall be allowed as a credit for the taxable year beginning in the calendar year during which the wages were received. If more than one taxable year begins in the calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

(c) Special rule for backup withholding

Any credit allowed by subsection (a) for any amount withheld under section 3406 shall be allowed for the taxable year of the recipient of the income in which the income is received.

(Aug. 16, 1954, ch. 736, 68A Stat. 12; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(D), 90 Stat. 1834; Sept. 3, 1982, Pub. L. 97-248, title III, §§ 302(a), 308(a), 96 Stat. 585, 591; Oct. 19, 1982, Pub. L. 97-354, § 3(i)(4), 96 Stat. 1691; Jan. 12, 1983, Pub. L. 97-448, title III, § 306(b)(1), 96 Stat. 2405; Aug. 5, 1983, Pub. L. 98-67, title I, §§ 102(a), 104(d)(2), 97 Stat. 369, 379; July 18, 1984, Pub. L. 98-369, div. A, title IV, § 471(c), title VII, § 714(j)(2), 98 Stat. 826, 962.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 714(j)(2), substituted "as tax under chapter 24" for "under section 3402 as tax on the wages of any individual".

1983—Pub. L. 98-67 added subsec. (c) and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

Pub. L. 97-448 amended subsec. (d) generally. See 1982 Amendment note below.

1982—Pub. L. 97-248, as amended by Pub. L. 97-354 and Pub. L. 97-448, provided that, applicable to payments of interest, dividends, and patronage dividends paid or credited after June 30, 1983, this section is amended to read as set out below. Section 102(a), (b) of Pub. L. 98-67, title I, Aug. 5, 1983, 97 Stat. 369, repealed subtitle A (§§ 301-308) of title III of Pub. L.

97-248 as of the close of June 30, 1983, and provided that the Internal Revenue Code of 1954 (this title) shall be applied and administered (subject to certain exceptions) as if such subtitle A (and the amendments made by such subtitle A) had not been enacted. This section, as amended by Pub. L. 97-248, Pub. L. 97-354, and Pub. L. 97-448 referred to above, read as follows:

"§ 31. Tax withheld on wages, interest, dividends, and patronage dividends

"(a) Wage withholding

"The amount withheld under section 3402 as tax on the wages of any individual shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle.

"(b) Withholding from interest, dividends, and patronage dividends

"The amount withheld under section 3451 as tax on interest, dividends, and patronage dividends shall be allowed to the recipient of the income as a credit against the tax imposed by this subtitle.

"(c) Credit for special refunds of social security tax

"The Secretary may prescribe regulations providing for the crediting against the tax imposed by this subtitle of the amount determined by the taxpayer or the Secretary to be allowable under section 6413(c) as a special refund of tax imposed on wages. The amount allowed as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402.

"(d) Year for which credit allowed

"(1) Wages

"Any credit allowed—

"(A) by subsection (a) shall be allowed for the taxable year beginning in the calendar year in which the amount is withheld, or

"(B) by subsection (c) shall be allowed for the taxable year beginning in the calendar year in which the wages are received.

For purposes of this paragraph, if more than 1 taxable year begins in a calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

"(2) Interest, dividends, and patronage dividends

"Any credit allowed by subsection (b) shall be allowed for the taxable year of the recipient of the income in which the amount is received."

1976—Subsec. (b)(1). Pub. L. 94-455 struck out "or his delegate" after "The Secretary" and "(or his delegate)" after "taxpayer or the Secretary".

Effective Date of 1984 Amendment

Section 715 of title VII of Pub. L. 98-369 provided that: "Any amendment made by this subtitle [subtitle A, §§ 711 to 715 of Pub. L. 98-369, see Tables for classification] shall take effect as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248] to which such amendment relates."

Effective Date of 1983 Amendments

Section 110 of Pub. L. 98-67 provided that:

"(a) General Rule.—Except as otherwise provided in this section, the amendments made by this title [enacting sections 3406 and 6705 of this title, amending sections 31, 274, 275, 643, 661, 3402, 3403, 3502, 3507, 6011, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6652, 6653, 6654, 6676, 6678, 6682, 7205, 7215, 7431, 7654, and 7701 of this title, repealing sections 3451 to 3456 of this title, enacting provisions set out as notes under sections 1, 3451, and 6011 of this title, and repealing provisions set out as a note under section 3451 of this title] shall apply with respect to payments made after December 31, 1983.

"(b) Section 102.—The amendments made by section 102 [amending sections 31, 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6049, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title, repealing sections 3451 to 3456 of this title, enacting provisions set out as a note under section 3451 of this title, and repealing provisions set out as a note under section 3451 of this title] shall take effect as of the close of June 30, 1983.

"(c) Sections 104(b) and 107.—The amendments made by sections 104(b) and 107 [amending sections 6682, 7205, and 7431 of this title] shall take effect on the date of the enactment of this Act [Aug. 5, 1983]."

Section 311(d) of Pub. L. 97-448 provided that: "The amendments made by section 306 [amending sections 31, 48, 55, 263, 291, 312, 338, 401, 501, 1232, 6038A, 6226, 6228, 6679, and 7701 of this title, enacting provisions set out as notes under sections 338 and 1232 of this title, and amending provisions set out as notes under sections 56, 72, 101, 103, 168, 302, 311, 338, 415, 907, and 5701 of this title] shall take effect as if included in the provisions of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248] to which such amendments relate."

Construction of Amendment by Title VII of Division A of Pub. L. 98-369

Section 701 of title VII of div. A of Pub. L. 98-369 provided that: "For purposes of applying the amendments made by any title of this Act [see Tables for classification] other than this title, the provisions of this title shall be treated as having been enacted immediately before the provisions of such other titles."

Cross References

Amount allowable as credit under this section exceeding taxes imposed by chapter 1 considered as overpayment, see section 6401 of this title.

Time tax collected at source deemed paid, see section 6513 of this title.

Section Referred to in Other Sections

This section is referred to in sections 643, 874, 995, 3406, 6211, 6362, 6413, 6428, 6513, 6654 of this title.

§ 32. Earned income

(a) Allowance of credit

In the case of an eligible individual, there is allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to 11 percent of so much of the earned income for the taxable year as does not exceed $5,000.

(b) Limitation

The amount of the credit allowable to a taxpayer under subsection (a) for any taxable year shall not exceed the excess (if any) of—

(1) $550, over

(2) 12⅕ percent of so much of the adjusted gross income (or, if greater, the earned income) of the taxpayer for the taxable year as exceeds $6,500.

(c) Definitions

For purposes of this section—

(1) Eligible individual

(A) In general

The term "eligible individual" means an individual who, for the taxable year—

(i) is married (within the meaning of section 143) and is entitled to a deduction under section 151 for a child (within the meaning of section 151(e)(3)) or would be so entitled but for paragraph (2) or (4) of section 152(e),

(ii) is a surviving spouse (as determined under section 2(a)), or

(iii) is a head of a household (as determined under subsection (b) of section 2 without regard to subparagraphs (A)(ii) and (B) of paragraph (1) of such subsection).

(B) Child must reside with taxpayer in the United States

An individual shall be treated as satisfying clause (i) of subparagraph (A) only if the child has the same principal place of abode as the individual for more than one-half of the taxable year and such abode is in the United States. An individual shall be treated as satisfying clause (ii) or (iii) of subparagraph (A) only if the household in question is in the United States.

(C) Individual who claims benefits of section 911 or 931 not eligible individual

The term "eligible individual" does not include an individual who, for the taxable year, claims the benefits of—

(i) section 911 (relating to citizens or residents of the United States living abroad),

(ii) section 931 (relating to income from sources within possessions of the United States).

(2) Earned income

(A) The term "earned income" means—

(i) wages, salaries, tips, and other employee compensation, plus

(ii) the amount of the taxpayer's net earnings from self-employment for the taxable year (within the meaning of section 1402(a)).

(B) For purposes of subparagraph (A)—

(i) the earned income of an individual shall be computed without regard to any community property laws,

(ii) no amount received as a pension or annuity shall be taken into account, and

(iii) no amount to which section 871(a) applies (relating to income of nonresident alien individuals not connected with United States business) shall be taken into account.

(d) Married individuals

In the case of an individual who is married (within the meaning of section 143), this section shall apply only if a joint return is filed for the taxable year under section 6013.

(e) Taxable year must be full taxable year

Except in the case of a taxable year closed by reason of the death of the taxpayer, no credit shall be allowable under this section in the case of a taxable year covering a period of less than 12 months.

(f) Amount of credit to be determined under tables

(1) In general

The amount of the credit allowed by this section shall be determined under tables prescribed by the Secretary.

(2) Requirements for tables

The tables prescribed under paragraph (1) shall reflect the provisions of subsections (a) and (b) and shall have income brackets of not greater than $50 each—

(A) for earned income between $0 and $11,000, and

(B) for adjusted gross income between $6,500 and $11,000.

(g) Coordination with advance payments of earned income credit

(1) Recapture of excess advance payments

If any payment is made to the individual by an employer under section 3507 during any calendar year, then the tax imposed by this chapter for the individual's last taxable year beginning in such calendar year shall be increased by the aggregate amount of such payments.

(2) Reconciliation of payments advanced and credit allowed

Any increase in tax under paragraph (1) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit (other than the credit allowed by subsection (a)) allowable under this subpart.

(h) Reduction of credit to taxpayers subject to alternative minimum tax

The credit allowed under this section for the taxable year shall be reduced by the amount of tax imposed by section 55 (relating to alternative minimum tax for taxpayers other than corporations) with respect to such taxpayer for such taxable year.

(Added Pub. L. 94-12, title II, § 204(a), Mar. 29, 1975, 89 Stat. 30, § 43, and amended Pub. L. 94-164, § 2(c), Dec. 23, 1975, 89 Stat. 971; Pub. L. 94-455, title IV, § 401(c)(1)(B), (2), Oct. 4, 1976, 90 Stat. 1557; Pub. L. 95-600, title I, §§ 104(a)–(e), 105(a), Nov. 6, 1978, 92 Stat. 2772, 2773; Pub. L. 95-615, § 202(g)(5), formerly § 202(f)(5), Nov. 8, 1978, 92 Stat. 3100, redesignated and amended Pub. L. 96-222, title I, §§ 101(a)(1), (2)(E), 108(a)(1)(A), Apr. 1, 1980, 94 Stat. 194, 195, 223; Pub. L. 97-34, title I, §§ 111(b)(2), 112(b)(3), Aug. 13, 1981, 95 Stat. 194, 195; renumbered § 32 and amended Pub. L. 98-369, div. A, title IV, §§ 423(c)(3), 471(c), title X, § 1042(a)–(d)(2), July 18, 1984, 98 Stat. 801, 826, 1043.)

AMENDMENT OF SUBSECTION (c)(2)(A)(ii)

Pub. L. 98-21, title I, § 124(c)(4)(B), (d)(2), Apr. 20, 1983, 97 Stat. 91, provided that, applicable to taxable years beginning after Dec. 31, 1989, cl. (ii) of subsection (c)(2)(A) of this section is amended by inserting before the period ", but such net earnings shall be determined with regard to the deduction allowed to the taxpayer by section 164(f)".

PRIOR PROVISIONS

A prior section 32 was renumbered section 33 of this title.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 1042(a), substituted "11 percent" for "10 percent".

Subsec. (b)(1). Pub. L. 98-369, § 1042(d)(1), substituted "$550" for "$500".

Subsec. (b)(2). Pub. L. 98-369, § 1042(b), substituted "12 2/9 percent" for "12.5 percent" and "$6,500" for "$6,000".

Subsec. (c)(1)(A)(i). Pub. L. 98-369, § 423(c)(3)(A), inserted "or would be so entitled but for paragraph (2) or (4) of section 152(e)".

Subsec. (c)(1)(B). Pub. L. 98-369, § 423(c)(3)(B), substituted "as the individual for more than one-half of the taxable year" for "as the individual".

Subsec. (f)(2)(A). Pub. L. 98-369, § 1042(d)(2), substituted "between $0 and $11,000" for "between $0 and $10,000".

Subsec. (f)(2)(B). Pub. L. 98-369, § 1042(d)(2), substituted "between $6,500 and $11,000" for "between $6,000 and $10,000".

Subsec. (h). Pub. L. 98-369, § 1042(c), added subsec. (h).

1981—Subsec. (c)(1)(C). Pub. L. 97-34 struck out reference to section 913 in heading, substituted "relating to citizens or residents of the United States living abroad" for "relating to income earned by individuals in certain camps outside the United States in cl. (i), struck out cl. (ii) which made reference to section 913, and redesignated cl. (iii) as (ii).

1980—Subsec. (c)(1)(C). Pub. L. 96-222, § 101(a)(1), in heading substituted "who claims benefit of section 911, 913, or 931" for "entitled to exclude income under section 911" and in text substituted "claims the benefits of" for "is entitled to exclude any amounts from gross income under" and added reference to section 913 (relating to deduction for certain expenses of living abroad).

Subsecs. (g), (h). Pub. L. 96-222, § 101(a)(2)(E), redesignated subsec. (h) as (g).

1978—Subsec. (a). Pub. L. 95-600, § 104(a), substituted "subtitle" for "chapter" and "$5,000" for "$4,000".

Subsec. (b). Pub. L. 95-600, § 104(b), substituted provision limiting the allowable credit to an amount not to exceed the excess of $500 over 12.5 percent of so much of the adjusted gross income for the taxable year as exceeds $6,000 for provision limiting the allowable credit to an amount reduced by 10 percent of so much of the adjusted gross income for the taxable year as exceeds $4,000.

Subsec. (c)(1). Pub. L. 95-600, § 104(e), amended par. (1) generally, substituting in definition of eligible individual one who is married and is entitled to a deduction under section 151 for a child, provided the child has the same principal abode as the individual and the abode is in the United States, is a surviving spouse, or is a head of household, provided the household is in the United States for one who maintains a household in the United States which is the principal abode of that individual and a child of that individual who meets the requirements of section 151(e)(1)(B) or a child of that individual who is disabled within the meaning of section 72(m)(7) and to whom the individual is entitled to claim a deduction under section 151.

Subsec. (c)(1)(C). Pub. L. 95-615, § 202(f)(5), which directed the amendment of subsec. (c)(1)(B) by substituting "(relating to income earned by employees in certain camps)" for "(relating to earned income from sources without the United States)", was executed to subsec. (c)(1)(C) to reflect the probable intent of Congress and the general amendment of subsec. (c)(1) by Pub. L. 95-600 which enacted the provisions formerly contained in subsec. (c)(1)(B) in subsec. (c)(1)(C).

Subsec. (c)(2)(B). Pub. L. 95-600, § 104(d), redesignated cls. (ii) to (iv) as (i) to (iii), respectively. Former cl. (i), which provided that amounts be taken into account only if includible in the gross income of the taxpayer for the taxable year, was struck out.

Subsec. (f). Pub. L. 95-600, § 104(c), added subsec. (f).

Subsec. (h). Pub. L. 95-600, § 105(a), added subsec. (h).

1976—Subsec. (a). Pub. L. 94-455, § 401(c)(1)(B), substituted "is allowed" for "shall be allowed" and eliminated provisions relating to the application of the six-month rule.

Subsec. (b). Pub. L. 94-455, § 401(c)(1)(B), eliminated provisions relating to the application of the six-month rule.

Subsec. (c)(1)(A). Pub. L. 94-455, § 401(c)(2), among other changes, substituted "section 44A(f)(1)" for "section 214(b)(3)" and "if such child meets the requirements of section 151(e)(1)(B)" for "with respect to whom he is entitled to claim a deduction under section 151(e)(1)(B)" and added reference to a child of that individual who is disabled (within the meaning of section 72(m)(7)) and with respect to whom that individual is entitled to claim a deduction under section 151.

1975—Subsec. (a). Pub. L. 94-164 designated existing provisions as par. (1) and added par. (2).

Subsec. (b). Pub. L. 94-164 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(c)(3) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98-369, set out as a note under section 2 of this title.

Section 1042(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 32 and 3507 of this title] shall apply to taxable years beginning after December 31, 1984."

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable with respect to taxable years beginning after Dec. 31, 1981, see section 115 of Pub. L. 97-34, set out as a note under section 911 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Section 101(b)(1)(A) of Pub. L. 96-222 provided that: "The amendment made by subsection (a)(1) [amending subsec. (c)(1)(C) of this section] shall apply to taxable years beginning after December 31, 1977."

Section 201 of Pub. L. 96-222 provided that: "Except as otherwise provided in title I, any amendment made by title I [see Tables for classification] shall take effect as if it had been included in the provision of the Revenue Act of 1978 [Pub. L. 95-600, see Tables for classification] to which such amendment relates."

EFFECTIVE DATE OF 1978 AMENDMENT

Section 104(f) of Pub. L. 95-600 provided that: "The amendments made by this section [adding subsec. (f) and amending subsecs. (a), (b), and (c)(1), (2)(i) to (iv) of this section] shall apply to taxable years beginning after December 31, 1978."

Section 105(g)(1) of Pub. L. 95-600 provided that: "The amendments made by subsections (a) and (d) [adding subsec. (h) of this section and amending section 6012(a)(8) of this title] shall apply to taxable years beginning after December 31, 1978."

Section 105(g)(3) of Pub. L. 95-600 provided that: "Subsection (f) [amending a provision set out as a note below] shall take effect on the date of enactment of this Act [Nov. 6, 1978]."

EFFECTIVE DATE OF 1978 AMENDMENT; ELECTION OF PRIOR LAW

Amendment by Pub. L. 95-615 applicable to taxable years beginning after Dec. 31, 1977, with provision for election of prior law, see section 209 of Pub. L. 95-615, set out as a note under section 911 of this title.

EFFECTIVE AND TERMINATION DATES OF 1976 AMENDMENT

Section 401(e) of Pub. L. 94-455, as amended by Pub. L. 95-30, title I, § 103(c), May 23, 1977, 91 Stat. 139; Pub. L. 95-600, title I, § 103(b), Nov. 6, 1978, 92 Stat. 2771, provided that: "The amendments made by subsection (a) [amending sections 43 [now 32] and 6096(b) of this title] shall apply to taxable years ending after December 31, 1975, and shall cease to apply to taxable years ending after December 31, 1978. The amendments made by subsection (c) [amending subsecs. (a) to (c)(1)(A) of this section] shall apply to taxable years ending after December 31, 1975. The amendments made by subsection (b) [amending sections 141(b), (c) and 6012(a) of this title] shall apply to taxable years ending after December 31, 1975. The amendments made by subsection (d) [amending section 3402(a), (c), (m) of this title] shall apply to wages paid after September 14, 1976."

EFFECTIVE AND TERMINATION DATES OF 1975 AMENDMENTS

Section 2(g) of Pub. L. 94-164 as amended by Pub. L. 94-455, § 402(b), provided that: "The amendments made by this section [amending sections 43 [now 32], 141, 3402, and 6012 of this title and provisions set out as notes under sections 42 and 43 [now 32] of this title] (other than by subsection (d) [enacting provisions set out as a note under this section]) apply to taxable years ending after December 31, 1975, and before January 1, 1978. Subsection (d) applies to taxable years ending after December 31, 1975."

Section 209(b) of Pub. L. 94-12, as amended by Pub. L. 94-164, § 2(f), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94-455, title IV, § 401(c)(1)(A), Oct. 4, 1976, 90 Stat. 1557; Pub. L. 95-30, title I, § 103(b), May 23, 1977, 91 Stat. 139; Pub. L. 95-600, title I, § 103(a), Nov. 6, 1978, 92 Stat. 2771, provided that: "The amendments made by section 204 [enacting this section and amending sections 6201 and 6401 of this title] shall apply to taxable years beginning after December 31, 1974."

DISREGARD OF REFUND FOR DETERMINATION OF ELIGIBILITY FOR FEDERAL BENEFITS OR ASSISTANCE

Section 2(d) of Pub. L. 94-164 as amended by Pub. L. 94-455, title IV, § 402(a), Oct. 4, 1976, 90 Stat. 1558; Pub. L. 95-600, title I, § 105(f), Nov. 6, 1978, 92 Stat. 2776, provided that: "Any refund of Federal income taxes made to any individual by reason of section 43 [now 32] of the Internal Revenue Code of 1954 (relating to earned income credit), and any payment made by an employer under section 3507 of such Code (relating to advance payment of earned income credit) shall not be taken into account in any year ending before 1980 as income or receipts for purposes of determining the eligibility, for the month in which such refund is made or any month thereafter of such individual or any other individual for benefits or assistance, or the amount or extent of benefits or assistance, under any Federal program or under any State or local program financed in whole or in part with Federal funds, but only if such individual (or the family unit of which he is a member) is a recipient of benefits or assistance under such a program for the month before the month in which such refund is made."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 86, 129, 995, 3507, 6201, 6213, 6428 of this title; title 42 sections 602, 1382a, 1383.

§ 33. Tax withheld at source on nonresident aliens and foreign corporations

There shall be allowed as a credit against the tax imposed by this subtitle the amount of tax withheld at source under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and on foreign corporations).

(Aug. 16, 1954, ch. 736, 68A Stat. 13, § 32, renumbered § 33 and amended July 18, 1984, Pub. L. 98-369, div. A, title IV, §§ 471(c), 474(j), 98 Stat. 826, 832.)

PRIOR PROVISIONS

A prior section 33 was renumbered section 27 of this title.

AMENDMENTS

1984—Pub. L. 98-369, § 474(j), amended section generally, striking out "and on tax-free covenant bonds" following "foreign corporations" in the section heading and, in text, substituting "as a credit against the tax imposed by this subtitle" for "as credits against the tax imposed by this chapter", and striking out the designation "(1)" preceding "the amount of tax withheld", and ", and (2) the amount of tax withheld at source under subchapter B of chapter 3 (relating to interest on tax-free covenant bonds)" following "on foreign corporations)".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 475(b) of Pub. L. 98-369 provided that: "The amendments made by subsections (j) and (r)(29) [amending sections 12, 33, 164, 1441, 1442, 6049, and 7701 of this title and repealing section 1451 of this title] shall not apply with respect to obligations issued before January 1, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 874, 882, 921, 6211, 6401 of this title.

§ 34. Certain uses of gasoline and special fuels

(a) General rule

There shall be allowed as a credit against the tax imposed by this subtitle for the taxable year an amount equal to the sum of the amounts payable to the taxpayer—

(1) under section 6420 with respect to gasoline used during the taxable year on a farm for farming purposes (determined without regard to section 6420(g)),

(2) under section 6421 with respect to gasoline used during the taxable year (A) otherwise than as a fuel in a highway vehicle or (B) in vehicles while engaged in furnishing certain public passenger land transportation service (determined without regard to section 6421(i)), and

(3) under section 6427 with respect to fuels used for nontaxable purposes or resold during the taxable year (determined without regard to section 6427(j)).

(b) Exception

Credit shall not be allowed under subsection (a) for any amount payable under section 6421 or 6427, if a claim for such amount is timely filed and, under section 6421(i) or 6427(j), is payable under such section.

(Added Pub. L. 89-44, title VIII, 809(c), June 21, 1965, 79 Stat. 167, § 39, and amended Pub. L.

91-258, title II, § 207(c), May 21, 1970, 84 Stat. 248; Pub. L. 94-455, title XIX, §§ 1901(a)(3), 1906(b)(8), (9), Oct. 4, 1976, 90 Stat. 1764, 1834; Pub. L. 94-530, § 1(c)(1), Oct. 17, 1976, 90 Stat. 2487; Pub. L. 95-599, title V, § 505(c)(1), Nov. 6, 1978, 92 Stat. 2760; Pub. L. 95-618, title II, § 233(b)(2)(C), Nov. 9, 1978, 92 Stat. 3191; Pub. L. 96-223, title II, § 232(d)(4)(A), Apr. 2, 1980, 94 Stat. 278; Pub. L. 97-424, title V, § 515(b)(6)(A)-(C), Jan. 6, 1983, 96 Stat. 2181; renumbered § 34 and amended Pub. L. 98-369, div. A, title IV, § 471(c), title IX, § 911(d)(2)(A), July 18, 1984, 98 Stat. 826, 1006.)

Prior Provisions

A prior section 34, acts Aug. 16, 1954, ch. 736, 68A Stat. 13; June 25, 1959, Pub. L. 86-69, § 3(a)(1), 73 Stat. 139; Sept. 14, 1960, Pub. L. 86-779, § 10(e), 74 Stat. 1009; Feb. 26, 1964, Pub. L. 88-272, title II, § 201(a), 78 Stat. 31, relating to dividends received by individuals, was repealed by Pub. L. 88-272, title II, § 201(b), Feb. 26, 1964, 78 Stat. 31, effective with respect to dividends received after Dec. 31, 1964.

Amendments

1984—Subsec. (a)(3). Pub. L. 98-369, § 911(d)(2)(A), which directed the amendment of par. (4) by substituting "6427(j)" for "6427(i)" was executed to par. (3) to reflect the probable intent of Congress and the redesignation of par. (4) as (3) by Pub. L. 97-424.

Subsec. (b). Pub. L. 98-369, § 911(d)(2)(A), substituted "6427(j)" for "6427(i)".

1983—Pub. L. 97-424, § 515(b)(6)(C), in section catchline substituted "and special fuels" for ", special fuels, and lubricating oil" after "gasoline".

Subsec. (a)(2) to (4). Pub. L. 97-424, § 515(b)(6)(A), added "and" at end of par. (2), redesignated par. (4) as (3), and struck out former (3) which had referred to amounts payable to the taxpayer under section 6424 with respect to lubricating oil used during the taxable year for certain nontaxable purposes (determined without regard to section 6424(f)).

Subsec. (b). Pub. L. 97-424, § 515(b)(6)(B)(i), substituted "6421 or 6427" for "6421, 6424, or 6427" after "amount payable under".

Pub. L. 97-424, § 515(b)(6)(B)(ii), substituted "6421(i) or 6427(i)" for "6421(i), 6424(f), or 6427(i)" after "and, under".

1980—Subsec. (a)(4). Pub. L. 96-223 substituted "6427(i)" for "6427(h)".

Subsec. (b). Pub. L. 96-223 substituted "6427(i)" for "6427(h)".

1978—Subsec. (a)(3). Pub. L. 95-618 substituted "for certain nontaxable purposes" for "otherwise than in a highway motor vehicle".

Subsec. (a)(4). Pub. L. 95-599 substituted "6427(h)" for "6427(g)".

Subsec. (b). Pub. L. 95-599 substituted "6427(h)" for "6427(g)".

1976—Subsec. (a)(1). Pub. L. 94-455, § 1906(b)(8), substituted "6420(g)" for "6420(h)".

Subsec. (a)(3). Pub. L. 94-455, § 1906(b)(9), substituted "6424(f)" for "6424(g)".

Subsec. (a)(4). Pub. L. 94-530 substituted "6427(g)" for "6427(f)".

Subsec. (b). Pub. L. 94-530, which directed the amendment of subsec. (c) by substituting "6427(g)" for "6427(f)", was executed to subsec. (b) to reflect the probable intent of Congress and the redesignation of subsec. (c) as (b) by Pub. L. 94-455.

Pub. L. 94-455, § 1901(a)(3), redesignated subsec. (c) as (b), and in subsec. (b) as so redesignated, substituted "section 6421(i), 6424(f), or 6427(f), is payable" for "section 6421(i), 6424(g) or 6427(f) is payable". Former subsec. (b), relating to determination of taxpayers first taxable year with respect to tax credit for certain uses of gasoline and lubricating oil, was struck out.

Subsec. (c). Pub. L. 94-455, § 1901(a)(3), redesignated subsec. (c) as (b).

1970—Pub. L. 91-258, § 207(c)(1), inserted reference to special fuels in section catchline.

Subsec. (a)(4). Pub. L. 91-258, § 207(c)(2), added par. (4).

Subsec. (c). Pub. L. 91-258, § 207(c)(3), (4), inserted references to sections 6427 and 6427(f), respectively.

Effective Date of 1984 Amendment

Amendment by section 911(d)(2)(A) of Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

Effective Date of 1983 Amendment

Section 515(c) of Pub. L. 97-424 provided that: "The amendments made by this section [amending sections 39 [now 34], 874, 882, 4101, 4102, 4221, 4222, 6201, 6206, 6416, 6421, 6504, 6675, 7210, 7603 to 7605, 7609, and 7610 of this title and repealing sections 4091 to 4094 and 6424 of this title] shall apply with respect to articles sold after the date of the enactment of this Act [Jan. 6, 1983]."

Effective Date of 1980 Amendment

Amendment by Pub. L. 96-223 effective on Jan. 1, 1979, see section 232(h)(2) of Pub. L. 96-223, set out as a note under section 6427 of this title.

Effective Date of 1978 Amendments

Section 233(d) of Pub. L. 95-618 provided that: "The amendments made by this section [amending sections 39 [now 34], 4041, 4221, 4483, 6416, 6421, 6424, 6427, 6504, and 6675 of this title and amending a provision set out as a note under section 120 of Title 23, Highways] shall take effect on the first day of the first calendar month which begins more than 10 days after the date of the enactment of this Act [Nov. 9, 1978]."

Amendment by Pub. L. 95-599 effective Jan. 1, 1979, see section 505(d) of Pub. L. 95-599, set out as a note under section 6427 of this title.

Effective Date of 1976 Amendments

Amendment by Pub. L. 94-530 effective on Oct. 1, 1976, see section 1(d) of Pub. L. 94-530, set out as a note under section 4041 of this title.

Amendment of subsec (b) by section 1901(a)(3) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as a note under section 2 of this title.

Amendment of subsec. (a)(1), (3), by section 1906(b)(8), (9) of Pub. L. 94-455, to take effect on Feb. 1, 1977, see section 1906(d) of Pub. L. 94-455, set out as a note under section 6013 of this title.

Effective Date of 1970 Amendment

Amendment by Pub. L. 91-258 applicable with respect to taxable years ending after June 30, 1970, see section 211(b) of Pub. L. 91-258, set out as a note under section 4041 of this title.

Effective Date

Section applicable to taxable years beginning on or after July 1, 1965, see section 809(f) of Pub. L. 89-44, set out as an Effective Date of 1965 Amendment note under section 6420 of this title.

Section Referred to in Other Sections

This section is referred to in sections 874, 882, 921, 995, 1366, 1374, 1375, 6201, 6211, 6213, 6362, 6420, 6421, 6427, 9502, 9503 of this title.

§ 35. Overpayments of tax

For credit against the tax imposed by this subtitle for overpayments of tax, see section 6401.

(Aug. 16, 1954, ch. 736, 68A Stat. 16, § 38; renumbered § 39, Oct. 16, 1962, Pub. L. 87-834, § 2(a), 76 Stat. 962; renumbered § 40, June 21, 1965, Pub. L. 89-44, title VIII, § 809(c), 79 Stat. 167; renumbered § 42, Dec. 10, 1971, Pub. L. 92-178, title VI, § 601(a), 85 Stat. 553; renumbered § 43, Mar. 29, 1975, Pub. L. 94-12, title II, § 203(a), 89 Stat. 29; renumbered § 44, Mar. 29, 1975, Pub. L. 94-12, title II, § 204(a), 89 Stat. 30; renumbered § 45, Mar. 29, 1975, Pub. L. 94-12, title II, § 208(a), 89 Stat. 32; renumbered § 35, July 18, 1984, Pub. L. 98-369, div. A, title IV, § 471(c), 98 Stat. 826.)

PRIOR PROVISIONS

A prior section 35, acts Aug. 16, 1954, ch. 736, 68A Stat. 14; Sept. 2, 1958, Pub. L. 85-866, title I, § 41(b), 72 Stat. 1639; Feb. 26, 1964, Pub. L. 88-272, title II, § 201(d)(2), 78 Stat. 32, relating to partially tax-exempt interest received by individuals, was repealed by Pub. L. 94-455, title XIX, § 1901(a)(2), Oct. 4, 1976, 90 Stat. 1764, effective with respect to taxable years beginning after Dec. 31, 1976.

[§ 36. Repealed. Pub. L. 95-30, title I, § 101(d)(3), May 23, 1977, 91 Stat. 133]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 15; Oct. 4, 1976, Pub. L. 94-455, title V, § 501(b)(2), title X, § 1011(c), title XIX, § 1901(b)(1)(A), 90 Stat. 1558, 1611, 1790, directed that the credits provided by section 32 not be allowed if an individual elects under section 144 to take the standard deduction.

EFFECTIVE DATE OF REPEAL

Repeal applicable to taxable years beginning after Dec. 31, 1976, see section 106(a) of Pub. L. 95-30, set out as an Effective Date of 1977 Amendment note under section 1 of this title.

[§ 37. Renumbered § 22]

SUBPART D—BUSINESS RELATED CREDITS

Sec.
38. General business credit.
39. Carryback and carryforward of unused credits.
40. Alcohol used as fuel.
41. Employee stock ownership credit.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 471(b), July 18, 1984, 98 Stat. 826, added subpart D heading and the analysis of sections for subpart D, consisting of items 38 (new), 39 (new), 40 (formerly 44E), and 41 (formerly 44G). Former subpart D was redesignated F.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 47, 55, 56, 168, 6401 of this title.

§ 38. General business credit

(a) Allowance of credit

There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of—

(1) the business credit carryforwards carried to such taxable year,

(2) the amount of the current year business credit, plus

(3) the business credit carrybacks carried to such taxable year.

(b) Current year business credit

For purposes of this subpart, the amount of the current year business credit is the sum of the following credits determined for the taxable year:

(1) the investment credit determined under section 46(a),

(2) the targeted jobs credit determined under section 51(a),

(3) the alcohol fuels credit determined under section 40(a), plus

(4) the employee stock ownership credit determined under section 41(a).

(c) Limitation based on amount of tax

(1) In general

The credit allowed under subsection (a) for any taxable year shall not exceed the sum of—

(A) so much of the taxpayer's net tax liability for the taxable year as does not exceed $25,000, plus

(B) 85 percent of so much of the taxpayer's net tax liability for the taxable year as exceeds $25,000.

(2) Net tax liability

For purposes of paragraph (1), the term "net tax liability" means the tax liability (as defined in section 26(b)), reduced by the sum of the credits allowable under subparts A and B of this part.

(3) Special rules

(A) Married individuals

In the case of a husband or wife who files a separate return, the amount specified under subparagraphs (A) and (B) of paragraph (1) shall be $12,500 in lieu of $25,000. This subparagraph shall not apply if the spouse of the taxpayer has no business credit carryforward or carryback to, and has no current year business credit for, the taxable year of such spouse which ends within or with the taxpayer's taxable year.

(B) Controlled groups

In the case of a controlled group, the $25,000 amount specified under subparagraphs (A) and (B) of paragraph (1) shall be reduced for each component member of such group by apportioning $25,000 among the component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term "controlled group" has the meaning given to such term by section 1563(a).

(C) Limitations with respect to certain persons

In the case of a person described in subparagraph (A) or (B) of section 46(e)(1), the $25,000 amount specified under subparagraphs (A) and (B) of paragraph (1) shall equal such person's ratable share (as determined under section 46(e)(2)) of such amount.

(D) Estates and trusts

In the case of an estate or trust, the $25,000 amount specified under subparagraphs (A) and (B) of paragraph (1) shall be reduced to an amount which bears the same ratio to $25,000 as the portion of the income of the estate or trust which is not allocated to beneficiaries bears to the total income of the estate or trust.

(d) Special rules for certain regulated companies

In the case of any taxpayer to which section 46(f) applies, for purposes of sections 46(f), 47(a), 196(a), and 404(i) and any other provision of this title where it is necessary to ascertain the extent to which the credits determined under section 40(a), 41(a), 46(a), or 51(a) are used in a taxable year or as a carryback or carryforward, the order in which such credits are used shall be determined on the basis of the order in which they are listed in subsection (b).

(Added and amended Pub. L. 98-369, div. A, title IV, § 473, title VI, § 612(e)(1), July 18, 1984, 98 Stat. 827, 912.)

Prior Provisions

A prior section 38, added Pub. L. 87-834, § 2(a), Oct. 16, 1962, 76 Stat. 962, and amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, which related to investment in certain depreciable property, was repealed by Pub. L. 98-369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833.

Another prior section 38 was renumbered section 35 of this title.

Amendments

1984—Subsec. (c)(2). Pub. L. 98-369, § 612(e)(1), substituted "section 26(b)" for "section 25(b)".

Effective Date of 1984 Amendment

Amendment by section 612(e)(1) of Pub. L. 98-369 applicable to interest paid or accrued after December 31, 1984, on indebtedness incurred after December 31, 1984, see section 612(g) of Pub. L. 98-369, set out as an Effective Date note under section 25 of this title.

Effective Date

Section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

Accounting for Investment Credit in Certain Financial Reports and Reports to Federal Agencies

Pub. L. 92-178, title I, § 101(c), Dec. 10, 1971, 85 Stat. 499, as amended by Pub. L. 98-369, div. A, title IV, § 450(a), July 18, 1984, 98 Stat. 818, provided that:

"(1) In general.—It was the intent of Congress in enacting, in the Revenue Act of 1962 [see Short Title of 1962 Amendment note set out under section 1 of this title], the investment credit allowed by section 38 of the Internal Revenue Code of 1954, and it is the intent of the Congress in restoring that credit in this Act [section 50 of this title], to provide an incentive for modernization and growth of private industry. Accordingly, notwithstanding any other provision of law, on and after the date of the enactment of this Act [Dec. 10, 1971]—

"(A) no taxpayer shall be required to use, for purposes of financial reports subject to the jurisdiction of any Federal agency or reports made to any Federal agency, any particular method of accounting for the credit allowed by such section 38 [this section], and

"(B) a taxpayer shall disclose, in any such report, the method of accounting for such credit used by him for purposes of such report.

"(2) Exceptions.—Paragraph (1) shall not apply to taxpayers who are subject to the provisions of section 46(e) of the Internal Revenue Code of 1954 (as added by section 105(c) of this Act) or to section 203(e) of the Revenue Act of 1964 (as modified by section 105(e) of this Act) [set out as note below]."

[Section 450(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this note] shall take effect as if included in the Revenue Act of 1971."]

Section Referred to in Other Sections

This section is referred to in sections 29, 39, 40, 41, 46, 47, 48, 51, 52, 55, 56, 58, 108, 167, 168, 179, 185, 196, 280F, 291, 381, 404, 861, 863, 1016, 1351 of this title; title 12 sections 3604, 3607, 3613.

§ 39. Carryback and carryforward of unused credits

(a) In general

(1) 3-year carryback and 15-year carryforward

If the sum of the business credit carryforwards to the taxable year plus the amount of the current year business credit for the taxable year exceeds the amount of the limitation imposed by subsection (c) of section 38 for such taxable year (hereinafter in this section referred to as the "unused credit year"), such excess (to the extent attributable to the amount of the current year business credit) shall be—

(A) a business credit carryback to each of the 3 taxable years preceding the unused credit year, and

(B) a business credit carryforward to each of the 15 taxable years following the unused credit year,

and, subject to the limitations imposed by subsections (b) and (c), shall be taken into account under the provisions of section 38(a) in the manner provided in section 38(a).

(2) Amount carried to each year

(A) Entire amount carried to first year

The entire amount of the unused credit for an unused credit year shall be carried to the earliest of the 18 taxable years to which (by reason of paragraph (1)) such credit may be carried.

(B) Amount carried to other 17 years

The amount of the unused credit for the unused credit year shall be carried to each of the other 17 taxable years to the extent that such unused credit may not be taken into account under section 38(a) for a prior taxable year because of the limitations of subsections (b) and (c).

(b) Limitation on carrybacks

The amount of the unused credit which may be taken into account under section 38(a)(3) for any preceding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of—

(1) the amounts determined under paragraphs (1) and (2) of section 38(a) for such taxable year, plus

(2) the amounts which (by reason of this section) are carried back to such taxable year and are attributable to taxable years preceding the unused credit year.

(c) Limitation on carryforwards

The amount of the unused credit which may be taken into account under section 38(a)(1) for any succeeding taxable year shall not exceed the amount by which the limitation imposed by section 38(c) for such taxable year exceeds the sum of the amounts which, by reason of this section, are carried to such taxable year and are attributable to taxable years preceding the unused credit year.

(d) Transitional rules

(1) Carryforwards

(A) In general

Any carryforward from an unused credit year under section 46, 50A, 53, 44E, or 44G [1] which has not expired before the beginning of the first taxable year beginning after December 31, 1983, shall be aggregated with other such carryforwards from such unused credit year and shall be a business credit carryforward to each taxable year beginning after December 31, 1983, which is 1 of the first 15 taxable years after such unused credit year.

(B) Amount carried forward

The amount carried forward under subparagraph (A) to any taxable year shall be properly reduced for any amount allowable as a credit with respect to such carryforward for any taxable year before the year to which it is being carried.

(2) Carrybacks

In determining the amount allowable as a credit for any taxable year beginning before January 1, 1984, as the result of the carryback of a general business tax credit from a taxable year beginning after December 31, 1983—

(A) paragraph (1) of subsection (b) shall be applied as if it read as follows:

"(1) the sum of the credits allowable for such taxable year under sections 38, 40, 44B, 44E, and 44G [1] (as in effect before enactment of the Tax Reform Act of 1984), plus", and

(B) for purposes of section 38(c) the net tax liability for such taxable year shall be the tax liability (as so defined in section 25(b)) [1] reduced by the sum of the credits allowable for such taxable year under sections 33, 37, 41, 44A, 44C, 44D, 44F, and 44H [1] (as so in effect).

(Added Pub. L. 98-369, div. A, title IV, § 473, July 18, 1984, 98 Stat. 828.)

REFERENCES IN TEXT

Sections 38, 40, 44B, 50A, and 53, referred to in subsec. (d)(1)(A), (2)(A), were repealed by section 474(m), (p)(8) of Pub. L. 98-369. A new section 38 was enacted by section 473 of Pub. L. 98-369 and former section 44E was renumbered section 40 by section 471(c)(1) of Pub. L. 98-369.

Sections 33, 37, 41, 44A, 44C, 44D, 44E, 44F, 44G, and 44H, referred to in subsec. (d)(1)(A), (2), were renumbered sections 27, 22, 24, 21, 23, 29, 40, 30, 41, and 28, respectively, and former section 32 was renumbered section 33, by section 471(c)(1) of Pub. L. 98-369.

The Tax Reform Act of 1984, referred to in subsec. (d)(2)(A), is division A [§§ 5-1082] of Pub. L. 98-369, July 18, 1984, 98 Stat. 494-1057. For complete classification of this Act to the Code, see Tables.

Section 25, referred to in subsec. (d)(2)(B), was added by section 472 of Pub. L. 98-369 and was renumbered section 26 by section 612(a) of Pub. L. 98-369.

PRIOR PROVISIONS

A prior section 39 was renumbered section 34 of this title.

Another prior section 39 was renumbered section 35 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40, 47, 48, 196, 383, 404, 6411, 6428, 6511 of this title.

§ 40. Alcohol used as fuel

(a) General rule

For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of—

(1) the alcohol mixture credit, plus

(2) the alcohol credit.

(b) Definition of alcohol mixture credit and alcohol credit

For purposes of this section—

(1) Alcohol mixture credit

(A) In general

The alcohol mixture credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol used by the taxpayer in the production of a qualified mixture.

(B) Qualified mixture

The term "qualified mixture" means a mixture of alcohol and gasoline or of alcohol and a special fuel which—

(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

(ii) is used as a fuel by the taxpayer producing such mixture.

(C) Sale or use must be in trade or business, etc.

Alcohol used in the production of a qualified mixture shall be taken into account—

(i) only if the sale or use described in subparagraph (B) is in a trade or business of the taxpayer, and

(ii) for the taxable year in which such sale or use occurs.

(D) Casual off-farm production not eligible

No credit shall be allowed under this section with respect to any casual off-farm production of a qualified mixture.

(2) Alcohol credit

(A) In general

The alcohol credit of any taxpayer for any taxable year is 60 cents for each gallon of alcohol which is not in a mixture with gasoline or a special fuel (other than any denaturant) and which during the taxable year—

---

[1] See References in Text note below.

(i) is used by the taxpayer as a fuel in a trade or business, or

(ii) is sold by the taxpayer at retail to a person and placed in the fuel tank of such person's vehicle.

(B) User credit not to apply to alcohol sold at retail

No credit shall be allowed under subparagraph (A)(i) with respect to any alcohol which was sold in a retail sale described in subparagraph (A)(ii).

(3) Smaller credit for lower proof alcohol

In the case of any alcohol with a proof which is at least 150 but less than 190, paragraphs (1)(A) and (2)(A) shall be applied by substituting "45 cents" for "60 cents".

(4) Adding of denaturants not treated as mixture

The adding of any denaturant to alcohol shall not be treated as the production of a mixture.

(c) Coordination with exemption from excise tax

The amount of the credit determined under this section with respect to any alcohol shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such alcohol solely by reason of the application of subsection (b)(2), (k), or (m) of section 4041 or section 4081(c).

(d) Definitions and special rules

For purposes of this section—

(1) Alcohol defined

(A) In general

The term "alcohol" includes methanol and ethanol but does not include—

(i) alcohol produced from petroleum, natural gas, or coal (including peat), or

(ii) alcohol with a proof of less than 150.

(B) Determination of proof

The determination of the proof of any alcohol shall be made without regard to any added denaturants.

(2) Special fuel defined

The term "special fuel" includes any liquid fuel (other than gasoline) which is suitable for use in an internal combustion engine.

(3) Mixture or alcohol not used as a fuel, etc.

(A) Mixtures

If—

(i) any credit was determined under this section with respect to alcohol used in the production of any qualified mixture, and

(ii) any person—

(I) separates the alcohol from the mixture, or

(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of alcohol in such mixture.

(B) Alcohol

If—

(i) any credit was determined under this section with respect to the retail sale of any alcohol, and

(ii) any person mixes such alcohol or uses such alcohol other than as a fuel,

then there is hereby imposed on such person a tax equal to 60 cents a gallon (45 cents in the case of alcohol with a proof less than 190) for each gallon of such alcohol.

(C) Applicable laws

All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) or (B) as if such tax were imposed by section 4081 and not by this chapter.

(4) Volume of alcohol

For purposes of determining—

(A) under subsection (a) the number of gallons of alcohol with respect to which a credit is allowable under subsection (a), or

(B) under section 4041(k) or 4081(c) the percentage of any mixture which consists of alcohol,

the volume of alcohol shall include the volume of any denaturant (including gasoline) which is added under any formulas approved by the Secretary to the extent that such denaturants do not exceed 5 percent of the volume of such alcohol (including denaturants).

(5) Pass-thru in the case of estates and trusts

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

(e) Termination

(1) In general

This section shall not apply to any sale or use after December 31, 1992.

(2) No carryovers to years after 1994

No amount may be carried under section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart) to any taxable year beginning after December 31, 1994.

(f) Election to have alcohol fuels credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election

An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election

An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(Added Pub. L. 96-223, title II, § 232(b)(1), Apr. 2, 1980, 94 Stat. 273, § 44E, and amended Pub. L. 97-34, title II § 207(c)(3), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97-354, § 5(a)(2), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97-424, title V, § 511(b)(2), (d)(3), Jan. 6, 1983, 96 Stat. 2170, 2171; renumbered § 40 and amended Pub. L. 98-369, div. A, title IV, §§ 471(c), 474(k), title IX, §§ 912(c), (f), 913(b), July 18, 1984, 98 Stat. 826, 832, 1007, 1008.)

Prior Provisions

A prior section 40, added Pub. L. 92-178, title VI, § 601(a), Dec. 10, 1971, 85 Stat. 553, and amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, which related to the allowance as a credit of expenses of work incentive programs, was repealed by Pub. L. 98-369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833.

Another prior section 40 was renumbered section 35 of this title.

Amendments

1984—Subsec. (a). Pub. L. 98-369, § 474(k)(1), substituted "For purposes of section 38, the alcohol fuels credit determined under this section for the taxable year is an amount equal to the sum of" for "There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the sum of" in introductory provisions.

Subsec. (b)(1)(A), (2)(A). Pub. L. 98-369, § 912(c)(1), substituted "60 cents" for "50 cents".

Subsec. (b)(3). Pub. L. 98-369, § 912(c), substituted "45 cents" for "37.5 cents" and "60 cents" for "50 cents".

Subsec. (c). Pub. L. 98-369, § 913(b), substituted "(b)(2), (k), or (m)" for "(b)(2) or (k)".

Pub. L. 98-369, § 474(k)(2), substituted "the credit determined under this section" for "the credit allowable under this section".

Subsec. (d)(1)(A)(i). Pub. L. 98-369, § 912(f), substituted "coal (including peat)" for "coal".

Subsec. (d)(3)(A). Pub. L. 98-369, § 912(c), substituted "60 cents" for "50 cents" and "45 cents" for "37.5 cents".

Subsec. (d)(3)(A)(i). Pub. L. 98-369, § 474(k)(3), substituted "credit was determined" for "credit was allowable".

Subsec. (d)(3)(B). Pub. L. 98-369, § 912(c), substituted "60 cents" for "50 cents" and "45 cents" for "37.5 cents".

Subsec. (d)(3)(B)(i). Pub. L. 98-369, § 474(k)(3), substituted "credit was determined" for "credit was allowable".

Subsec. (e). Pub. L. 98-369, § 474(k)(4), redesignated subsec. (f) as (e). Former subsec. (e), which had placed a limitation based on the amount of tax, was struck out.

Subsec. (e)(2). Pub. L. 98-369, § 474(k)(5), substituted "section 39 by reason of this section (treating the amount allowed by reason of this section as the first amount allowed by this subpart)" for "subsection (e)(2)".

Subsec. (f). Pub. L. 98-369, § 474(k)(6), added subsec. (f). Former subsec. (f) redesignated (e).

1983—Subsec. (b)(1)(A), (2)(A). Pub. L. 97-424, § 511(d)(3)(A), substituted "50 cents" for "40 cents".

Subsec. (b)(3). Pub. L. 97-424, § 511(d)(3), substituted "50 cents" for "40 cents" and "37.5 cents" for "30 cents".

Subsec. (c). Pub. L. 97-424, § 511(b)(2), substituted "subsection (b)(2) or (k) of section 4041 or section 4081(c)" for "section 4041(k) or 4081(c)" after "reason of the application of".

Subsec. (d)(3)(A), (B). Pub. L. 97-424, § 511(d)(3), substituted "50 cents" for "40 cents" and "37.5 cents" for "30 cents".

1982—Subsec. (d)(5). Pub. L. 97-354 substituted "Pass-thru in the case of estates and trusts" for "Pass-through in the case of subchapter S corporations, etc." in par. heading, and substituted provisions relating to the applicability of rules similar to rules of subsec. (d) of section 52 for provisions relating to the applicability of rules similar to rules of subsecs. (d) and (e) of section 52.

1981—Subsec. (e)(2)(A). Pub. L. 97-34 substituted "15" for "7" in two places, and "14" for "6" in one place.

Effective Date of 1984 Amendment

Amendment by section 474(k) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 912(g) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 40, 4041, 4081, and 6427 of this title] shall take effect on January 1, 1985."

Amendment by section 913(b) of Pub. L. 98-369 effective Aug. 1, 1984, see section 913(c) of Pub. L. 98-369, set out as a note under section 4041 of this title.

Effective Date of 1983 Amendment

Amendments by section 511 of Pub. L. 97-424 effective Apr. 1, 1983, see section 511(h) of Pub. L. 97-424, set out as a note under section 4041 of this title.

Effective Date of 1982 Amendment

Amendment by Pub. L. 97-354 applicable to taxable years beginning after Dec. 31, 1982, see section 6(a) of Pub. L. 97-354, set out as an Effective Date note under section 1361 of this title.

Effective Date of 1981 Amendment

Amendment by Pub. L. 97-34 applicable to unused credit years ending after Sept. 30, 1980, see section 209(c)(2)(C) of Pub. L. 97-34, set out as an Effective Date note under section 168 of this title.

Effective Date

Section 232(h)(1), (4), of Pub. L. 96-223, as amended by Pub. L. 97-448, title II, § 202(e), Jan. 12, 1983, 96 Stat. 2396, provided that:

"(1) The amendments made by subsections (b) and (c) [enacting sections 44E [now 40] and 86 of this title and amending sections 55, 381, 383, 4081, and 6096 of this title] shall apply to sales or uses after September 30, 1980, in taxable years ending after such date.

"(4) Notwithstanding paragraph (1), the provisions of section 44E(d)(4)(B) [now 40(d)(4)(B)] of such Code, as added by this section, shall take effect on April 2, 1980."

Section Referred to in Other Sections

This section is referred to in sections 38, 87, 196 of this title.

§ 41. Employee stock ownership credit

(a) General rule

(1) Amount of credit

In the case of a corporation which elects to have this section apply for the taxable year and which meets the requirements of subsection (c)(1), for purposes of section 38, the amount of the employee stock ownership credit determined under this section for the taxable year is an amount equal to the amount of the credit determined under paragraph (2) for such taxable year.

(2) Determination of amount

(A) In general

The amount of the credit determined under this paragraph for the taxable year shall be equal to the lesser of—

(i) the aggregate value of employer securities transferred by the corporation for the taxable year to a tax credit employee stock ownership plan maintained by the corporation, or

(ii) the applicable percentage of the amount of the aggregate compensation (within the meaning of section 415(c)(3)) paid or accrued during the taxable year to all employees under a tax credit employee stock ownership plan.

(B) Applicable percentage

For purposes of applying subparagraph (A)(ii), the applicable percentage shall be determined in accordance with the following table:

For aggregate compensation paid or accrued during a portion of the taxable year occurring in calendar year:	*The applicable percentage is:*
1983, 1984, 1985, 1986, or 1987	0.5
1988 or thereafter	0.

(b) Certain regulated companies

No credit attributable to compensation taken into account for the ratemaking purposes involved shall be determined under this section with respect to a taxpayer if—

(1) the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by reason of any portion of such credit which results from the transfer of employer securities or cash to a tax credit employee stock ownership plan which meets the requirements of section 409;

(2) the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of such credit which results from a transfer described in paragraph (1) to such employee stock ownership plan; or

(3) any portion of the amount of such credit which results from a transfer described in paragraph (1) to such employee stock ownership plan is treated for ratemaking purposes in any way other than as though it had been contributed by the taxpayer's common shareholders.

Under regulations prescribed by the Secretary, rules similar to the rules of paragraphs (4) and (7) of section 46(f) shall apply for purposes of the preceding sentence.

(c) Definitions and special rules

(1) Requirements for corporation

A corporation meets the requirements of this paragraph if it—

(A) establishes a plan—

(i) which meets the requirements of section 409, and

(ii) under which no more than one-third of the employer contributions for the taxable year are allocated to the group of employees consisting of—

(I) officers,

(II) shareholders owning more than 10 percent of the employer's stock (within the meaning of section 415(c)(6)(B)(iv)), or

(III) employees described in section 415(c)(6)(B)(iii), and

(B) agrees, as a condition for the allowance of the credit allowed by this subsection—

(i) to make transfers of employer securities to a tax credit employee stock ownership plan maintained by the corporation having an aggregate value of not more than the applicable percentage for the taxable year (determined under subsection (a)(2)) of the amount of the aggregate compensation (within the meaning of section 415(c)(3)) paid or accrued by the corporation during the taxable year, and

(ii) to make such transfers at the times prescribed in paragraph (2).

(2) Times for making transfers

The transfers required under paragraph (1)(B) shall be made not later than 30 days after the due date (including extensions) for filing the return for the taxable year.

(3) Adjustments to credit

If the credit determined under this section is reduced by a final determination, the employer may reduce the amount required to be transferred to the tax credit employee stock ownership plan under paragraph (1)(B) for the taxable year in which the final determination occurs or any succeeding taxable year by an amount equal to such reduction to the extent such reduction is not taken into account in any deduction allowed under section 404(i)(2).

(4) Certain contributions of cash treated as contributions of employer securities

For purposes of this section, a transfer of cash shall be treated as a transfer of employer securities if the cash is, under the tax credit employee stock ownership plan, used within 30 days to purchase employer securities.

(5) Disallowance of deduction

Except as provided in section 404(i), no deduction shall be allowed under section 162, 212, or 404 for amounts required to be transferred to a tax credit employee stock ownership plan under this section.

(6) Employer securities

For purposes of this section, the term "employer securities" has the meaning given such term in section 409(*l*).

(7) Value

For purposes of this section, the term "value" means—

(A) in the case of securities listed on a national exchange, the average of closing prices of such securities for the 20 consecutive trading days immediately preceding the date on which the securities are contributed to the plan, or

(B) in the case of securities not listed on a national exchange, the fair market value as determined in good faith and in accordance with regulations prescribed by the Secretary.

(Added Pub. L. 97-34, title III, § 331(a), Aug. 13, 1981, 95 Stat. 289, § 44G, amended Pub. L. 97-448, title I, § 103(g)(1), Jan. 12, 1983, 96 Stat. 2379; renumbered § 41 and amended Pub. L. 98-369, div. A, title I, § 14, title IV, §§ 471(c), 474(*l*), 491(e)(2), (3), July 18, 1984, 98 Stat. 505, 826, 833, 852, 853.)

PRIOR PROVISIONS

A prior section 41 was renumbered section 24 of this title.

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 474(*l*)(1), substituted "Amount of credit" for "Credit allowed" in heading and, in text, substituted "for purposes of section 38, the amount of the employee stock ownership credit determined under this section for the taxable year is an amount equal to the amount" for "there is allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the amount".

Subsec. (a)(2)(B). Pub. L. 98-369, § 14, amended the table by substituting an item setting an applicable percentage of 0.5 for calendar years 1983, 1984, 1985, 1986, or 1987 for former items which had set applicable percentages of 0.5 for calendar years 1983 and 1984 and 0.75 for calendar years 1985, 1986, and 1987.

Subsec. (b). Pub. L. 98-369, § 474(*l*)(2), amended subsec. (b) generally, substituting provisions setting out three situations under which no credit attributable to compensation taken into account for ratemaking purposes involved shall be determined under this section for former provisions which had set limitations based on the amount of tax.

Subsec. (c)(1)(A)(i). Pub. L. 98-369, § 491(e)(2), substituted "section 409" for "section 409A".

Subsec. (c)(3). Pub. L. 98-369, § 474(*l*)(3), substituted "the credit determined under this section" for "the credit allowed under this section".

Subsec. (c)(6). Pub. L. 98-369, § 491(e)(3), substituted "409(*l*)" for "409A(1)".

1983—Subsec. (b)(3). Pub. L. 97-448 substituted "No credit attributable to compensation taken into account for the ratemaking purposes involved" for "No credit" in the provisions preceding subpar. (A), and following subpar. (C) added provision that under regulations prescribed by the Secretary rules similar to the rules of paragraphs (4) and (7) of section 46(f) shall apply for purposes of the preceding sentence.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 14 of Pub. L. 98-369 applicable to taxable years ending after Dec. 31, 1983, but not applicable in the case of a tax credit employee stock ownership plan if (1) such plan was favorably approved on Sept. 23, 1983, by employees, and (2) not later than Jan. 11, 1984, the employer of such employees was 100 percent owned by such plan, see section 18 of Pub. L. 98-369, set out as a note under section 48 of this title.

Amendment by section 474(*l*) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 491(f)(3) of Pub. L. 98-369 provided that: "The amendments made by subsection (e) [redesignating section 409A as section 409 of this title and amending sections 41, 401, 415, 4975, and 6699 of this title] shall take effect on January 1, 1984."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by title I of Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section 331(f)(1) of Pub. L. 97-34 provided that: "The amendments made by subsection (a) [enacting this section] shall apply to aggregate compensation (within the meaning of section 415(c)(3) of the Internal Revenue Code of 1954), paid or accrued after December 31, 1982, in taxable years ending after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38, 56, 108, 401, 404, 409, 6699.

[§ 42. Omitted]

CODIFICATION

Section, added Pub. L. 94-12, title II, § 203(a), Mar. 29, 1975, 89 Stat. 29, and amended Pub. L. 94-164, § 3(a)(1), Dec. 23, 1975, 89 Stat. 972; Pub. L. 94-455, title IV, § 401(a)(2)(A), (B), title V, § 503(b)(4), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1555, 1562, 1834; Pub. L. 95-30, title I, § 101(c), May 23, 1977, 91 Stat. 132, which related to the general tax credit allowed to individuals in an amount equal to the greater of (1) 2% of taxable income not exceeding $9,000 or (2) $35 multiplied by each exemption the taxpayer was entitled to, expired Dec. 31, 1978 pursuant to the terms of: (1) Pub. L. 94-12, § 209(a) as amended by Pub. L. 94-164, § 2(e), set out as an Effective and Termination Dates of 1975 Amendment note under section 56 of this title; (2) Pub. L. 94-164, § 3(b) as amended by Pub. L. 94-455, § 401(a)(1) and Pub. L. 95-30, § 103(a); and (3) Pub. L. 94-455, § 401(e), as amended by Pub. L. 95-30, § 103(c) and Pub. L. 95-600, title I, § 103(b), Nov. 6, 1978, 92 Stat. 2771, set out as an Effective and Termination Dates of 1976 Amendment note under section 32 of this title.

A prior section 42 was renumbered section 35 of this title.

[§ 43. Renumbered § 32]

PRIOR PROVISIONS

Another prior section 43 was renumbered section 34 of this title.

[§ 44. Repealed. Pub. L. 98-369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833]

Section, added Pub. L. 94-12, title II, § 208(a), Mar. 29, 1975, 89 Stat. 32, and amended Pub. L. 94-45, title IV, § 401(a), June 30, 1975, 89 Stat. 243; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to the purchase of a new principal residence.

A prior section 44 was renumbered section 35 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

[§ 44A. Renumbered § 21]

[§ 44B. Repealed. Pub. L. 98-369, div. A, title IV, § 474(m)(1), July 18, 1984, 98 Stat. 833]

Section, added Pub. L. 95-30, title II, § 202(a), May 23, 1977, 91 Stat. 141, and amended Pub. L. 95-600, title III, § 321(b)(1), Nov. 6, 1978, 92 Stat. 2835; Pub. L. 96-222, title I, § 103(a)(6)(G)(i), (ii), Apr. 1, 1980, 94 Stat. 210, related to a credit for the employment of certain new employees.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

[§ 44C. Renumbered § 23]

[§ 44D. Renumbered § 29]

[§ 44E. Renumbered § 40]

[§ 44F. Renumbered § 30]

[§ 44G. Renumbered § 41]

[§ 44H. Renumbered § 28]

[§ 45. Renumbered § 35]

SUBPART E—RULES FOR COMPUTING CREDIT FOR INVESTMENT IN CERTAIN DEPRECIABLE PROPERTY

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 474(n)(1), July 18, 1984, 98 Stat. 833, substituted "E" for "B" as the subpart designation.

§ 46. Amount of credit

(a) Amount of investment credit

For purposes of section 38, the amount of the investment credit determined under this section for any taxable year shall be an amount equal to the sum of the following percentages of the qualified investment (as determined under subsections (c) and (d)):

(1) the regular percentage,

(2) in the case of energy property, the energy percentage, and

(3) in the case of that portion of the basis of any property which is attributable to qualified rehabilitation expenditures, the rehabilitation percentage.

(b) Determination of percentages

For purposes of subsection (a)—

(1) Regular percentage

The regular percentage is 10 percent.

(2) Energy percentage

(A) In general

The energy percentage shall be determined in accordance with the following table:

Column A—Description	Column B—Percentage	Column C—Period	
		For the period:	
In the case of:	The energy percentage is:	Beginning on:	And ending on:
(i) GENERAL RULE.—Property not described in any of the following provisions of this column.	10 percent	Oct. 1, 1978	Dec. 31, 1982
(ii) SOLAR WIND, OR GEOTHERMAL PROPERTY.—Property described in section 48(*l*)(2)(A)(ii) or 48(*l*)(3)(A)(viii).	A. 10 percent B. 15 percent	Oct. 1, 1978 Jan. 1, 1980	Dec. 31, 1979. Dec. 31, 1985
(iii) OCEAN THERMAL PROPERTY.—Property described in section 48(*l*)(3)(A)(ix).	15 percent	Jan. 1, 1980	Dec. 31, 1985
(iv) QUALIFIED HYDROELECTRIC GENERATING PROPERTY.—Property described in section 48(*l*)(2)(A)(vii).	11 percent	Jan. 1, 1980	Dec. 31, 1985
(v) QUALIFIED INTERCITY BUSES.—Property described in section 48(*l*)(2)(A)(ix).	10 percent	Jan. 1, 1980	Dec. 31, 1985
(vi) BIOMASS PROPERTY.—Property described in section 48(*l*)(15).	10 percent	Oct. 1, 1978	Dec. 31, 1985
(vii) CHLOR-ALKALI ELECTROLYTIC CELLS.—Property described in section 48(*l*)(5)(M).	10 percent	Jan. 1, 1980	Dec. 31, 1982

(B) Periods for which percentage not specified

In the case of any energy property, the energy percentage shall be zero for any period for which an energy percentage is not specified for such property under subparagraph (A) (as modified by subparagraphs (C) and (D)).

(C) Longer period for certain long-term projects

For the purpose of applying the energy percentage contained in clause (i) of subparagraph (A) with respect to property which is part of a project with a normal construction period of 2 years or more (within the meaning of subsection (d)(2)(A)(i)), "December 31, 1990" shall be substituted for "December 31, 1982" if—

(i) before January 1, 1983, all engineering studies in connection with the commencement of the construction of the project have been completed and all environmental and construction permits required under Federal, State, or local law in connection with the commencement of the construction of the project have been applied for, and

(ii) before January 1, 1986, the taxpayer has entered into binding contracts for the acquisition, construction, reconstruction, or erection of equipment specially designed for the project and the aggregate cost to the taxpayer of that equipment is at least 50 percent of the reasonably estimated cost for all such equipment which is to be placed in service as part of the project upon its completion.

(D) Longer period for certain hydroelectric generating property

If an application has been docketed by the Federal Energy Regulatory Commission before January 1, 1986, with respect to the installation of any qualified hydroelectric generating property, for purposes of applying the energy percentage contained in clause (iv) of subparagraph (A) with respect to such property, "December 31, 1988" shall be substituted for "December 31, 1985".

(3) Special rule for certain energy property

The regular percentage shall not apply to any energy property which, but for section 48(*l*)(1), would not be section 38 property. In the case of any qualified hydroelectric generating property which is a fish passageway, the preceding sentence shall not apply to any period after 1979 for which the energy percentage for such property is greater than zero.

(4) Rehabilitation percentage

(A) In general

In the case of qualified rehabilitation expenditures with respect to a:	The rehabilitation percentage is:
30-year building	15
40-year building	20
Certified historic structure	25.

(B) Regular and energy percentages not to apply

The regular percentages and the energy percentages shall not apply to that portion of the basis of any property which is attributable to qualified rehabilitation expenditures.

(C) Definitions

For purpose of this paragraph—

(i) 30-year building

The term "30-year building" means a qualified rehabilitated building other than a 40-year building and other than a certified historic structure.

(ii) 40-year building

The term "40-year building" means a qualified rehabilitated building (other than a certified historic structure) which would meet the requirements of section 48(g)(1)(B) if "40" were substituted for "30" each place it appears in subparagraph (B) thereof.

(iii) Certified historic structure

The term "certified historic structure" means a qualified rehabilitated building which meets the requirements of section 48(g)(3).

(c) Qualified investment

[*See main edition for text of (1) to (6)*]

(7) Applicable percentage for recovery property

Notwithstanding paragraph (2), the applicable percentage for purposes of paragraph (1) shall be—

(A) in the case of recovery property other than 3-year property (within the meaning of section 168(c)), 100 percent, and

(B) in the case of 3-year property (within the meaning of section 168(c)), 60 percent.

For purposes of subparagraph (A), RRB replacement property (within the meaning of section 168(f)(3)(B)) shall be treated as property which is not 3-year property.

(8) Certain nonrecourse financing excluded from credit base

(A) Limitation

The credit base of any property to which this paragraph applies shall be reduced by the nonqualified nonrecourse financing with respect to such property (as of the close of the taxable year in which placed in service).

(B) Property to which paragraph applies

This paragraph applies to any property which—

(i) is placed in service during the taxable year by a taxpayer described in section 465(a)(1), and

(ii) is used in connection with an activity with respect to which any loss is subject to limitation under section 465.

(C) Credit base defined

For purposes of this paragraph, the term "credit base" means—

(i) in the case of new section 38 property, the basis of the property, or

(ii) in the case of used section 38 property, the cost of such property.

(D) Nonqualified nonrecourse financing

(i) In general

For purposes of this paragraph and paragraph (9), the term "nonqualified nonrecourse financing" means any nonrecourse financing which is not qualified commercial financing.

(ii) Qualified commercial financing

For purposes of this paragraph, the term "qualified commercial financing" means any financing with respect to any property if—

(I) such property is acquired by the taxpayer from a person who is not a related person,

(II) the amount of the nonrecourse financing with respect to such property does not exceed 80 percent of the credit base of such property, and

(III) such financing is borrowed from a qualified person or represents a loan from any Federal, State, or local government or instrumentality thereof, or is guaranteed by any Federal, State, or local government.

Such term shall not include any convertible debt.

(iii) Nonrecourse financing

For purposes of this subparagraph, the term "nonrecourse financing" includes—

(I) any amount with respect to which the taxpayer is protected against loss through guarantees, stop-loss agreements, or other similar arrangements, and

(II) except to the extent provided in regulations, any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a related person to a person (other than the taxpayer) having such an interest.

In the case of amounts borrowed by a corporation from a shareholder, subclause (II) shall not apply to an interest as a shareholder.

(iv) Qualified person

For purposes of this paragraph, the term "qualified person" means any person which is actively and regularly engaged in the business of lending money and which is not—

(I) a related person with respect to the taxpayer,

(II) a person from which the taxpayer acquired the property (or a related person to such person), or

(III) a person who receives a fee with respect to the taxpayer's investment in the property (or a related person to such person).

(v) Related person

For purposes of clause (i), the term "related person" has the meaning given such term by section 168(e)(4). Except as otherwise provided in regulations prescribed by the Secretary, the determination of whether a person is a related person shall be made as of the close of the taxable year in which the property is placed in service.

(E) Application to partnerships and S corporations

For purposes of this paragraph and paragraph (9)—

(i) In general

Except as otherwise provided in this subparagraph, in the case of any partnership or S corporation, the determination of whether a partner's or shareholder's allocable share of any financing is nonqualified nonrecourse financing shall be made at the partner or shareholder level.

(ii) Special rule for certain recourse financing of S corporation

A shareholder of an S corporation shall be treated as liable for his allocable share of any financing provided by a qualified person to such corporation if—

(I) such financing is recourse financing (determined at the corporate level), and

(II) such financing is provided with respect to qualified business property of such corporation.

(iii) Qualified business property

For purposes of clause (ii), the term "qualified business property" means any property if—

(I) such property is used by the corporation in the active conduct of a trade or business,

(II) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time employees who were not owner-employees (as defined in section 465(c)(7)(E)(i)) and substantially all the services of whom were services directly related to such trade or business, and

(III) during the entire 12-month period ending on the last day of such taxable year, such corporation had at least 1 full-time employee substantially all of the services of whom were in the active management of the trade or business.

Such term shall not include any master sound recording or other tangible or intangible asset associated with literary, artistic, or musical properties.

(iv) Determination of allocable share

The determination of any partner's or shareholder's allocable share of any financing shall be made in the same manner as the credit allowable by section 38 with respect to such property.

(F) Special rule for certain energy property

(i) In general

Subparagraph (A) shall not apply with respect to qualified energy property.

(ii) Qualified energy property

The term "qualified energy property" means energy property to which (but for this subparagraph) subparagraph (A) applies and—

(I) which is described in clause (iii),

(II) with respect to which the energy percentage determined under subsection (b)(2) at the time such property is placed in service is greater than zero,

(III) as of the close of the taxable year in which the property is placed in service, not more than 75 percent of the basis of such property is attributable to nonqualified nonrecourse financing, and

(IV) with respect to which any nonqualified nonrecourse financing in connection with such property consists of a level payment loan.

For purposes of subclause (II), the energy percentage for property described in clause (iii)(V) shall be treated as being greater than zero during any period the energy percentage for property described in section 48(*l*)(14) is greater than zero.

[*See main edition for text of* (*iii*) *and* (*iv*)]

(9) Subsequent decreases in nonqualified nonrecourse financing with respect to the property

(A) In general

If, at the close of a taxable year following the taxable year in which the property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be taken into account as additional qualified investment in such property in accordance with subparagraph (C).

(B) Certain transactions not taken into account

For purposes of this paragraph, nonqualified nonrecourse financing shall not be treated as decreased through the surrender or other use of property financed by nonqualified nonrecourse financing.

(C) Manner in which taken into account

(i) Credit determined by reference to taxable year property placed in service

For purposes of determining the amount of credit allowable under section 38 and the amount of credit subject to the early disposition or cessation rules under section 47, any increase in a taxpayer's qualified investment in property by reason of this paragraph shall be deemed to be additional qualified investment made by the taxpayer in the year in which the property referred to in subparagraph (A) was first placed in service.

(ii) Credit allowed for year of decrease in nonqualified nonrecourse financing

Any credit allowable under this subpart for any increase in qualified investment by reason of this paragraph shall be treated as earned during the taxable year of the decrease in the amount of nonqualified nonrecourse financing.

[*See main edition for text of* (*d*)]

(e) Limitations with respect to certain persons

(1) In general

In the case of—

[*See main edition for text of* (*A*) *and* (*B*)]

the qualified investment shall equal such person's ratable share of such qualified investment.

(2) Ratable share

For purposes of paragraph (1), the ratable share of any person for any taxable year of qualified investment shall be—

[*See main edition for text of* (*A*) *and* (*B*)]

For purposes of subparagraph (B) of the preceding sentence, the term "taxable income" means in the case of a regulated investment company its investment company taxable income (within the meaning of section 852(b)(2)), and in the case of a real estate investment trust its real estate investment trust taxable income (within the meaning of section 857(b)(2)) determined without regard to any deduction for capital gains dividends (as defined in section 857(b)(3)(C)) and by excluding any net capital gain.

[*See main edition for text of* (*3*)]

(4) Special rules where section 593 organization is lessee

(A) In general

For purposes of paragraph (1)(A), if an organization described in section 593 is the lessee of any section 38 property, the lessor of such property shall be treated as an organization described in section 593 with respect to such property.

(B) Exception for short-term leases

This paragraph shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(j)(6)).

(C) Election not to have subparagraph (A) apply

Subparagraph (A) shall not apply for any taxable year to an organization described in section 593 if such organization elects to compute for such year and all subsequent taxable years the amount of the deduction for a reasonable addition to a reserve for bad debts on the basis of actual experience. Any such election shall apply to any successor organization engaged in substantially similar activities and, once made, shall be irrevocable.

(f) Limitation in case of certain regulated companies

(1) General rule

Except as otherwise provided in this subsection, no credit determined under subsection (a) shall be allowed by section 38 with respect to any property described in section 50 (as in effect before its repeal by the Revenue Act of 1978) which is public utility property (as defined in paragraph (5)) of the taxpayer—

(A) Cost of service reduction

If the taxpayer's cost of service for ratemaking purposes is reduced by reason of any portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection); or

(B) Rate base reduction

If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection).

Subparagraph (B) shall not apply if the reduction in the rate base is restored not less rapidly than ratably. If the taxpayer makes an election under this sentence within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, the immediately preceding sentence shall not apply to property described in paragraph (5)(B) if any agency or instrumentality of the United States having jurisdiction for ratemaking purposes with respect to such taxpayer's trade or business referred to in paragraph (5)(B) determines that the natural domestic supply of the product furnished by the taxpayer in the course of such trade or business is insufficient to meet the present and future requirements of the domestic economy.

(2) Special rule for ratable flow-through

If the taxpayer makes an election under this paragraph within 90 days after the date of the enactment of this paragraph in the manner prescribed by the Secretary, paragraph (1) shall not apply, but no credit determined under subsection (a) shall be allowed by section 38 with respect to any property described in section 50 (as in effect before its repeal by the Revenue Act of 1978) which is public utility property (as defined in paragraph (5)) of the taxpayer—

(A) Cost of service reduction

If the taxpayer's cost of service for ratemaking purposes or in its regulated books of account is reduced by more than a ratable portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection), or

(B) Rate base reduction

If the base to which the taxpayer's rate of return for ratemaking purposes is applied is reduced by reason of any portion of the credit determined under subsection (a) and allowable by section 38 (determined without regard to this subsection).

[*See main edition for text of* (*3*)]

(4) Limitation

[*See main edition for text of* (*A*)]

(B) Determinations

For purposes of this paragraph, a determination is a determination made with respect to public utility property (to which this subsection applies) by a governmental unit, agency, instrumentality, or commission or similar body described in subsection (c)(3)(B) which determines the effect of the credit determined under subsection (a) and allowed by section 38 (determined without regard to this subsection)—

[*See main edition for text of* (*i*) *and* (*ii*), (*C*), (*5*) *to* (*7*)]

(8) Prohibition of immediate flowthrough

An election made under paragraph (3) shall apply only to the amount of the credit determined under subsection (a) and allowable under section 38 with respect to public utility property (within the meaning of the first sentence of subsection (c)(3)(B)) determined as if the Tax Reduction Act of 1975, the Tax Reform Act of 1976, the Energy Tax Act of 1978, and the Revenue Act of 1978 had not been enacted. Any taxpayer who had timely made an election under paragraph (3) may, at his own option and without regard to any requirement imposed by an agency described in subsection (c)(3)(B), elect within 90 days after the date of the enactment of the Tax Reduction Act of 1975 (in such manner as the Secretary shall prescribe) to have the provisions of paragraph (3) apply with respect to the amount of the credit determined under subsection (a) and allowable under section 38 with respect to such property which is in excess of the amount determined under the preceding sentence. If such taxpayer does not make such an election, paragraph (1) or (2) (whichever paragraph is applicable without regard to this paragraph) shall apply to such excess credit, except that if neither paragraph (1) nor (2) is applicable (without regard to this paragraph), paragraph (1) shall apply unless the taxpayer elects (in such manner as the Secretary shall prescribe) within 90 days after the date of the enactment of the Tax Reduction Act of 1975 to have the provisions of paragraph (2) apply. The provisions of this paragraph shall not be applied to disallow such excess credit before the first final determination which is inconsistent with such requirements is made, determined in the same manner as under paragraph (4).

[*See main edition for text of* (*9*) *and* (*10*)]

(g) 50 percent credit in the case of certain vessels

[*See main edition for text of* (*1*)]

(2) Amount of credit

For purposes of paragraph (1), the amount of the qualified investment shall be 50 percent of the applicable percentage of the qualified withdrawal referred to in paragraph (1), or the amount of the qualified progress expenditures shall be 50 percent of such withdrawal, as the case may be. For purposes of determining the amount of the credit allowable by reason of this subsection for any taxable year, the limitation of section 38(c) shall be determined without regard to subsection (d)(1)(A) of such section 607.

[*See main edition for text of* (*3*) *to* (*6*)]

(h) Special rules for cooperatives

In the case of a cooperative organization described in section 1381(a)—

(1) that portion of the credit determined under subsection (a) and allowable to the organization under section 38 which the organization cannot use for the taxable year to which the qualified investment is attributable because of the limitation contained in section 38(c) shall be allocated to the patrons of the organization,

[*See main edition for text of* (*2*) *and* (*3*)]

(Added Pub. L. 87-834, § 2(b), Oct. 16, 1962, 76 Stat. 963, and amended Pub. L. 88-272, title II, § 201(d)(4), Feb. 26, 1964, 78 Stat. 32; Pub. L. 89-384, § 1(c)(1), Apr. 8, 1966, 80 Stat. 102; Pub. L. 89-389, § 2(b)(5), Apr. 14, 1966, 80 Stat. 114; Pub. L. 89-800, § 3, Nov. 8, 1966, 80 Stat. 1514; Pub. L. 90-225, § 2(a), Dec. 27, 1967, 81 Stat. 731; Pub. L. 91-172, title III, § 301(b)(4), title IV, § 401(e)(1), title VII, § 703(b), Dec. 30, 1969, 83 Stat. 585, 603, 666; Pub. L. 92-178, title I,

§§ 102(a)(1), (b), 105(a)-(c), 106(a)-(c), 107(a)(1), 108(a), Dec. 10, 1971, 85 Stat. 499, 503, 506, 507; Pub. L. 93-406, title II, §§ 2001(g)(2)(B), 2002(g)(2), 2005(c)(4), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94-12, title III, § 301(a), (b)(1)-(3), 302(a), (b)(1), Mar. 29, 1975, 89 Stat. 36, 37, 40, 43; Pub. L. 94-455, title V, § 503(b)(4), title VIII, §§ 802(a), (b)(1)-(5), 803(a), (b)(1), 805(a), title XVI, § 1607(b)(1)(B), title XVII, §§ 1701(b), 1703, title XIX, §§ 1901(a)(4), (b)(1)(C), 1906(b)(13)(A), title XXI, § 2112(a)(2), Oct. 4, 1976, 90 Stat. 1562, 1580-1584, 1596, 1756, 1759, 1761, 1764, 1790, 1834, 1905; Pub. L. 95-600, title I, § 141(e), (f)(2), title III, §§ 311(a), (c), 312(a), (b), (c)(2), 313(a), 316(a), (b)(1), (2), title VII, § 703(a)(1), (2), Nov. 6, 1978, 92 Stat. 2794, 2795, 2824-2826, 2829, 2939; Pub. L. 95-618, title II, § 241(a), title III, § 301(a), (c)(1), Nov. 9, 1978, 92 Stat. 3192, 3194, 3195, 3199; Pub. L. 96-222, title I, §§ 101(a)(7)(A), (L)(iii)(I), (v)(I), (M)(i), 103(a)(2)(A), (B)(i)-(iii), (3), (4)(A), 107(a)(3)(A), Apr. 1, 1980, 94 Stat. 197, 200, 201, 208, 209, 223; Pub. L. 96-223, title II, §§ 221(a), 222(e)(2), 223(b)(1), Apr. 2, 1980, 94 Stat. 260, 263, 266; Pub. L. 97-34, title II, §§ 207(c)(1), 211(a)(1), (b), (d), (e)(1), (2), (f)(1), 212(a)(1), (2), title III, §§ 302(c)(3), (d)(1), 332(a), Aug. 13, 1981, 95 Stat. 225, 227-229, 235, 236, 272, 274, 296; Pub. L. 97-248, title II, § 201(d)(8)(A), formerly § 201(c)(8)(A), §§ 205(b), 265(b)(2)(A)(i), Sept. 3, 1982, 96 Stat. 420, 430, 547, redesignated Pub. L. 97-448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; Pub. L. 97-354, § 5(a)(4)-(6), Oct. 19, 1982, 96 Stat. 1692; Pub. L. 97-424, title V, §§ 541(b), 546(b), Jan. 6, 1983, 96 Stat. 2192, 2199; Pub. L. 97-448, title I, § 102(e)(1), (f)(5), title II, § 202(f), Jan. 12, 1983, 96 Stat. 2370, 2372, 2396; (As amended Pub. L. 98-21, title I, § 122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98-369, div. A, title I, §§ 16(a), 31(f), 113(b)(2)(B), title IV, §§ 431(a), (b)(1), (d)(1)-(3), 474(*o*)(1)-(7), title VII, § 713(c)(1)(C), July 18, 1984, 98 Stat. 505, 521, 637, 805, 807, 810, 834, 836, 957.)

REFERENCES IN TEXT

Section 409A, referred to in subsec. (f)(9)(A), was renumbered section 409 of this title by section 491(e)(1) of Pub. L. 98-369.

Section 607 of the Merchant Marine Act, 1936, referred to in subsec. (g)(1), (5) is section 607 of act June 29, 1936, ch. 858, 49 Stat. 2005, which is classified to section 1177 of Title 46, Appendix, Shipping.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 474(*o*)(1), amended subsec. (a) generally, so as to contain provisions relating to amount of investment credit, which formerly constituted only par. (2)(A)(i), (ii), and (iv) of subsec. (a).

Subsec. (a)(4). Pub. L. 98-369, § 713(c)(1)(C), substituted "premature distributions to key employees" for "premature distributions to owner-employees".

Subsec. (b). Pub. L. 98-369, § 474(*o*)(1), amended subsec. (b) generally, substituting provisions relating to determination of percentages for purposes of subsec. (a), for provisions relating to carryback and carryover of unused credits.

Subsec. (c)(7)(A). Pub. L. 98-369, § 13(b)(2)(B), inserted "recovery" before first reference to "property".

Subsec. (c)(8). Pub. L. 98-369, § 431(a), substituted "Certain nonrecourse financing excluded from credit base" for "Limitation to amount at risk" in heading.

Subsec. (c)(8)(A). Pub. L. 98-369, § 431(a), substituted provisions reducing the credit base of any property to which this paragraph applies by the nonqualified nonrecourse financing with respect to such property for provisions relating to limitation of the basis to the amount at risk in the case of new or used section 38 property placed in service during the taxable year by a taxpayer described in section 465(a)(1) and used in connection with an activity with respect to which any loss was subject to limitation under section 465.

Subsec. (c)(8)(B). Pub. L. 98-369, § 431(a), substituted provisions relating to the property to which this paragraph applies for provisions defining the term "at risk" and stating the circumstances under which a taxpayer would be considered to be at risk for purposes of this paragraph.

Subsec. (c)(8)(C). Pub. L. 98-369, § 431(a), substituted provisions defining "credit base" for provisions relating to a special rule for partnerships and subchapter S corporations.

Subsec. (c)(8)(D). Pub. L. 98-369, § 431(a), substituted provisions defining "nonqualified nonrecourse financing" for provisions defining "qualified person".

Subsec. (c)(8)(D)(i)(I). Pub. L. 98-369, § 16(a), repealed amendments made by Pub. L. 97-34, § 302(c). See 1981 Amendment note below.

Subsec. (c)(8)(E). Pub. L. 98-369, § 431(a), substituted provisions relating to the application of this paragraph to partnerships and subchapter S corporations for provisions defining "related person".

Subsec. (c)(8)(F)(i). Pub. L. 98-369, § 431(d)(1), substituted provisions that subpar. (A) shall not apply with respect to qualified energy property for provisions that subpar. (A) would not apply to amounts borrowed with respect to qualified energy property (other than amounts described in subpar. (B)).

Subsec. (c)(8)(F)(ii)(II). Pub. L. 98-369, § 474(*o*)(2), substituted "subsection (b)(2)" for "section 46(a)(2)(C)".

Subsec. (c)(8)(F)(ii)(III). Pub. L. 98-369, § 431(d)(2), substituted provisions that qualified energy property means energy property to which (but for this subpar.) subpar. (A) applies and not more than 75 percent of the basis of which is attributable to nonqualified nonrecourse financing for provisions that qualified energy property meant energy property to which (but for this subpar.) subpar. (A) applied and with respect to which the taxpayer was at risk (within the meaning of section 465(b) without regard to par. (5) thereof) in an amount equal to at least 25 percent of the basis of the property.

Subsec. (c)(8)(F)(ii)(IV). Pub. L. 98-369, § 431(d)(3), substituted "nonqualified nonrecourse financing" for "nonrecourse financing (other than financing described in section 46(c)(8)(B)(ii))".

Subsec. (c)(9). Pub. L. 98-369, § 431(b)(1), substituted provisions relating to subsequent decreases in nonqualified nonrecourse financing with respect to the property for provisions relating to subsequent increases in the taxpayer's amount at risk with respect to the property.

Subsec. (e)(1). Pub. L. 98-369, § 474(*o*)(3)(A), struck out "and the $25,000 amount specified under subparagraphs (A) and (B) of subsection (a)(3)", and substituted "such qualified investment" for "such items", in the provisions following subpar. (B).

Subsec. (e)(2). Pub. L. 98-369, § 474(*o*)(3)(B), substituted "qualified investment" for "the items described therein" in introductory provisions.

Subsec. (e)(4). Pub. L. 98-369, § 31(b), added par. (4).

Subsec. (f)(1). Pub. L. 98-369, § 474(*o*)(4)(A), substituted "no credit determined under subsection (a) shall be allowed by section 38" for "no credit shall be allowed by section 38" in introductory provisions.

Subsec. (f)(1)(A), (B). Pub. L. 98-369, § 474(*o*)(4)(B), substituted "the credit determined under subsection (a) and allowable by section 38" for "the credit allowable by section 38".

Subsec. (f)(2). Pub. L. 98-369, § 474(o)(4)(A), substituted "no credit determined under subsection (a) shall be allowed by section 38" for "no credit shall be allowed by section 38" in introductory provisions.

Subsec. (f)(2)(A), (B). Pub. L. 98-369, § 474(o)(4)(B), substituted "the credit determined under subsection (a) and allowable by section 38" for "the credit allowable by section 38".

Subsec. (f)(4)(B). Pub. L. 98-369, § 474(o)(4)(C), substituted "the credit determined under subsection (a) and allowed by section 38" for "the credit allowed by section 38" in introductory provisions.

Subsec. (f)(8). Pub. L. 98-369, § 474(o)(5), substituted "the credit determined under subsection (a) and allowable under section 38" for "the credit allowable under section 38" in two places, and "(within the meaning of the first sentence of subsection (c)(3)(B))" for "(within the meaning of subsection (a)(7)(C))".

Subsec. (g)(2). Pub. L. 98-369, § 474(o)(6), substituted "the limitation of section 38(c)" for "the limitation of subsection (a)(3)".

Subsec. (h)(1). Pub. L. 98-369, § 474(o)(7), substituted "the credit determined under subsection (a) and allowable to the organization under section 38" for "the credit allowable to the organization under section 38" and "the limitation contained in section 38(c)" for "the limitation contained in subsection (a)(3)".

1983—Subsec. (a)(4)(B). Pub. L. 98-21 substituted "relating to credit for the elderly and the permanently and totally disabled" for "relating to credit for the elderly".

1981—Subsec. (c)(8)(D)(i)(I). Pub. L. 97-34, § 302(c)(3), (d)(1), provided that, applicable to taxable years beginning after Dec. 31, 1984, subsection (c)(8)(D)(i)(I) of this section (relating to limitation to amount at risk) is amended by striking out "clause (i), (ii), or (iii) of subparagraph (A) or subparagraph (B) of section 128(c)(2)" and inserting in lieu thereof "subparagraph (A) or (B) of section 128(c)(1)". Section 16(a) of Pub. L. 98-369, repealed section 302(c) of Pub. L. 97-34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

Effective Date of 1984 Amendment

Amendment by section 16 of Pub. L. 98-369 applicable to taxable years ending after Dec. 31, 1983, see section 16(a) of Pub. L. 98-369, set out as a note under section 48 of this title.

Enactment of subsec. (e)(4) of this section by section 31(f) of Pub. L. 98-369 effective, except as otherwise provided in section 31(g) of Pub. L. 98-369, as to property placed in service by the taxpayer after Nov. 5, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before Nov. 5, 1983, if the lease to the organization described in section 593 of this title is entered into after Nov. 5, 1983, see section 31(g)(1), (14) of Pub. L. 98-369, set out as a note under section 168 of this title.

Amendment of subsec. (c)(7)(A) by section 113(b)(2)(B) of Pub. L. 98-369 applicable as if included in the amendments by sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97-34, which amended this section and enacted section 168 of this title, see section 113(c)(2)(B) of Pub. L. 98-369, set out as a note under section 168 of this title.

Section 431(e) of Pub. L. 98-369 provided:

"(1) In general.—The amendments made by this section [amending sections 46, 47, and 48 of this title] shall apply to property placed in service after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date; except that such amendments shall not apply to any property to which the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981 [section 211(f) of Pub. L. 97-34, which enacted subsec. (c)(8), (9) of this section and section 47(d) of this title] do not apply.

"(2) Amendments may be elected retroactively.—At the election of the taxpayer, the amendments made by this section shall apply as if included in the amendments made by section 211(f) of the Economic Recovery Tax Act of 1981. Any election made under the preceding sentence shall apply to all property of the taxpayer to which the amendments made by such section 211(f) apply and shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe."

Amendment by section 474(o)(1)-(7) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 713 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Effective Date of 1983 Amendments

Amendment by section 122 of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

Clarification of Effect of 1984 Amendment on Investment Tax Credit

Section 475(c) of Pub. L. 98-369 provided that: "Nothing in the amendments made by section 474(o) [amending sections 46 to 48 of this title] shall be construed as reducing the amount of any credit allowable for qualified investment in taxable years beginning before January 1, 1984."

Section Referred to in Other Sections

This section is referred to in sections 38, 41, 47, 48, 52, 58, 111, 124, 168, 179, 196, 275, 280F, 291, 1033, 1388, 6621 of this title.

§ 47. Certain dispositions, etc., of section 38 property

(a) General rule

Under regulations prescribed by the Secretary—

[See main edition for text of (1) to (4)]

(5) Special rules for recovery property

[See main edition for text of (A) to (C)]

(D) Limitation

The tax for the taxable year shall be increased under subparagraph (A) only with respect to the credits allowed under section 38 which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carrybacks and carryovers under section 39 shall be appropriately adjusted. If, prior to a disposition to which this subsection applies, any portion of any credit is not allowable with respect to any property by reason of section 168(i)(3), such portion shall be treated (for purposes of this subparagraph) as not having been used to reduce tax liability.

[See main edition for text of (E)]

(6) Carrybacks and carryovers adjusted

In the case of any cessation described in paragraph (1), (3), or (6) or any change in use described in paragraph (2) or (4), the carrybacks and carryovers under section 39 shall be adjusted by reason of such cessation (or change in use).

(7) Aircraft used outside the United States after April 18, 1969

[*See main edition for text of* (*A*) *and* (*B*)]

(C) Qualifying lease defined

For purposes of subparagraph (A) the term "qualifying lease" means a lease from an air carrier (as defined in section 101 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301)) which complies with the provisions of the Federal Aviation Act of 1958, as amended, and the rules and regulations promulgated by the Secretary of Transportation thereunder, but only if such lease was executed after April 18, 1969.

[*See main edition for text of* (*8*); (*b*)]

(c) Special rule

Any increase in tax under subsection (a) shall not be treated as tax imposed by this chapter for purposes of determining the amount of any credit allowable under subpart A, B, or D.

(d) Increases in nonqualified nonrecourse financing

(1) In general

If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8)) with respect to any property to which section 46(c)(8) applied, then the tax under this chapter for such taxable year shall be increased by an amount equal to the aggregate decrease in credits allowed under section 38 for all prior taxable years which would have resulted from reducing the qualified investment taken into account with respect to such property by the amount of such net increase.

(2) Transfers of debt more than 1 year after initial borrowing not treated as increasing nonqualified nonrecourse financing

For purposes of paragraph (1), the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8)(D)) with respect to the taxpayer shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of an indebtedness if such transfer occurs (or such agreement is entered into) more than 1 year after the date such indebtedness was incurred.

(3) Special rules for certain energy property

(A) In general

In the case of the second taxable year following the taxable year in which any qualified energy property (within the meaning of section 46(c)(8)(F)) is placed in service by the taxpayer and any succeeding taxable year, the taxpayer, for purposes of paragraph (1), shall be treated as increasing the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8)) with respect to such property for such taxable year in an amount equal to the credit recapture amount (if any).

(B) Credit recapture amount

For purposes of this paragraph, the term "credit recapture amount" means an amount equal to the excess (if any) of—

(i) the total amount of principal to be paid as of the close of any taxable year under a nonrecourse level payment loan (as defined in section 46(c)(8)(F)(iv)) with respect to such property, over

[*See main edition for text of* (*ii*), (*C*) *to* (*G*)]

(e) Transfers between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041—

(1) subsection (a) of this section shall not apply, and

(2) the same tax treatment under this section with respect to the transferred property shall apply to the transferee as would have applied to the transferor.

(As amended Pub. L. 98-369, div. A, title IV, §§ 421(b)(7), 431(b)(2), (d)(4), (5), 474(*o*)(8), (9), July 18, 1984, 98 Stat. 794, 807, 810, 836; Pub. L. 98-443, § 9(p), Oct. 4, 1984, 98 Stat. 1708.)

AMENDMENTS

1984—Subsec. (a)(5)(D), (6). Pub. L. 98-369, § 474(*o*)(8), substituted "under section 39" for "under section 46(b)".

Subsec. (a)(7)(C). Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

Subsec. (c). Pub. L. 98-369, § 474(*o*)(9), substituted "subpart A, B, or D" for "subpart A".

Subsec. (d). Pub. L. 98-369, § 431(b)(2), substituted "Increases in nonqualified nonrecourse financing" for "Property ceasing to be at risk" in catchline.

Subsec. (d)(1). Pub. L. 98-369, § 431(b)(2), substituted provisions relating to increases in tax liability resulting from increases in nonqualified nonrecourse financing for provisions relating to increases in tax liability resulting from the taxpayer ceasing to be at risk with respect to certain property.

Subsec. (d)(2). Pub. L. 98-369, § 431(b)(2), substituted provisions that for purposes of par. (1), transfers of debt, or agreements to transfer, occurring more than one year after the initial borrowing shall not be treated as increasing nonqualified nonrecourse financing with respect to the taxpayer for provisions that for purposes of par. (1), such transfers (or agreements to transfer) by a qualified person to a nonqualified person would not cause the taxpayer to be treated as ceasing to be at risk.

Subsec. (d)(3)(A). Pub. L. 98-369, § 431(d)(4), substituted "increasing the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8))" for "ceasing to be at risk".

Subsec. (d)(3)(B)(i). Pub. L. 98-369, § 431(d)(5), struck out "other than a loan described in section 46(c)(8)(B)(ii)" after "section 46(c)(8)(F)(iv)".

Subsec. (e). Pub. L. 98-369, § 421(b)(7), added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

Enactment of subsec. (e) by section 421(b)(7) of Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 431 of Pub. L. 98-369 applicable to property placed in service after July 18, 1984, in taxable years ending after such date, but not applicable to property to which subsec. (d) of this section and section 46(c)(8), (9) of this title, as enacted by section 211(f) of Pub. L. 97-34, do not apply, with the taxpayer having an option to elect retroactive application of amendment by Pub. L. 98-369, see section 431(e) of Pub. L. 98-369, set out as a note under section 46 of this title.

Amendment by section 474(*o*)(8), (9) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Clarification of Effect of 1984 Amendment on Investment Tax Credit

For provision that nothing in the amendments made by section 474(*o*) of Pub. L. 98-369, which amended this section, be construed as reducing the investment tax credit in taxable years beginning before Jan. 1, 1984, see section 475(c) of Pub. L. 98-369, set out as a note under section 46 of this title.

Section Referred to in Other Sections

This section is referred to in sections 29, 38, 46, 48, 55, 58, 291, 1371, 1393 of this title.

§ 48. Definitions; special rules

(a) Section 38 property

[*See main edition for text of (1) to (5)*]

(5) Property used by governmental units or foreign persons or entities

(A) In general

Property used—

(i) by the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing, or

(ii) by any foreign person or entity (as defined in section 168(j)(4)(C)), but only with respect to property to which section 168(j)(4)(A)(iii) applies (determined after the application of section 168(j)(4)(B)),

shall not be treated as section 38 property.

(B) Exception for short-term leases

(i) In general

This paragraph and paragraph (4) shall not apply to any property by reason of use under a lease with a term of less than 6 months (determined under section 168(j)(6)).

(ii) Exception for certain oil drilling property and certain containers

For purposes of this paragraph and paragraph (4), clause (i) shall be applied by substituting the lease term limitation in section 168(j)(3)(C)(ii) for the lease term limitation in clause (i) in the case of property which is leased to a foreign person or entity and—

(I) which is used in offshore drilling for oil and gas (including drilling vessels, barges, platforms, and drilling equipment) and support vessels with respect to such property, or

(II) which is a container described in section 48(a)(2)(B)(v) (without regard to whether such container is used outside the United States) or container chassis or trailer but only if such container, chassis, or trailer has a present class life of not more than 6 years.

(iii) Exception for certain aircraft

(I) In general

In the case of any aircraft used under a qualifying lease (as defined in section 47(a)(7)(C)) and which is leased to a foreign person or entity before January 1, 1990, clause (i) shall be applied by substituting "3 years" for "6 months".

(II) Recapture period extended

For purposes of applying subparagraph (B) of section 47(a)(5) and paragraph (1) of section 47(a), there shall not be taken into account any period of a lease to which subclause (I) applies.

(C) Exception for qualified rehabilitated buildings leased to governments, etc.

If any qualified rehabilitated building is leased to a governmental unit (or a foreign person or entity), this paragraph shall not apply to that portion of the basis of such building which is attributable to qualified rehabilitation expenditures.

(D) Cross reference

For provisions providing special rules for the application of this paragraph and paragraph (4), see section 168(j).

[*See main edition for text of (6) to (10)*]

(b) New section 38 property

For purposes of this subpart—

(1) In general

The term "new section 38 property" means section 38 property the original use of which commences with the taxpayer.

(2) Special rule for sale-leasebacks

For purposes of paragraph (1), in the case of any section 38 property which—

(A) is originally placed in service by a person, and

(B) is sold and leased back by such person, or is leased to such person, within 3 months of the date such property was originally placed in service,

such property shall be treated as originally placed in service not earlier than the date on which such property is used under the lease.

(3) Special rule for energy property

The principles of paragraph (2) shall be applicable in determining whether the original use of property commences with the taxpayer for purposes of section 48(*l*)(2)(B)(ii).

(c) Used section 38 property

[*See main edition for text of* (*1*)]

(2) Dollar limitation

(A) In general

The cost of used section 38 property taken into account under section 46(c)(1)(B) for any taxable year shall not exceed $125,000 ($150,000 for taxable years beginning after 1987). If such cost exceeds $125,000 (or $150,000 as the case may be), the taxpayer shall select (at such time and in such manner as the Secretary shall by regulations prescribe) the items to be taken into account, but only to the extent of an aggregate cost of $125,000 (or $150,000). Such a selection, once made, may be changed only in the manner, and to the extent, provided by such regulations.

(B) Married individuals

In the case of a husband or wife who files a separate return, the limitation under subparagraph (A) shall be $62,500 ($75,000 for taxable years beginning after 1987). This subparagraph shall not apply if the spouse of the taxpayer has no used section 38 property which may be taken into account as qualified investment for the taxable year of such spouse which ends within or with the taxpayer's taxable year.

[*See main edition for text of* (*C*) *and* (*D*)]

(3) Definitions

For purposes of this subsection—

[*See main edition for text of* (*A*)]

(B) Cost

The cost of used section 38 property does not include so much of the basis of such property as is determined by reference to the adjusted basis of other property held at any time by the person acquiring such property. If property is disposed of (other than by reason of its destruction or damage by fire, storm, shipwreck, or other casualty, or its theft) and used section 38 property similar or related in service or use is acquired as a replacement therefor in a transaction to which the preceding sentence does not apply, the cost of the used section 38 property acquired shall be its basis reduced by the adjusted basis of the property replaced. The cost of used section 38 property shall not be reduced with respect to the adjusted basis of any property disposed of it, by reason of section 47, such disposition involved an increase of tax or a reduction of the unused credit carrybacks or carryovers described in section 39.

[*See main edition for text of* (*C*)]

(d) Certain leased property

(1) General rule

A person (other than a person referred to in section 46(e)(1)) who is a lessor of property may (at such time, in such manner, and subject to such conditions as are provided by regulations prescribed by the Secretary) elect with respect to any new section 38 property (other than property described in paragraph (4)) to treat the lessee as having acquired such property for an amount equal to—

(A) except as provided in subparagraph (B), the fair market value of such property, or

(B) if the property is leased by a corporation which is a component member of a controlled group (within the meaning of section 38(c)(3)(B)) to another corporation which is a component member of the same controlled group, the basis of such property to the lessor.

[*See main edition for text of* (*2*) *to* (*5*)]

(6) Coordination with at-risk rules

(A) Extension of at-risk rules to certain lessors

(i) In general

If—

(I) a lessor makes an election under this subsection with respect to any at-risk property leased to an at-risk lessee, and

(II) but for this clause, section 46(c)(8) would not apply to such property in the hands of the lessor,

section 46(c)(8) shall apply to the lessor with respect to such property.

(ii) Exceptions

Clause (i) shall not apply—

(I) if the lessor manufactured or produced the property,

(II) if the property has a readily ascertainable fair market value, or

(III) in circumstances which the Secretary determines by regulations to be circumstances where the application of clause (i) is not necessary to carry out the purposes of section 46(c)(8).

(B) Requirement that lessor be at risk

In the case of any property which, in the hands of the lessor, is property to which section 46(c)(8) applies, the amount of the credit allowable to the lessee under section 38 with respect to such property by reason of an election under this subsection shall at no time exceed the credit which would have been allowable to the lessor with respect to such property (determined without regard to section 46(e)(3)) if—

(i) the lessor's basis in such property were equal to the lessee acquisition amount, and

(ii) no election had been made under this subsection.

(C) Lessee subject to at-risk limitations

(i) In general

In the case of any lease where—

(I) the lessee is an at-risk lessee,

(II) the property is at-risk property, and

(III) the at-risk percentage is less than the required percentage, any credit allowable under section 38 to the lessee by reason of an election under this subsection (hereinafter in this paragraph referred to as the "total credit") shall be allowable only as provided in subparagraph (D).

(ii) At-risk percentage

For purposes of this paragraph, the term "at-risk percentage" means the percentage obtained by dividing—

(I) the present value (as of the time the lease is entered into) of the aggregate lease at-risk payments, by

(II) the lessee acquisition amount.

For purposes of subclause (I), the present value shall be determined by using a discount rate equal to the rate in effect under section 6621 as of the time the lease is entered into.

(iii) Required percentage

For purposes of clause (i)(III), the term "required percentage" means the sum of—

(I) 2 times the sum of the percentages applicable to the property under section 46(a), plus

(II) 10 percent.

In the case of 3-year property, such term means 60 percent of the required percentage determined under the preceding sentence.

(iv) Lessee acquisition amount

For purposes of this paragraph, the term "lessee acquisition amount" means the amount for which the lessee is treated as having acquired the property by reason of an election under this subsection.

(v) Lease at-risk payment

For purposes of this paragraph, the term "lease at-risk payment" means any rental payment—

(I) which the lessee is required to make under the lease in all events, and

(II) with respect to which the lessee is not protected against loss through nonrecourse financing, guarantees, stop-loss agreements, or other similar arrangements.

(D) Year for which credit allowable

(i) In general

Except as provided in clause (ii), in any case to which subparagraph (C)(i) applies, the portion of the total credit allowable for any taxable year shall be an amount which bears the same ratio to such total credit as—

(I) the aggregate rental payments made by the lessee under the lease during such taxable year, bears to

(II) the lessee acquisition amount.

(ii) Remaining amount allowable for year in which aggregate rental payments exceed required percentage of acquisition amount

The total credit (to the extent not allowable for a preceding taxable year) shall be allowable for the first taxable year as of the close of which the aggregate rental payments made by the lessee under the lease equal or exceed the required percentage (as defined in subparagraph (C)(iii)) of the lessee acquisition amount.

(E) Definition of at-risk lessee and at-risk property

For purposes of this paragraph—

(i) At-risk lessee

The term "at-risk lessee" means any lessee who is a taxpayer described in section 465(a)(1).

(ii) At-risk property

The term "at-risk property" means any property used by an at-risk lessee in connection with an activity with respect to which any loss is subject to limitation under section 465.

(F) Special rules for subparagraphs (C) and (D)

(i) Subparagraphs (C) and (D) apply in lieu of other at-risk rules

In the case of any election under this subsection, paragraphs (8) and (9) of section 46(c) and subsection (d) of section 47 shall only apply with respect to the lessor.

(ii) Application to partnerships and S corporations

For purposes of subparagraphs (C) and (D), rules similar to the rules of subparagraph (E) of section 46(c)(8) shall apply.

(iii) Subsequent reductions in at-risk amount

Under regulations prescribed by the Secretary, the principles of subsection (d) of section 47 shall apply for purposes of subparagraphs (C) and (D).

(G) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations—

(i) providing for such adjustments as may be appropriate where expenses connected with the lease are borne by the lessor, and

(ii) providing the extent to which contingencies in the lease will be disregarded.

[*See main edition for text of* (e)]

(f) Estates and trusts

In the case of an estate or trust—

(1) the qualified investment for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) any beneficiary to whom any investment has been apportioned under paragraph (1) shall be treated (for purposes of this subpart) as the taxpayer with respect to such investment, and such investment shall not (by reason of such apportionment) lose its character as an investment in new section 38 property or used section 38 property, as the case may be.

READEX FICHE
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(g) Special rules for qualified rehabilitated buildings

For purposes of this subpart—

(1) Qualified rehabilitated building defined

[*See main edition for text of* (*A*) *to* (*D*)]

(E) Alternative test for definition of qualified rehabilitated building

The requirement in clause (iii) of subparagraph (A) shall be deemed to be satisfied if in the rehabilitation process—

(i) 50 percent or more of the existing external walls of the building are retained in place as external walls,

(ii) 75 percent or more of the existing external walls of such building are retained in place as internal or external walls, and

(iii) 75 percent or more of the existing internal structural framework of such building is retained in place.

(2) Qualified rehabilitation expenditure defined

(A) In general

The term "qualified rehabilitation expenditure" means any amount properly chargeable to capital account which is incurred after December 31, 1981—

(i) for real property (or additions or improvements to real property) which have a recovery period (within the meaning of section 168) of 18 (15 years in the case of low-income housing) years, and

(ii) in connection with the rehabilitation of a qualified rehabilitated building.

(B) Certain expenditures not included

The term "qualified rehabilitation expenditure" does not include—

(i) Accelerated methods of depreciation may not be used

Any expenditures with respect to which an election has not been made under section 168(b)(3) (to use the straight-line method of depreciation). The preceding sentence shall not apply to any expenditure to the extent subsection (f)(12) or (j) of section 168 applies to such expenditure.

[*See main edition for text of* (*ii*) *to* (*iv*)]

(v) Expenditures of lessee

Any expenditure of a lessee of a building if, on the date the rehabilitation is completed, the remaining term of the lease (determined without regard to any renewal periods) is less than 18 years (15 years in the case of low-income housing).

(vi) Tax-exempt use property

(I) In general

Any expenditure in connection with the rehabilitation of a building which is allocable to that portion of such building which is (or may reasonably be expected to be) tax-exempt use property (within the meaning of section 168(j)(3)).

(II) Clause not to apply for purposes of paragraph (1)(C)

This clause shall not apply for purposes of determining under paragraph (1)(C) whether a building has been substantially rehabilitated.

[*See main edition for text of* (*C*)]

(D) Low-income housing

For purposes of subparagraph (B), the term "low-income housing" has the meaning given such term by section 168(c)(2)(F).

[*See main edition for text of* (*3*) *and* (*4*); (*h*) *to* (*j*)]

(k) Movie and television films

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Predominant use test or at-risk rules; qualified investment

In the case of any qualified film—

(A) section 48(a)(2), section 46(c)(8), or section 46(c)(9) shall not apply, and

(B) in determining qualified investment under section 46(c)(1), there shall be used (in lieu of the basis of the property) an amount equal to the qualified United States production costs (as defined in paragraph (5)).

(5) Qualified United States production costs

[*See main edition for text of* (*A*) *to* (*C*)]

(D) Allocation of direct production costs

For purposes of this paragraph—

(i) Compensation for services performed shall be allocated to the country in which the services are performed, except that payments to United States persons for services performed outside the United States shall be allocated to the United States. For purposes of the preceding sentence, payments to an S corporation or a partnership shall be considered payments to a United States person only to the extent that such payments are included in the gross income of a United States person other than an S corporation or partnership.

[*See main edition for text of* (*ii*) *and* (*iii*), (*6*)]

(*l*) Energy property

For purposes of this subpart—

(1) Treatment as section 38 property

For any period for which the energy percentage determined under section 46(b)(2) for any energy property is greater than zero—

[*See main edition for text of* (*A*) *and* (*B*), (*2*) *to* (*4*)]

(5) Specially defined energy property

The term "specially defined energy property" means—

[*See main edition for text of* (*A*) *to* (*N*)]

the principal purpose of which is reducing the amount of energy consumed in any existing industrial or commercial process and which is installed in connection with an existing industrial or commercial facility. The Secretary shall not specify any property under subparagraph (N) unless he determines that such specification meets the requirements of paragraph (9) of section 44C(c) [3] for specification of items under section 44C(c)(4)(A)(viii).[3]

[See main edition for text of (6) to (15)]

(16) Qualified intercity buses

[See main edition for text of (A)]

(B) Qualified intercity bus

The term "qualified intercity bus" means an automobile bus—

(i) the chassis of which is an automobile bus chassis and the body of which is an automobile bus body,

[See main edition for text of (ii) and (iii), (C), (17)]

(m) Application of certain transitional rules

Where the application of any provision of subsection (*l*) of this section or subsection (b) or (c)(3) of section 46 is expressed in terms of a period, such provision shall apply only to—

[See main edition for text of (1) to (3)]

[(n) Repealed.[4] Pub. L. 98–369, div. A, title IV, § 474(o)(15), July 18, 1984, 98 Stat. 837]

(o) Certain credits defined

For purposes of this title—

[See main edition fo. text of (1) and (2)]

(3) Rehabilitation investment credit

The term "rehabilitation investment credit" means that portion of the credit allowable by section 38 which is attributable to the rehabilitation percentage.

[See main edition for text of (p)]

(q) Basis adjustment to section 38 property

(1) In general

For purposes of this subtitle, if a credit is determined under section 46(a) with respect to section 38 property, the basis of such property shall be reduced by 50 percent of the amount of the credit so determined.

[See main edition for text of (2)]

(3) Special rule for qualified rehabilitated buildings

In the case of any credit determined under section 46(a) for any qualified rehabilitation expenditure in connection with a qualified rehabilitated building other than a certified historic structure, paragraphs (1) and (2) of this subsection and paragraph (5) of subsection (d) shall be applied without regard to the phrase "50 percent of".

(4) Election of reduced credit in lieu of basis adjustment for regular percentage

(A) In general

If the taxpayer elects to have this paragraph apply with respect to any recovery property—

(i) paragraphs (1) and (2) shall not apply to so much of the credit determined under section 46(a) with respect to such property as is attributable to the regular percentage set forth in section 46(b)(1); and

[See main edition for text of (ii)]

(B) Reduction in credit

In the case of any recovery property to which an election under subparagraph (A) applies—

[See main edition for text of (i)]

(ii) notwithstanding section 46(b)(1), the regular percentage shall be—

[See main edition for text of (I) and (II)]

For purposes of the preceding sentence, RRB replacement property (within the meaning of section 168(f)(3)(B)) shall be treated as property which is not 3-year property.

[See main edition for text of (C), (5)]

(6) [5] Special rule for qualified films

If a credit is allowed under section 38 with respect to any qualified film (within the meaning of subsection (k)(1)(B)) then, in lieu of any reduction under paragraph (1)—

(A) to the extent that the credit is determined with respect to any amount described in clause (v) or (vi) of subsection (k)(5)(B), any deduction allowable under this chapter with respect to such amount shall be reduced by 50 percent of the amount of the credit so determined, and

(B) the basis of the taxpayer's ownership interest (within the meaning of subsection (k)(1)(C)) shall be reduced by the excess of—

(i) 50 percent of the amount of the credit determined under subsection (k), over

(ii) the amount of the reduction under subparagraph (A).

(6) [5] Adjustment in basis of interest in partnership or S corporation

The adjusted basis of—

(A) a partner's interest in a partnership, and

(B) stock in an S corporation,

shall be appropriately adjusted to take into account adjustments made under this subsection in the basis of property held by the partnership or S corporation (as the case may be).

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[3] See References in Text note below.

[4] See section 474(o)(15) of Pub. L. 98-369, set out in Effective Date of 1984 Amendment note below.

[5] So in original. There are two pars. designated "(6)".

(r) Special rules relating to sound recordings

(1) In general

For purposes of this title, in the case of any sound recording, the original use of which commences with the taxpayer, the taxpayer may elect to treat such recording as recovery property which is 3-year property to the extent that the taxpayer has an ownership interest in such recording.

(2) Failure to make election

If a taxpayer does not make an election under paragraph (1) with respect to any sound recording—

(A) no credit shall be allowed under section 38 with respect to such recording, and

(B) such recording shall not be treated as recovery property.

(3) Predominant use test and at risk rules not to apply; qualified investment

In the case of any sound recording—

(A) sections 46(c)(8), 46(c)(9), and 48(a)(2) shall not apply, and

(B) in determining the qualified investment under section 46(c)(1), there shall be used (in lieu of the basis of the property) an amount equal to the production costs which are allocable to the United States (as determined under rules similar to the rules of section 48(k)(5)(D)).

(4) Ownership interest

For purposes of determining the credit allowable under section 38, the ownership interest of any person in a sound recording shall be determined on the basis of his proportionate share of any loss which may be incurred with respect to the production costs of such sound recording.

(5) Sound recording

For purposes of this subsection, the term "sound recording" means any sound recording described in section 280(c)(2).

(6) Production costs

(A) In general

For purposes of this subsection, the term "production costs" includes—

(i) a reasonable allocation of general overhead costs,

(ii) compensation for services performed by song writers, artists, production personnel, directors, producers, and similar personnel,

(iii) costs of "first" distribution of records or tapes, and

(iv) the cost of the material being recorded.

(B) Certain costs not taken into account

Except as provided in subparagraph (C), the term "production costs" shall not include—

(i) "residuals" payable under contracts with labor organizations, or

(ii) participations or royalties payable as compensation to song writers, artists, production personnel, directors, producers, and similar personnel, or

(iii) any other contingent amounts.

(C) Certain contingent amounts taken into account

In the case of any amount which is described in subparagraph (B) and which is incurred in the taxable year in which the sound recording is placed in service or the next taxable year—

(i) subparagraph (B) shall not apply, and

(ii) for purposes of sections 38 and 168, the taxpayer shall be treated as having placed in service in each such taxable year 3-year recovery property with a basis equal to the amount so incurred in such taxable year.

(7) Election made separately

An election under paragraph (1) shall be made separately with respect to each sound recording and must be made by all persons having an ownership interest in such recording.

(8) United States

For purposes of this subsection, the term "United States" includes the possessions of the United States.

(s) Cross reference

For application of this subpart to certain acquiring corporations, see section 381(c)(26).

(Added Pub. L. 87-834, § 2(b), Oct. 16, 1962, 76 Stat. 967, and amended Pub. L. 88-272, title II, § 203(a)(1), (3)(A), (b), (c), Feb. 26, 1964, 78 Stat. 33, 34; Pub. L. 89-800, § 1 Nov. 8, 1966, 80 Stat. 1508; Pub. L. 89-809, title II, § 201(a), Nov. 13, 1966, 80 Stat. 1575; Pub. L. 90-26, §§ 1, 2(a), 3, June 13, 1967, 81 Stat. 57, 58; Pub. L. 91-172, title I, § 121(d)(2)(A), title IV, § 401(e)(2)-(4), Dec. 30, 1969, 83 Stat. 547, 603; Pub. L. 92-178, title I, §§ 102(a)(2), 103, 104(a)(1), (b)-(f)(1), (g), 108(b), (c), Dec. 10, 1971, 85 Stat. 499-502, 507; Pub. L. 94-12, title III, §§ 301(c)(1), 302(c)(3), title VI, § 604(a), Mar. 29, 1975, 89 Stat. 38, 44, 65; Pub. L. 94-455, title VIII, §§ 802(b)(6), 804(a), title X, § 1051(h)(1), title XIX, §§ 1901(a)(5), (b)(11)(A), 1906(b)(13)(A), title XXI, § 2112(a)(1), Oct. 4, 1976, 90 Stat. 1583, 1591, 1647, 1764, 1795, 1834, 1905; Pub. L. 95-473, § 2(a)(2)(A), Oct. 17, 1978, 92 Stat. 1464; Pub. L. 95-600, title I, § 141(b), title III, §§ 312(c)(1)-(3), 314(a), (b), 315(a)-(c), title VII, § 703(a)(3), (4), Nov. 6, 1978, 92 Stat. 2791, 2826-2829, 2939; Pub. L. 95-618, title III, § 301(b), (d)(1), (2), Nov. 9, 1978, 92 Stat. 3198, 3199, 3200; Pub. L. 96-222, title I, §§ 101(a)(7)(G), (H), (L)(i)(I)-(IV), (ii)(III)-(VI), (iii)(II), (III), (v)(II)-(V), (M)(ii), (iii), 103(a)(2)(A), (4)(B), 108(c)(6), Apr. 1, 1980, 94 Stat. 198-201, 206, 209, 228; Pub. L. 96-223, title II, §§ 221(b), 222(a)-(e)(1), (f)-(i), 223(a)(1), (c)(1), Apr. 2, 1980, 94 Stat. 261-266; Pub. L. 96-451, title III, § 302(a), Oct. 14, 1980, 94 Stat. 1991; Pub. L. 96-605, title I, § 109(a), title II, § 223(a), Dec. 28, 1980, 94 Stat. 3525, 3528; Pub. L. 97-34, title II, §§ 211(a)(2), (c), (e)(3), (4), (h), 212(a)(3), (b), (c), (d)(2)(A), 213(a), 214(a), (b), title III, § 332(b), Aug. 13, 1981, 95 Stat. 227-229, 235, 236, 239, 240, 296; Pub. L. 97-248, title II, §§ 205(a)(1), (4), (5)(A), 209(c), Sept. 3, 1982, 96 Stat. 427, 429, 447; Pub. L. 97-354, §§ 3(d), 5(a)(7), (8), Oct. 19, 1982, 96 Stat. 1689, 1692; Pub. L. 97-362, title I, § 104(a), Oct. 25, 1982, 96 Stat. 1729; Pub. L. 97-424, title V, § 546(a), Jan. 6, 1983, 96 Stat. 2198; Pub. L. 97-448, title I, § 102(e)(2)(A), (f)(2), (3), (6), title II, § 202(c), title III, § 306(a)(3), Jan. 12, 1983, 96 Stat. 2371, 2372, 2396, 2400; Pub. L. 98-369, div. A, title I, §§ 11, 31(b), (c), 111(e)(8), 113(a)(1), (b)(3), (4), 114(a), title IV, §§ 431(c), 474(*o*)(10)-(18), title VII, §§ 712(b), 721(x)(1), 735(c)(1), title X, § 1043(a), July 18, 1984, 98 Stat. 503, 517, 518, 633, 635, 637, 638, 808, 836, 837, 946, 971, 982, 1044.)

References in Text

Section 44C, referred to in subsec. (*l*)(5), was renumbered section 23 by section 471(c)(1) of Pub. L. 98-369.

Amendments

1984—Subsec. (a)(5). Pub. L. 98-369, § 31(b), amended par. (5) generally, to extend its scope to encompass property used by foreign persons or entities and to create an exception for short-term leases by substituting provisions covered by subpars. (A) to (D) for former provisions which had directed that property used by the United States, any State or political subdivision thereof, any international organization, or any agency or instrumentality of any of the foregoing not be treated as section 38 property, that for purposes of that prohibition the International Telecommunications Satellite Consortium, the International Maritime Satellite Organization, and any successor organization of such Consortium or Organization not be treated as an international organization, and that if any qualified rehabilitated building were used by the governmental unit pursuant to a lease, this paragraph would not apply to that portion of the basis of such building attributable to qualified rehabilitation expenditures.

Subsec. (b). Pub. L. 98-369, § 114(a), amended subsec. (b) generally, substituting a general definition of "new section 38 property" for definitions which made reference to property constructed, reconstructed or erected after December 31, 1961, and adding pars. (2) and (3).

Subsec. (c)(2)(A). Pub. L. 98-369, § 11(a), substituted "$125,000 ($150,000 for taxable years beginning after 1987)" for "$150,000 ($125,000 for taxable years beginning in 1981, 1982, 1983, or 1984)" in first sentence, and "$125,000 (or $150,000" for "$150,000 (or $125,000" in two places in second sentence.

Subsec. (c)(2)(B). Pub. L. 98-369, § 11(b), substituted "$62,500 ($75,000 for taxable years beginning after 1987)" for "$75,000 ($62,500 for taxable years beginning in 1981, 1982, 1983, or 1984)".

Subsec. (c)(3)(B). Pub. L. 98-369, § 474(*o*)(10), substituted "section 39" for "section 46(b)".

Subsec. (d)(1)(B). Pub. L. 98-369, § 474(*o*)(11), substituted "section 38(c)(3)(B)" for "section 46(a)(6)".

Subsec. (d)(6). Pub. L. 98-369, § 431(c), added par. (6).

Subsec. (f)(3). Pub. L. 98-369, § 474(*o*)(12), struck out par. (3) which had provided that the $25,000 amount specified under subparagraphs (A) and (B) of section 46(a)(3) applicable to an estate or trust be reduced to an amount which bore the same ratio to $25,000 as the amount of the qualified investment allocated to the estate or trust under paragraph (1) to the entire amount of the qualified investment.

Subsec. (g)(1)(E). Pub. L. 98-369, § 1043(a), added subpar. (E).

Subsec. (g)(2)(A)(i). Pub. L. 98-369, § 111(e)(8)(A), (B), substituted "real property" for "property" in two places, and "18 (15 years in the case of low-income housing)" for "15".

Subsec. (g)(2)(B)(i). Pub. L. 98-369, § 31(c)(2), added: "The preceding sentence shall not apply to any expenditure to the extent subsection (f)(12) or (j) of section 168 applies to such expenditure."

Subsec. (g)(2)(B)(v). Pub. L. 98-369, § 111(e)(8)(C), substituted "18 years (15 years in the case of low-income housing)" for "15 years".

Subsec. (g)(2)(B)(vi). Pub. L. 98-369, § 31(c)(1), added cl. (vi).

Subsec. (g)(2)(D). Pub. L. 98-369, § 111(e)(8)(D), added subpar. (D).

Subsec. (k)(4). Pub. L. 98-369, § 113(b)(3)(B), added "or at-risk rules" after "test" in catchline.

Subsec. (k)(4)(A). Pub. L. 98-369, § 113(b)(3)(A), added ", section 46(c)(8), or section 46(c)(9)".

Subsec. (k)(4)(B). Pub. L. 98-369, § 113(b)(3)(C), substituted "used" for "issued".

Subsec. (k)(5)(D)(i). Pub. L. 98-369, § 721(x)(1), substituted "S corporation" for "electing small business corporation".

Subsec. (*l*)(1). Pub. L. 98-369, § 474(*o*)(13), substituted "section 46(b)(2)" for "section 46(a)(2)(C)".

Subsec. (*l*)(16)(B)(i). Pub. L. 98-369, § 735(c)(1), substituted "the chassis of which is an automobile bus chassis and the body of which is an automobile bus body" for "the chassis and body of which is exempt under section 4063(a)(6) from the tax imposed by section 4061(a)".

Subsec. (m). Pub. L. 98-369, § 474(*o*)(14), substituted "subsection (b)" for "subsection (a)(2)".

Subsec. (n). Pub. L. 98-369, § 474(*o*)(15), repealed subsec. (n). For continuing applicability of par. (4) of subsec. (n), see section 474(*o*)(15) of Pub. L. 98-369, set out in Effective Date of 1984 Amendment note below.

Subsec. (*o*)(3) to (8). Pub. L. 98-369, § 474(*o*)(16), redesignated par. (8) as (3) and struck out former pars. (3) to (7) which defined "employee plan credit", "basic employee plan credit", "matching employee plan credit", "basic employee plan percentage", and "matching employee plan percentage", respectively.

Subsec. (q)(1), (3). Pub. L. 98-369, § 474(*o*)(17)(A), substituted "section 46(a)" for "section 46(a)(2)".

Subsec. (q)(4)(A)(i). Pub. L. 98-369, § 474(*o*)(17), substituted "section 46(a)" for "section 46(a)(2)" and "section 46(b)(1)" for "section 46(a)(2)(B)".

Subsec. (q)(4)(B)(ii). Pub. L. 98-369, § 474(*o*)(17)(B), substituted "section 46(b)(1)" for "section 46(a)(2)(B)".

Subsec. (q)(6). Pub. L. 98-369, § 712(b), added the par. (6) relating to adjustment in basis of interest in partnership or S corporation.

Pub. L. 98-369, § 113(b)(4), added the par. (6) relating to special rule for qualified films.

Subsec. (r). Pub. L. 98-369, § 113(a)(1), added subsec. (r). Former subsec. (r) redesignated (s).

Pub. L. 98-369, § 474(*o*)(18), substituted "section 381(c)(26)" for "section 381(c)(23)".

Subsec. (s). Pub. L. 98-369, § 113(a)(1), redesignated former subsec. (r) as (s).

1982—Subsec. (b). Pub. L. 97-248, § 209(c), added provision that for purposes of determining whether section 38 property subject to a lease is new section 38 property, such property shall be treated as originally placed in service not earlier than the date such property is used under the lease, but only if such property is leased within 3 months after such property is placed in service.

Effective Date of 1984 Amendment

Section 18 of Pub. L. 98-369 provided that:

"(a) General Rule.—The amendments made by this part [Part I (§§ 11-18) of subtitle A of title I of div. A of Pub. L. 98-369, amending sections 41, 46, 48, 57, 128, 168, 179, 265, 415, 854, 857, and 911 of this title, and enacting provisions set out as a note under section 168 of this title and amending provisions set out as notes under sections 128 and 168 of this title] shall apply to taxable years ending after December 31, 1983.

"(b) Special Rule for Section 14.—The amendment made by section 14 [amending section 41 of this title] shall not apply in the case of a tax credit employee stock ownership plan if—

"(1) such plan was favorably approved on September 23, 1983, by employees, and

"(2) not later than January 11, 1984, the employer of such employees was 100 percent owned by such plan."

Amendment of subsecs. (a)(5) and (g)(2)(B)(vi) of this section by section 31(b) and (c)(1) of Pub. L. 98-369 effective, except as otherwise provided in section 31(g) of Pub. L. 98-369, as to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983, and amendment of subsec. (g)(2)(B)(i) of this section by section 31(c)(2) of Pub. L. 98-369, to the extent it relates to section 168(f)(12) of this title, effective as if it had been included in the amendments to section 168 of this title by section 216(a) of Pub. L. 97-248, see section 31(g)(1), (12) of Pub. L. 98-369, set out as a note under section 168 of this title.

Amendment by section 111(e)(8) of Pub. L. 98-369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98-369, set out as a note under section 168 of this title.

Amendment by section 113(b)(3) of Pub. L. 98-369 applicable as if included in the amendments made by sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97-34, which enacted section 168 and amended section 46 of this title, see section 113(c)(2)(B) of Pub. L. 98-369, set out as a note under section 168 of this title.

Enactment of subsec. (q)(6) by section 113(b)(4) of Pub. L. 98-369 applicable as if included in the amendments made by section 205(a)(1) of Pub. L. 97-248, see section 113(c)(2)(C) of Pub. L. 98-369, set out as a note under section 168 of this title.

Section 113(c)(1) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending sections 48 and 168 of this title] shall apply to property placed in service after March 15, 1984, in taxable years ending after such date."

Section 114(b) of Pub. L. 98-369 provided that: "The amendment made by this section [amending subsec. (b) of this section] shall apply to property originally placed in service after April 11, 1984 (determined without regard to such amendment)."

Amendment by section 431 of Pub. L. 98-369 applicable to property placed in service after July 18, 1984, in taxable years ending after such date, but not applicable to property to which sections 46(c)(8), (9) and 47(d) of this title, as enacted by section 211(f) of Pub. L. 97-34, do not apply, with the taxpayer having an option to elect retroactive application of amendment by Pub. L. 98-369, see section 431(e) of Pub. L. 98-369, set out as a note under section 46 of this title.

Amendment by section 474(o)(10) to (18) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 474(o)(15) of Pub. L. 98-369 provided that: "Subsection (n) of section 48 (relating to requirements for allowance of employee plan percentage) is hereby repealed; except that paragraph (4) of section 48(n) of the Internal Revenue Code of 1954 (as in effect before its repeal by this paragraph) shall continue to apply in the case of any recapture under section 47(f) of such Code of a credit allowable for a taxable year beginning before January 1, 1984."

Amendment by section 712 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 721 of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

Amendment by section 735 of Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

Section 1043(b) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting subsec. (g)(1)(E) of this section] shall apply to expenditures incurred after December 31, 1983, in taxable years ending after such date."

EFFECTIVE AND TERMINATION DATES OF 1982 AMENDMENTS

Amendment of subsec. (b) by section 209(c) of Pub. L. 97-248 applicable to property placed in service after Dec. 31, 1983, but not to qualified leased property described in section 168(f)(8)(D)(v) of this title which is placed in service before Jan. 1, 1988, or is placed in service after such date pursuant to a binding contract or commitment entered into before April 1, 1983, and solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee, see sections 208(d)(5), 209(d)(2) of Pub. L. 97-248, set out as notes under section 168 of this title.

CLARIFICATION OF EFFECT OF 1984 AMENDMENT ON INVESTMENT TAX CREDIT

For provision that nothing in the amendments made by section 474(*o*) of Pub. L. 98-369, which amended this section, be construed as reducing the investment tax credit in taxable years beginning before Jan. 1, 1984, see section 475(c) of Pub. L. 98-369, set out as a note under section 46 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29, 46, 47, 58, 103, 167, 168, 170, 185, 196, 280F, 312, 409, 861, 1016, 1245, 6699 of this title.

[§§ 50A, 50B. Repealed. Pub. L. 98-369, div. A, title IV, § 474(m)(2), July 18, 1984, 98 Stat. 833]

Section 50A, added Pub. L. 92-178, title VI, § 601(b), Dec. 10, 1971, 85 Stat. 554, and amended Pub. L. 93-406, title II, §§ 2001(g)(2)(B), 2002(g)(2), 2005(c)(4), Sept. 2, 1974, 88 Stat. 957, 968, 991; Pub. L. 94-12, title IV, § 401(a)(1), (2), Mar. 29, 1975, 89 Stat. 45; Pub. L. 94-401, § 4(a), Sept. 7, 1976, 90 Stat. 1217; Pub. L. 94-455, title V, § 503(b)(4) title XIX, §§ 1901(a)(6), (b)(1)(D), 1906(b)(13)(A), title XXI, § 2107(a)(1)-(3), (b), (c), Oct. 4, 1976, 90 Stat. 1562, 1765, 1790, 1834, 1903, 1904; Pub. L. 95-600, title III, § 322(a)-(c), Nov. 6, 1978, 92 Stat. 2836, 2837; Pub. L. 96-178, § 6(c)(1), Jan. 2, 1980, 93 Stat. 1298; Pub. L. 96-222, title I, § 103(a)(7)(D)(i), Apr. 1, 1980, 94 Stat. 211; Pub. L. 97-34, title II, § 207(c)(1), Aug. 13, 1981, 95 Stat. 225; Pub. L. 97-248, title I, § 265(b)(2)(A)(ii), Sept. 3, 1982, 96 Stat. 547; Pub. L. 97-354, § 5(a)(9), Oct. 19, 1982, 96 Stat. 1693, provided for a credit for expenses of work incentive programs, for the determination of the amount of that credit, and for the carryover and carryback of unused credit.

Section 50B, added Pub. L. 92-178, title VI, § 601(b), Dec. 10, 1971, 85 Stat. 556, and amended Pub. L. 94-12, title III, § 302(c)(4), title IV, § 401(a)(3)-(5), Mar. 29, 1975, 89 Stat. 44, 46; Pub. L. 94-401, § 4(b), Sept. 7, 1976, 90 Stat. 1218; Pub. L. 94-455, title XIX, § 1906(b)(13)(A), title XXI, § 2107(a)(4), (d)-(f), Oct. 4, 1976, 90 Stat. 1834, 1903, 1904; Pub. L. 95-171, § 1(e), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95-600, title III, § 322(d), Nov. 6, 1978, 92 Stat. 2837; Pub. L. 96-178, §§ 3(a)(1), (3), 6(c)(2), (3), Jan. 2, 1980, 93 Stat. 1295, 1298; Pub. L. 96-222, title I, § 103(a)(5), (7)(C), (D)(ii), (iii), Apr. 1, 1980, 94 Stat. 209, 211; Pub. L. 96-272, title II, § 208(b)(1), (2), June 17, 1980, 94 Stat. 526, 527; Pub. L. 97-34, title II, § 261(b)(2)(B)(i), Aug. 13, 1981,

96 Stat. 261; Pub. L. 97-354, § 5(a)(10), Oct. 19, 1982, 96 Stat. 1693, provided for the definition of terms related to the expenses of work incentive programs, limitations on such expenses, and special rules to be applied in connection with the computation of the credit.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

SUBPART F—RULES FOR COMPUTING TARGETED JOBS CREDIT

Sec.
[53. Repealed.]

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 474(n)(1), (2), (p)(9), July 18, 1984, 98 Stat. 833, 838, substituted "F" for "D" as the subpart designation and, in the heading substituted "Rules for Computing Targeted Jobs Credit" for "Rules for Computing Credit for Employment of Certain New Employees", and struck out item 53 "Limitation based on amount of tax".

§ 51. Amount of credit

(a) Determination of amount

For purposes of section 38, the amount of the targeted jobs credit determined under this section for the taxable year shall be the sum of—

(1) 50 percent of the qualified first-year wages for such year, and

(2) 25 percent of the qualified second-year wages for such year.

(b) Qualified wages defined

For purposes of this subpart—

[See main edition for text of (1)]

(2) Qualified first-year wages

The term "qualified first-year wages" means, with respect to any individual, qualified wages attributable to service rendered during the 1-year period beginning with the day the individual begins work for the employer.

[See main edition for text of (3) and (4)]

(c) Wages defined

For purposes of this subpart—

[See main edition for text of (1)]

(2) On-the-job training and work supplementation payments

(A) Exclusion for employers receiving on-the-job training payments

The term "wages" shall not include any amounts paid or incurred by an employer for any period to any individual for whom the employer receives federally funded payments for on-the-job training of such individual for such period.

(B) Reduction for work supplementation payments to employers

The amount of wages which would (but for this subparagraph) be qualified wages under this section for an employer with respect to an individual for a taxable year shall be reduced by an amount equal to the amount of the payments made to such employer (however utilized by such employer) with respect to such individual for such taxable year under a program established under section 414 of the Social Security Act.

(3) Termination

The term "wages" shall not include any amount paid or incurred to an individual who begins work for the employer after December 31, 1985.

(d) Members of targeted groups

For purposes of this subpart—

(1) In general

An individual is a member of a targeted group if such individual is—

[See main edition for text of (A) to (G)]

(H) an eligible work incentive employee,

(I) an involuntarily terminated CETA employee, or

(J) a qualified summer youth employee.

[See main edition for text of (2) to (5)]

(6) General assistance recipients

[See main edition for text of (A)]

(B) Qualified general assistance program

The term "qualified general assistance program" means any program of a State or a political subdivision of a State—

[See main edition for text of (i)]

(ii) which is designated by the Secretary (after consultation with the Secretary of Health and Human Services) as meeting the requirements of clause (i).

[See main edition for text of (7) to (10)]

(11) Members of economically disadvantaged families

An individual is a member of an economically disadvantaged family if the designated local agency determines that such individual was a member of a family which had an income during the 6 months immediately preceding the earlier of the month in which such determination occurs or the month in which the hiring date occurs, which, on an annual basis, would be 70 percent or less of the Bureau of Labor Statistics lower living standard. Any such determination shall be valid for the 45-day period beginning on the date such determination is made. Any such determination with respect to an individual who is a qualified summer youth employee or youth participating in a qualified cooperative education program with respect to any employer shall also apply for purposes of determining whether such individual is a member of another targeted group with respect to such employer.

(12) Qualified summer youth employee

(A) In general

The term "qualified summer youth employee" means an individual—

(i) who performs services for the employer between May 1 and September 15,

(ii) who is certified by the designated local agency as having attained age 16 but not 18 on the hiring date (or if later, on May 1 of the calendar year involved),

(iii) who has not been an employee of the employer during any period prior to the 90-day period described in subparagraph (B)(iii), and

(iv) who is certified by the designated local agency as being a member of an economically disadvantaged family (as determined under paragraph (11)).

(B) Special rules for determining amount of credit

For purposes of applying this subpart to wages paid or incurred to any qualified summer youth employee—

(i) subsection (a)(1) shall be applied by substituting "85 percent" for "50 percent",

(ii) subsections (a)(2) and (b)(3) shall not apply,

(iii) subsection (b)(2) shall be applied by substituting "any 90-day period between May 1 and September 15" for "the 1-year period beginning with the day the individual begins work for the employer", and

(iv) subsection (b)(4) shall be applied by substituting "$3,000" for "$6,000".

(C) Special rule for continued employment for same employer

In the case of an individual who, with respect to the same employer, is certified as a member of another targeted group after such individual has been a qualified summer youth employee, paragraph (14) shall be applied by substituting "certified" for "hired by the employer".

(13) Preemployment period

The term "preemployment period" means the 60-day period ending on the hiring date.

(14) Hiring date

The term "hiring date" means the day the individual is hired by the employer.

(15) Designated local agency

The term "designated local agency" means a State employment security agency established in accordance with the Act of June 6, 1933, as amended (29 U.S.C. 49–49n).

(16) Special rules for certifications

(A) In general

An individual shall not be treated as a member of a targeted group unless, on or before the day on which such individual begins work for the employer, the employer—

(i) has received a certification from a designated local agency that such individual is a member of a targeted group, or

(ii) has requested in writing such certification from the designated local agency.

For purposes of the preceding sentence, if on or before the day on which such individual begins work for the employer, such individual has received from a designated local agency (or other agency or organization designated pursuant to a written agreement with such designated local agency) a written preliminary determination that such individual is a member of a targeted group, then "the fifth day" shall be substituted for "the day" in such sentence.

(B) Incorrect certifications

If—

(i) an individual has been certified as a member of a targeted group, and

(ii) such certification is incorrect because it was based on false information provided by such individual,

the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.

[*See main edition for text of* (*e*) *and* (*f*)]

(g) United States Employment Service to notify employers of availability of credit

The United States Employment Service, in consultation with the Internal Revenue Service, shall take such steps as may be necessary or appropriate to keep employers apprised of the availability of the targeted jobs credit determined under this subpart.

[*See main edition for text of* (*h*) *and* (*i*)]

(j)[1] Election to have targeted jobs credit not apply

(1) In general

A taxpayer may elect to have this section not apply for any taxable year.

(2) Time for making election

An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

(3) Manner of making election

An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

(j)[1] Treatment of successor employers; treatment of employees performing services for other persons

(1) Treatment of successor employers

Under regulations prescribed by the Secretary, in the case of a successor employer referred to in section 3306(b)(1), the determination of the amount of the credit under this section with respect to wages paid by such successor employer shall be made in the same manner as if such wages were paid by the predecessor employer referred to in such section.

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[1] So in original. There are two subsecs. designated "(j)".

(2) Treatment of employees performing services for other persons

No credit shall be determined under this section with respect to remuneration paid by an employer to an employee for services performed by such employee for another person unless the amount reasonably expected to be received by the employer for such services from such other person exceeds the remuneration paid by the employer to such employee for such services.

(Added Pub. L. 95-30, title II, § 202(b), May 23, 1977, 91 Stat. 141, and amended Pub. L. 95-600, title III, § 321(a), Nov. 6, 1978, 92 Stat. 2830; Pub. L. 96-222, title I, § 103(a)(6)(A), (E), (F), (G)(iii)-(ix), Apr. 1, 1980, 94 Stat. 209, 210; Pub. L. 97-34, title II, § 261(a), (b)(1), (2)(A), (B)(ii), (iii), (3), (4), (c)-(f)(1), Aug. 13, 1981, 95 Stat. 260-263; Pub. L. 97-248, title II, § 233(a)-(d), (f), Sept. 3, 1982, 96 Stat. 501, 502; Pub. L. 97-448, title I, § 102(*l*)(1), (3), (4), Jan. 12, 1983, 96 Stat. 2374; Pub. L. 98-369, div. A, title IV, § 474(p)(1)-(3), title VII, § 712(n), title X, § 1041(a), (c)(1)-(4), div. B, title VI, §§ 2638(b), 2663(j)(5)(A), July 18, 1984, 98 Stat. 837, 955, 1042, 1043, 1144, 1171.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(2)(B) and (d)(5), (9), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Part A of title IV of the Social Security Act is classified generally to Part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42. Title XVI of such Act is classified generally to subchapter XVI (§ 1381 et seq.) of chapter 7 of Title 42. Sections 414, 432(b)(1), 445, and 1616 of such Act are classified to sections 614, 632(b)(1), 645, and 1382e, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Act of June 6, 1933, as amended (29 U.S.C. 49-49n), referred to in subsec. (d)(15), is act June 6, 1933, ch. 49, 48 Stat. 113, as amended, popularly known as the Wagner-Peyser Act, which is classified principally to chapter 4B (§ 49 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 49 of Title 29 and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 474(p)(1), substituted "For purposes of section 38, the amount of the targeted jobs credit determined under this section" for "The amount of the credit allowable by section 44B" in introductory provisions.

Subsec. (b)(2). Pub. L. 98-369, § 1041(c)(4), struck out "(or, in the case of a vocational rehabilitation referral, the day the individual begins work for the employer on or after the beginning of such individual's rehabilitation plan)" after "begins work for the employer".

Subsec. (c)(2). Pub. L. 98-369, § 2638(b), designated existing provisions as subpar. (A), inserted par. (2) heading, and added subpar. (B).

Subsec. (c)(3). Pub. L. 98-369, § 1041(a), substituted "December 31, 1985" for "December 31, 1984".

Subsec. (d)(6)(B)(ii). Pub. L. 98-369, § 2663(j)(5)(A), substituted "Secretary of Health and Human Services" for "Secretary of Health Education and Welfare".

Subsec. (d)(11). Pub. L. 98-369, § 712(n), made determination respecting membership of a qualified summer youth employee or youth participating in a qualified cooperative education program with respect to an employer applicable for purposes of determining whether such individual is a member of another targeted group with respect to such employer.

Subsec. (d)(12)(A)(ii). Pub. L. 98-369, § 1041(c)(3), substituted "(or if later, on May 1 of the calendar year involved)" for "(as defined in paragraph (14))".

Subsec. (d)(16)(A). Pub. L. 98-369, § 1041(c)(2), added: "For purposes of the preceding sentence, if on or before the day on which such individual begins work for the employer, such individual has received from a designated local agency (or other agency or organization designated pursuant to a written agreement with such designated local agency) a written preliminary determination that such individual is a member of a targeted group, then 'the fifth day' shall be substituted for 'the day' in such sentence."

Subsec. (g). Pub. L. 98-369, § 474(p)(2), substituted "the targeted jobs credit determined under this subpart" for "the credit provided by section 44B".

Subsec. (j). Pub. L. 98-369, § 1041(c)(1), added the subsec. (j) relating to treatment of successor employers, and employees performing services for other persons.

Pub. L. 98-369, § 474(p)(3), added the subsec. (j) relating to election to have targeted jobs credit not apply.

1982—Subsec. (c)(3). Pub. L. 97-248, § 233(a), substituted "1984" for "1982".

Subsec. (d)(1)(J). Pub. L. 97-248, § 233(b)(3), added subpar. (J).

Subsec. (d)(6)(B)(i)(II). Pub. L. 97-248, § 233(d), substituted "consists of money payments or voucher or scrip, and" for "consists of money payments".

Subsec. (d)(10). Pub. L. 97-248, § 233(c), added provision respecting nonapplicability of paragraph to individuals who begin work for the employer after December 31, 1982.

Subsec. (d)(12) to (15). Pub. L. 97-248, § 233(b)(4), (5), added par. (12) and redesignated former pars. (12) to (15) as (13) to (16), respectively.

Subsec. (d)(16). Pub. L. 97-248, § 233(b)(4), redesignated former par. (15) as (16).

Pub. L. 97-248, § 233(f), substituted "on or before" for "before" in subpar. (A).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(p)(1) to (3) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 712 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Section 1041(c)(5) of Pub. L. 98-369 provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by this section [amending this section] shall apply to individuals who begin work for the employer after the date of the enactment of this Act [July 18, 1984].

"(B) SPECIAL RULE FOR EMPLOYEES PERFORMING SERVICES FOR OTHER PERSONS.—Paragraph (2) of section 51(j) of the Internal Revenue Code of 1954 (as added by this subsection) and the amendment made by paragraph (3) of this subsection [amending subsec. (d)(12)(A)(ii) of this section] shall apply to individuals who begin work for the employer after December 31, 1984."

Section 2638(c)(2) of Pub. L. 98-369 provided that: "The amendments made by subsection (b) [amending subsec. (c)(2) of this section] shall apply with respect to payments made on or after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

AUTHORIZATION OF APPROPRIATIONS

Section 261(f)(2) of Pub. L. 97-34, as amended by Pub. L. 97-248, title II, § 233(e), Sept. 3, 1982, 96 Stat. 502; Pub. L. 98-369, div. A, title X, § 1041(b), July 18, 1984, 98 Stat. 1042, provided that: "There is authorized to be appropriated for fiscal year 1982 the sum of $30,000,000, and for fiscal years 1983, 1984, and 1985 such sums as may be necessary, to carry out the functions described by the amendments made by paragraph (1) [amending subsecs. (d)(14) and (g) of this section], except that, of the amounts appropriated pursuant to this paragraph—

[*See main edition for text of* (*A*) *and* (*B*)]

The Secretary of Labor shall each calendar year beginning with calendar year 1983 report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate with respect to the results of the testing conducted under subparagraph (A) during the preceding calendar year."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30, 38, 52, 196, 280C of this title.

§ 52. Special rules

(a) Controlled group of corporations

For purposes of this subpart, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In any such case, the credit (if any) determined under section 51(a) with respect to each such member shall be its proportionate share of the wages giving rise to such credit. For purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

[*See main edition for text of* (*1*) *and* (*2*)]

(b) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of this subpart, under regulations prescribed by the Secretary—

[*See main edition for text of* (*1*)]

(2) the credit (if any) determined under section 51(a) with respect to each trade or business shall be its proportionate share of the wages giving rise to such credit.

The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (a).

(c) Tax-exempt organizations

No credit shall be allowed under section 38 for any targeted jobs credit determined under this subpart to any organization (other than a cooperative described in section 521) which is exempt from income tax under this chapter.

(d) Estates and trusts

In the case of an estate or trust—

[*See main edition for text of* (*1*)]

(2) any beneficiary to whom any amount has been apportioned under paragraph (1) shall be allowed, subject to section 38(c), a credit under section 38(a) for such amount.

[*See main edition for text of* (*e*)]

(As amended Pub. L. 98-369, div. A, title IV, § 474(p)(4)-(7), July 18, 1984, 98 Stat. 838.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 474(p)(4), substituted "the credit (if any) determined under section 51(a) with respect to each such member" for "the credit (if any) allowable by section 44B to each such member".

Subsec. (b)(2). Pub. L. 98-369, § 474(p)(5), substituted "the credit (if any) determined under section 51(a)" for "the credit (if any) allowable by section 44B".

Subsec. (c). Pub. L. 98-369, § 474(p)(6), substituted "credit shall be allowed under section 38 for any targeted jobs credit determined under this subpart" for "credit shall be allowed under section 44B".

Subsec. (d)(2). Pub. L. 98-369, § 474(p)(7), substituted ", subject to section 38(c), a credit under section 38(a)" for ", subject to section 53 a credit under section 44B".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29, 30, 40, 51, 168, 280C, 474, 6053 of this title.

[§ 53. Repealed. Pub. L. 98–369, div. A, title IV, § 474(p)(8), July 18, 1984, 98 Stat. 838]

Section, added Pub. L. 95–30, title II, § 202(b), May 23, 1977, 91 Stat. 146, and amended Pub. L. 95-600, title III, § 321(c)(2), Nov. 6, 1978, 92 Stat. 2835; Pub. L. 97-34, title II, § 207(c)(2), Aug. 13, 1981, 95 Stat. 228; Pub. L. 97-248, title II, § 201(d)(8)(A), formerly § 201(c)(8)(A), and § 265(b)(2)(A)(iii), Sept. 3, 1982, 96 Stat. 420, 547, redesignated Pub. L. 97-448, title III, § 306(a)(1)(A)(i), Jan. 12, 1983, 96 Stat. 2400; 97-354, § 5(a)(12), Oct. 19, 1982, 96 Stat. 1693; 97-448, title I, § 102(d)(3), Jan. 12, 1983, 96 Stat. 2370; Pub. L. 98-21, title I, § 122(c)(1), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98-369, div. A, title VII, § 713(c)(1)(C), July 18, 1984, 98 Stat. 957, placed limitations on the amount of credit allowed by former section 44B for employment of certain new employees. See section 38 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 21 of this title.

PART VI—MINIMUM TAX FOR TAX PREFERENCES

§ 55. Alternative minimum tax for taxpayers other than corporations

[*See main edition for text of* (*a*)]

(b) Alternative minimum taxable income

For purposes of this title, the term "alternative minimum taxable income" means the adjusted gross income (determined without regard to the deduction allowed by section 172) of the taxpayer for the taxable year—

(1) reduced by the sum of—

(A) the alternative tax net operating loss deduction, plus

(B) the alternative tax itemized deductions, plus

(C) any amount included in income under section 87 or 667, and

(2) increased by the amount of items of tax preference.

(c) Credits

(1) In general

For purposes of determining any credit allowable under subpart A, B, or D of part IV of this subchapter (other than the foreign tax credit allowed under section 27(a))—

(A) the tax imposed by this section shall not be treated as a tax imposed by this chapter, and

(B) the amount of the foreign tax credit allowed by section 27(a) shall be determined without regard to this section.

(2) Foreign tax credit allowed against alternative minimum tax

[See main edition for text of (A)]

(B) Increase in amount of foreign taxes taken into account

For purposes of the determination provided by subparagraph (A), the amount of the taxes paid or accrued to foreign countries or possessions of the United States during the taxable year shall be increased by an amount equal to the lesser of—

(i) the foreign tax credit allowable under section 27(a) in computing the regular tax for the taxable year, or

[See main edition for text of (ii), (C) to (E)]

(3) Carryover and carryback of certain credits

In the case of any taxable year for which a tax is imposed by this section, for purposes of determining the amount of any carryover or carryback to any other taxable year of any credit allowable under section 23, 25, 30, or 38, the amount of the limitation under section 26, 30(g), or 38(c) (as the case may be) shall be deemed to be—

(A) the amount of such limitation for such taxable year (determined without regard to this paragraph), reduced (but not below zero) by

(B) the amount of the tax imposed by this section for the taxable year, reduced by—

(i) the amount of the credit allowable under section 27(a),

(ii) in the case of the limitation under section 30(g), the amount of such tax taken into account under this subparagraph with respect to the limitation under section 26, and

(iii) in the case of the limitation under section 38(c), the amount of such tax taken into account under this subparagraph with respect to limitations under sections 26 and 30(g).

[See main edition for text of (d)]

(e) Alternative tax itemized deductions

For purposes of this section—

[See main edition for text of (1) to (7)]

(8) Treatment of interests in limited partnerships and subchapter S corporations

[See main edition for text of (A)]

(B) Income and losses taken into account in computing qualified net investment income

Any income or loss derived from a limited business interest shall be taken into account in computing qualified net investment income.

[See main edition for text of (C)]

(f) Other definitions

For purposes of this section—

[See main edition for text of (1)]

(2) Regular tax

The term "regular tax" means the taxes imposed by this chapter for the taxable year (computed without regard to this section and without regard to the taxes imposed by sections 47(a), 72(m)(5)(B), 72(q), 402(e), 408(f), and 667(b)) reduced by the sum of the credits allowable under subparts A, B, and D of part IV of this subchapter. For purposes of this paragraph, the amount of the credits allowable under such subpart shall be determined without regard to this section.

(As amended Pub. L. 98-369, div. A, title IV, §§ 474(q), 491(d)(1), title VI, § 612(e)(3), title VII, § 711(a)(1), (4), (5), July 18, 1984, 98 Stat. 838, 849, 912, 942, 943.)

AMENDMENTS

1984—Subsec. (b)(1)(C). Pub. L. 98-369, § 711(a)(5), inserted reference to section 87.

Subsec. (c)(1). Pub. L. 98-369, § 474(q)(1), substituted "subpart A, B, or D of part IV" for "subpart A of part IV" and "section 27(a)" for "section 33(a)" in introductory provisions.

Subsec. (c)(1)(B). Pub. L. 98-369, § 474(q)(1)(B), substituted "section 27(a)" for "section 33(a)".

Subsec. (c)(2)(B)(i). Pub. L. 98-369, § 474(q)(2), substituted "section 27(a)" for "section 33(a)".

Subsec. (c)(3). Pub. L. 98-369, § 612(e)(3), substituted "26" for "25" wherever appearing, and "23, 25, 30, or 38" for "23, 30, or 38".

Pub. L. 98-369, § 474(q)(3), amended par. (3) generally. Prior to amendment, par. (3) provided that, in the case of any taxable year in which a tax was imposed by this section, for purposes of determining the amount of any carryback or carryover of any applicable credit to any other taxable year, the amount of the applicable credit limitation for such taxable year was deemed to be (i) the amount of the applicable credit allowable for such taxable year (determined without regard to this paragraph), reduced (but not below zero) by (ii) the amount of the tax imposed by this section for the taxable year, reduced by (I) the amount of the credit allowable under section 33(a), and (II) the amount of such tax taken into account under this clause with respect to any applicable credit having a lower number or letter designation, and that, for purposes of this paragraph, the term "applicable credit" meant any credit allowable under section 38, 40, 44B, 44C, 44E, or 44F, and that the term "applicable credit limitation" meant, with respect to any applicable credit, the limitation under section 46(a)(3), 53(a), 44C(b)(5), 44E(e)(1), 44F(g)(1), or 50A(a)(2), whichever was appropriate.

Subsec. (e)(8)(B). Pub. L. 98-369, § 711(a)(4), amended subpar. (B) generally, substituting "Income and losses taken into account in computing qualified net investment income" for "Income treated as qualified investment income" in heading and in text "Any income or loss derived from a limited business interest shall be taken into account in computing qualified net investment income" for "Any income derived from a limited business interest shall be treated as qualified investment income".

Subsec. (f)(2). Pub. L. 98-369, § 711(a)(1), inserted reference to section 47(a).

Pub. L. 98-369, § 491(d)(1), struck out "409(c)," after "408(f),".

Pub. L. 98-369, § 474(q)(4), substituted "allowable under subparts A, B, and D of part IV of this subchapter" for "allowable under subpart A of part IV of this subchapter (other than sections 31, 39, and 43)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(q) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 491(f)(1) of Pub. L. 98-369 provided that: "The amendments and repeals made by subsections (a), (b), and (d) [amending sections 55, 62, 72, 172, 219, 402, 403, 406, 407, 408, 412, 414, 415, 457, 2039, 2517, 3121, 3306, 3401, 4972, 4973, 4975, 6047, 6058, 6104, 6652, 7207, 7476, and 7701 of this title, section 3107 of Title 31, Money and Finance, and section 409 of Title 42, The Public Health and Welfare, and repealing sections 405 and 409 of this title] shall apply to obligations issued after December 31, 1983."

Amendment by section 612 of Pub. L. 98-369, applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98-369, set out as an Effective Date note under section 25 of this title.

Amendment by section 711 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 26, 32, 58, 443, 511, 666, 871, 877, 897, 904, 6362 of this title.

§ 56. Corporate minimum tax

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Regular tax deduction defined

For purposes of this section, the term "regular tax deduction" means an amount equal to the taxes imposed by this chapter for the taxable year (computed without regard to this part and without regard to the taxes imposed by sections 531 and 541), reduced by the sum of the credits allowable under subparts A, B, and D of part IV. For purposes of the preceding sentence, the amount of the credit determined under section 38 for any taxable year shall be determined without regard to the employee stock ownership credit determined under section 41.

[*See main edition for text of* (*d*)]

(e) Tax carryover for timber

(1) In general

In the case of a corporation, if for any taxable year, including a taxable year beginning before January 1, 1976—

(A) the taxes imposed by this chapter (computed without regard to this part and without regard to the tax imposed by section 531) which, under regulations prescribed by the Secretary, are attributable to income from timber, reduced by the sum of the credits allowable under—

(i) section 27 (relating to foreign tax credit), and

(ii) section 38 (relating to general business credit), exceed.

(B) the items of tax preference (as determined under section 57),

then the excess of the taxes described in subparagraph (A) over the items of tax preference shall be a tax carryover to each of the 7 taxable years following such year. The entire amount of the excess shall be carried to the first of such 7 taxable years, and then to each of the other such taxable years to the extent that such excess is not used to reduce the amount subject to tax under subsection (a) for a prior taxable year to which such excess may be carried.

[*See main edition for text of* (*2*)]

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(1), July 18, 1984, 98 Stat. 839.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 474(r)(1)(A), substituted "subparts A, B, and D of part IV" for "subpart A of part IV other than sections 39 and 44G", and "the amount of the credit determined under section 38 for any taxable year shall be determined without regard to the employee stock ownership credit determined under section 41" for "the amount of the credit allowable under section 38 shall be determined without regard to the employee plan percentage set forth in section 46(a)(2)(E)".

Subsec. (e)(1)(A)(i). Pub. L. 98-369, § 474(r)(1)(B), substituted "section 27 (relating to foreign tax credit), and" for "section 33 (relating to foreign tax credit),".

Subsec. (e)(1)(A)(ii). Pub. L. 98-369, § 474(r)(1)(B), substituted "section 38 (relating to general business credit), exceed" for "section 38 (relating to investment credit),".

Subsec. (e)(1)(A)(iii), (iv). Pub. L. 98-369, § 474(r)(1)(B), struck out cls. (iii) and (iv) which had read: "(iii) section 40 (relating to expenses of work incentive programs), and (iv) section 44B (relating to credit for employment of certain new employees), exceed".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

HIGH INCOME TAXPAYER REPORT

Section 2123 of Pub. L. 94-455, as amended by Pub. L. 98-369, div. A, title IV, § 441(b)(1), July 18, 1984, 98 Stat. 815, provided that: "The Secretary of the Treasury shall publish annually information on the amount of tax paid by individual taxpayers with high total incomes. Total income for this purpose is to be calculated and set forth by adding to adjusted gross income any items of tax preference excluded from, or deducted in arriving at, adjusted gross income, and by subtracting any investment expenses incurred in the production of such income to the extent of the investment income. These data are to include the number of such individuals with total income over $200,000 who owe no Federal income tax (after credits) and the deductions, exclusions, or credits used by them to avoid tax."

[Section 441(b)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [amending this note] shall apply to information published after the date of the enactment of this Act [July 18, 1984]."]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 26, 58, 168, 443, 936, 1366 of this title.

§ 57. Items of tax preference

(a) In general

For purposes of this part, the items of tax preference are—

(1) Exclusion of dividends

Any amount excluded from gross income for the taxable year under section 116.

[*See main edition for text of* (*2*) *to* (*5*)]

(6) Circulation and research and experimental expenditures

An amount equal to the excess of—

(A) the amount allowable as a deduction under section 173 or 174(a) for the taxable year, over

(B) the amount which would have been allowable for the taxable year with respect to expenditures paid or incurred during such taxable year if—

(i) the circulation expenditures described in section 173 had been capitalized and amortized ratably over the 3-year period beginning with the taxable year in which such expenditures were made, or

(ii) the research and experimental expenditures described in section 174 had been capitalized and amortized ratably over the 10-year period beginning with the taxable year in which such expenditures were made.

[*See main edition for text of* (*7*) *to* (*9*)]

(10) Incentive stock options

With respect to the transfer of a share of stock pursuant to the exercise of an incentive stock option (as defined in section 422A), the amount by which the fair market value of the share at the time of exercise exceeds the option price. For purposes of this paragraph, the fair market value of a share of stock shall be determined without regard to any restriction other than a restriction which, by its terms, will never lapse.

[*See main edition for text of* (*11*)]

(12) Accelerated cost recovery deduction

(A) In general

With respect to each recovery property (other than 18-year real property and low-income housing) which is subject to a lease, the amount (if any) by which the deduction allowed under section 168(a) for the taxable year exceeds the deduction which would have been allowable for the taxable year had the property been depreciated using the straight-line method (with a half-year convention and without regard to salvage value) and a recovery period determined in accordance with the following table:

In the case of:	The recovery period is:
3-year property	5 years.
5-year property	8 years.
10-year property	15 years.
15-year public utility property	22 years.

(B) 18-year real property and low-income housing

With respect to each recovery property which is 18-year real property or low-income housing, the amount (if any) by which the deduction allowed under section 168(a) (or, in the case of property described in section 167(k), under section 167) for the taxable year exceeds the deduction which would have been allowable for a taxable year had the property been depreciated using the straight-line method (without regard to salvage value) over a recovery period of—

(i) 18 years in the case of 18-year real property, and

(ii) 15 years in the case of low-income housing property.

[*See main edition for text of* (*C*) *and* (*D*)]

(E) Definitions

For purposes of this paragraph, the terms "3-year property", "5-year property", "10-year property", "15-year public utility property", "18-year real property", "low-income housing", and "recovery property", shall have the same meanings given such terms under section 168.

Paragraphs (1), (3), (5), (6), (11), and (12)(A) shall not apply to a corporation other than a personal holding company (as defined in section 542).

(b) Application with section 291

(1) In general

(A) Pollution control facilities; bad debt reserves

In the case of any item of tax preference of a corporation described in paragraph (4) or (7) of subsection (a), only 59% percent of the amount of such item of tax preference (determined without regard to this subsection) shall be taken into account as an item of tax preference.

(B) Iron ore and coal

In the case of any item of tax preference of a corporation described in paragraph (8) of subsection (a) (but only to the extent such item is allocable to a deduction for depletion for iron ore and coal (including legnite [1])), only 71.6 percent of the amount of such item of tax preference (determined without regard to this subsection) shall be taken into account as an item of tax preference.

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[1] So in original. Probably should be "lignite".

(2) Certain capital gains

In determining the net capital gain of any corporation for purposes of paragraph (9)(B) of subsection (a), there shall be taken into account only 59⅚ percent of any gain from the sale or exchange of section 1250 property which is equal to 85 percent of the excess determined under section 291(a)(1) with respect to such property.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended Pub. L. 98-369, div. A, title I, §§ 16(b), 68(c), 111(e)(5)-(7), title V, § 555(a)(2), title VII, §§ 711(a)(3)(A), 722(a)(1), July 18, 1984, 98 Stat. 505, 586, 633, 897, 942, 972.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 16(b), substituted "Exclusion of dividends" for "Exclusion of interest and dividends" in heading, and in text deleted reference to section 128.

Subsec. (a)(6)(B). Pub. L. 98-369, § 711(a)(3)(A), designated existing provisions as cls. (i) and (ii), substituting in cl. (i) "3-year" for "10-year" period.

Subsec. (a)(10). Pub. L. 98-369, § 555(a)(2), added "For purposes of this paragraph, the fair market value of a share of stock shall be determined without regard to any restriction other than a restriction which, by its terms, will never lapse."

Subsec. (a)(12)(A). Pub. L. 98-369, § 111(e)(5), substituted "18-year real property and low-income housing" for "15-year real property".

Pub. L. 98-369, § 722(a)(1)(A), struck out "(or, in the case of property described in section 167(k), under section 167)" before "for the taxable year exceeds".

Subsec. (a)(12)(B). Pub. L. 98-369, § 722(a)(1)(B), added "(or, in the case of property described in section 167(k), under section 167)" after "section 168(a)".

Pub. L. 98-369, § 111(e)(6), amended subpar. (B) generally, substituting "18-year real property and low-income housing" for "15-year real property" wherever appearing and "the straight-line" for "a 15-year period and the straight-line", and adding "over a recovery period of— (i) 18 years in the case of 18-year real property, and (ii) 15 years in the case of low-income housing property."

Subsec. (a)(12)(E). Pub. L. 98-369, § 111(e)(7), substituted "'18-year real property', 'low income housing'," for "'15-year real property',".

Subsec. (b)(1). Pub. L. 98-369, § 68(c)(1), amended par. (1) generally, adding provision in subpar. (A), that with respect to any item of tax preference described in par. (4) or (7) of subsec. (a), only 59⅚ percent of its amount shall be taken into account as an item of tax preference.

Subsec. (b)(2). Pub. L. 98-369, § 68(c)(2), which directed the substitution of "59⅚ percent" for "71.6 percent" in subsec. (h)(2) of this section, was executed to subsec. (b)(2) to reflect the probable intent of Congress.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(b) of Pub. L. 98-369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98-369, set out as a note under section 48 of this title.

Amendment by section 68 of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 68(e)(1) of Pub. L. 98-369, set out as a note under section 291 of this title.

Amendment by section 111(e) of Pub. L. 98-369 applicable to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98-369, set out as a note under section 168 of this title.

Section 555(c)(2) of Pub. L. 98-369 provided that: "The amendment made by subsection (b) [probably should be '(a)(2)' which amended subsec. (a)(10) of this section] shall apply to options exercised after March 20, 1984. In the case of an option issued after March 20, 1984, pursuant to a plan adopted or corporate action taken by the board of directors of the grantor corporation before May 15, 1984, the preceding sentence shall be applied by substituting 'December 31, 1984' for 'March 20, 1984'."

Amendment by section 711 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Section 722(a)(6) of Pub. L. 98-369 provided that: "Any amendment made by this subsection [amending sections 57, 172, 1256, and 5684 of this title, and provisions set out as a note under section 338 of this title] shall take effect as if included in the provisions of the Technical Corrections Act of 1982 [Pub. L. 97-448] to which such amendment relates."

§ 58. Rules for application of this part

[*See main edition for text of* (*a*) *to* (*h*)]

(i) Optional 10-year writeoff of certain tax preferences

(1) In general

For purposes of this title, in the case of an individual, any qualified expenditure to which an election under this paragraph applies shall be allowed as a deduction ratably over the 10-year period (3-year period in the case of circulation expenditures described in section 173) beginning with the taxable year in which such expenditure was made.

[*See main edition for text of* (*2*) *and* (*3*)]

(4) Special election for intangible drilling and development costs not allocable to limited business interest

(A) In general

In the case of any nonlimited partnership intangible drilling costs (with respect to wells located in the United States) to which an election under this paragraph applies—

[*See main edition for text of* (*i*) *and* (*ii*), (*B*) *and* (*C*), (*5*) *to* (*7*)]

(As amended Pub. L. 98-369, div. A, title VII, § 711(a)(2), (3)(B), July 18, 1984, 98 Stat. 942.)

AMENDMENTS

1984—Subsec. (i)(1). Pub. L. 98-369, § 711(a)(3)(B), inserted "(3-year period in the case of circulation expenditures described in section 173)".

Subsec. (i)(4)(A). Pub. L. 98-369, § 711(a)(2), inserted "(with respect to wells located in the United States)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 711 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Subchapter B—Computation of Taxable Income

PART I—DEFINITION OF GROSS INCOME, ADJUSTED GROSS INCOME, TAXABLE INCOME, ETC.

Sec.	
66.	Treatment of community income.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 424(b)(2)(C), July 18, 1984, 98 Stat. 803, struck out "where spouses live apart" in item 66.

§ 61. Gross income defined

(a) General definition

Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:

(1) Compensation for services, including fees, commissions, fringe benefits, and similar items;

[*See main edition for text of* (*2*) *to* (*15*); (*b*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title V, § 531(c), 98 Stat. 884.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369 inserted reference to fringe benefits.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

NO GAIN RECOGNIZED FROM NET GIFTS MADE BEFORE MARCH 4, 1981

Section 1026 of Pub. L. 98-369 provided that:

"(a) IN GENERAL.—In the case of any transfer of property subject to gift tax made before March 4, 1981, for purposes of subtitle A of the Internal Revenue Code of 1954 [26 U.S.C. 1 et seq.], gross income of the donor shall not include any amount attributable to the donee's payment of (or agreement to pay) any gift tax imposed with respect to such gift.

"(b) GIFT TAX DEFINED.—For purposes of subsection (a), the term 'gift tax' means—

"(1) the tax imposed by chapter 12 of such Code [26 U.S.C. 2501 et seq.], and

"(2) any tax imposed by a State (or the District of Columbia) on transfers by gifts.

"(c) STATUTE OF LIMITATIONS.—If refund or credit of any overpayment of tax resulting from subsection (a) is prevented on the date of the enactment of this Act [July 18, 1984] (or at any time within 1 year after such date) by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to subsection (a)) may nevertheless be made or allowed if claim therefor is filed within 1 year after the date of the enactment of this Act."

PAYMENT-IN-KIND TAX TREATMENT ACT OF 1983

Pub. L. 98-4, Mar. 11, 1983, 97 Stat. 7, as amended by Pub. L. 98-369, div. A, title X, § 1061(a), July 18, 1984, 98 Stat. 1046, provided that:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Payment-in-Kind Tax Treatment Act of 1983'.

"SEC. 2. INCOME TAX TREATMENT OF AGRICULTURAL COMMODITIES RECEIVED UNDER A 1983 PAYMENT-IN-KIND PROGRAM.

"(a) INCOME TAX DEFERRAL, ETC.—Except as otherwise provided in this Act, for purposes of the Internal Revenue Code of 1954—

"(1) a qualified taxpayer shall not be treated as having realized income when he receives a commodity under a 1983 payment-in-kind program,

"(2) such commodity shall be treated as if it were produced by such taxpayer, and

"(3) the unadjusted basis of such commodity in the hands of such taxpayer shall be zero.

"(b) EFFECTIVE DATE.—This section shall apply to taxable years ending after December 31, 1982, but only with respect to commodities received for the 1983 crop year.

"SEC. 3. LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM TREATED AS USED IN FARMING BUSINESS, ETC.

"(a) GENERAL RULE.—For purposes of the provisions specified in subsection (b), in the case of any land diverted from the production of an agricultural commodity under a 1983 payment-in-kind program—

"(1) such land shall be treated as used during the 1983 crop year by the qualified taxpayer in the active conduct of the trade or business of farming, and

"(2) any qualified taxpayer who materially participates in the diversion and devotion to conservation uses required under a 1983 payment-in-kind program shall be treated as materially participating in the operation of such land during such crop year.

"(b) PROVISIONS TO WHICH SUBSECTION (a) APPLIES.—The provisions specified in this subsection are—

"(1) section 2032A of the Internal Revenue Code of 1954 (relating to valuation of certain farm, etc., real property),

"(2) section 6166 of such Code (relating to extension of time for payment of estate tax where estate consists largely of interest in closely held business),

"(3) chapter 2 of such Code (relating to tax on self-employment income), and

"(4) title II of the Social Security Act [42 U.S.C. 401 et seq.] (relating to Federal old-age, survivors, and disability insurance benefits).

"SEC. 4. ANTIABUSE RULES.

"(a) GENERAL RULE.—In the case of any person, sections 2 and 3 of this Act shall not apply with respect to any land acquired by such person after February 23, 1983, unless such land was acquired in a qualified acquisition.

"(b) QUALIFIED ACQUISITION.—For purposes of this section, the term 'qualified acquisition' means any acquisition—

"(1) by reason of the death of a qualified transferor,

"(2) by reason of a gift from a qualified transferor, or

"(3) from a qualified transferor who is a member of the family of the person acquiring the land.

"(c) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) QUALIFIED TRANSFEROR.—The term "qualified transferor" means any person—

"(A) who held the land on February 23, 1983, or

"(B) who acquired the land after February 23, 1983, in a qualified acquisition.

"(2) MEMBER OF FAMILY.—The term 'member of the family' has the meaning given such term by section 2032A(e)(2) of the Internal Revenue Code of 1954.

"(3) MERE CHANGE IN FORM OF BUSINESS.—Subsection (a) shall not apply to any change in ownership by reason of a mere change in the form of conducting the trade or business so long as the land is retained in such trade or business and the person holding the land before such change retains a direct or indirect 80-percent interest in such land.

"(4) TREATMENT OF CERTAIN ACQUISITIONS OF RIGHT TO THE CROP.—The acquisition of a direct or indirect interest in 80 percent or more of the crop from any land shall be treated as an acquisition of such land.

"SEC. 5. DEFINITIONS AND SPECIAL RULES.

"(a) GENERAL RULE.—For purposes of this Act—

"(1) 1983 PAYMENT-IN-KIND PROGRAM.—The term '1983 payment-in-kind program' means any program for the 1983 crop year—

"(A) under which the Secretary of Agriculture (or his delegate) makes payments in kind of any agricultural commodity to any person in return for—

"(i) the diversion of farm acreage from the production of an agricultural commodity, and

"(ii) the devotion of such acreage to conservation uses, and

"(B) which the Secretary of Agriculture certifies to the Secretary of the Treasury as being described in subparagraph (A).

"(2) CROP YEAR.—The term '1983 crop year' means the crop year for any crop the planting or harvesting period for which occurs during 1983. The term '1984 crop year' means the crop year for wheat the planting and harvesting period for which occurs during 1984.

"(3) QUALIFIED TAXPAYER.—The term 'qualified taxpayer' means any producer of agricultural commodities (within the meaning of the 1983 payment-in-kind programs) who receives any agricultural commodity in return for meeting the requirements of clauses (i) and (ii) of paragraph (1)(A).

"(4) RECEIPT INCLUDES RIGHT TO RECEIVE, ETC.—A right to receive (or other constructive receipt of) a commodity shall be treated the same as actual receipt of such commodity.

"(5) AMOUNTS RECEIVED BY THE TAXPAYER AS REIMBURSEMENT FOR STORAGE.—A qualified taxpayer reporting on the cash receipts and disbursements method of accounting shall not be treated as being entitled to receive any amount as reimbursement for storage of commodities received under a 1983 payment-in-kind program until such amount is actually received by the taxpayer.

"(6) COMMODITY CREDIT LOANS TREATED SEPARATELY.—Subsection (a) of section 2 shall apply to the receipt of any commodity under a 1983 payment-in-kind program separately from, and without taking into account, any related transaction or series of transactions involving the satisfaction of loans from the Commodity Credit Corporation.

"(b) EXTENSION TO WHEAT PLANTED AND HARVESTED IN 1984.—In the case of wheat—

"(1) any reference in this Act to the 1983 crop year shall include a reference to the 1984 crop year, and

"(2) any reference to the 1983 payment-in-kind program shall include a reference to any program for the 1984 year for wheat which meets the requirements of subparagraphs (A) and (B) of subsection (a)(1).

"(c) REGULATIONS.—The Secretary of the Treasury or his delegate (after consultation with the Secretary of Agriculture) shall prescribe such regulations as may be necessary to carry out the purposes of this Act, including (but not limited to) such regulations as may be necessary to carry out the purposes of this Act where the commodity is received by a cooperative on behalf of the qualified taxpayer.

"SEC. 6. STUDY.

"(a) GENERAL RULE.—The Secretary of the Treasury or his delegate, after consultation with the Secretary of Agriculture, shall conduct a study of—

"(1) the 1983 payment-in-kind program, and

"(2) the tax treatment provided with respect to such program by this Act.

"(b) REPORT.—Not later than September 1, 1983, the Secretary of the Treasury shall submit to the Congress a report on the study conducted under subsection (a), together with such recommendations as he may deem advisable."

[Section 1061(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending Pub. L. 98-4 set out above] shall apply with respect to commodities received for the 1984 crop year (as defined in section 5(a)(2) of the Payment-in-Kind Tax Treatment Act of 1983 [Pub. L. 98-4, set out above] as amended by subsection (a))."]

§ 62. Adjusted gross income defined

[*See main edition for text of* (1) *to* (6)]

(7) Pension, profit-sharing, and annuity plans of self-employed individuals

In the case of an individual who is an employee within the meaning of section 401(c)(1), the deduction allowed by section 404 to the extent attributable to contributions made on behalf of such individual.

[*See main edition for text of* (8) *to* (16)]

Nothing in this section shall permit the same item to be deducted more than once.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 491(d)(2), 98 Stat. 849.)

AMENDMENTS

1984—Par. (7). Pub. L. 98-369, § 491(d)(2), substituted in heading "and annuity" for "annuity, and bond purchase", and substituted in text "the deduction allowed by section 404" for "the deductions allowed by section 404 and section 405(c)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 219, 221, 3402 of this title; title 18 section 3575; title 21 section 849.

§ 63. Taxable income defined

[*See main edition for text of* (a) *to* (c)]

(d) Zero bracket amount

For purposes of this subtitle, the term "zero bracket amount" means—

(1) in the case of an individual to whom subsection (a), (b), (c), or (d) of section 1 applies, the maximum amount of taxable income on which no tax is imposed by the applicable subsection of section 1, or

(2) zero in any other case.

[*See main edition for text of* (e) *to* (i)]

(Aug. 16, 1954, ch. 736, 68A Stat. 18; May 23, 1977, Pub. L. 95-30, title I, § 102(a), 91 Stat. 135; Nov. 6, 1978, Pub. L. 95-600, title I, § 101(b), 92 Stat. 2769; Aug. 13, 1981, Pub. L. 97-34, title I, §§ 104(b), 111(b)(4), 121(b), (c)(2), 95 Stat. 189, 194, 196, 197.)

SUBSECTION (d)(1) ZERO BRACKET AMOUNT FOR TAXABLE YEAR BEGINNING IN 1985

For adjustment of zero bracket amount, see section 4.02 of Revenue Procedure 84-79, set out as a note under section 1 of this title.

AMENDMENTS

1981—Subsec. (d). Pub. L. 97-34, § 104(b), substituted a blanket reference to individuals to whom subsection (a), (b), (c), or (d) of section 1 applies and the maximum amount of taxable income on which no tax is imposed by the applicable subsection of section 1 for provisions specifically referring to amounts of $3,400 in the case of (A) a joint return under section 6013, or (B) a surviving spouse (as defined in section 2(a)), $2,300 in the case of an individual who is not married and who is not a surviving spouse (as so defined), and

$1,700 in the case of a married individual filing a separate return.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 104(b) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97-34, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 3, 161, 170, 211, 1034, 1374, 6012, 6014, 6212, 6362, 6504 of this title.

§ 66. Treatment of community income

(a) Treatment of community income where spouses live apart

[*See main edition for text of* (*a*)]

(b) Secretary may disregard community property laws where spouse not notified of community income

The Secretary may disallow the benefits of any community property law to any taxpayer with respect to any income if such taxpayer acted as if solely entitled to such income and failed to notify the taxpayer's spouse before the due date (including extensions) for filing the return for the taxable year in which the income was derived of the nature and amount of such income.

(c) Spouse relieved of liability in certain other cases

Under regulations prescribed by the Secretary, if—

(1) an individual does not file a joint return for any taxable year,

(2) such individual does not include in gross income for such taxable year an item of community income properly includible therein which, in accordance with the rules contained in section 879(a), would be treated as the income of the other spouse,

(3) the individual establishes that he or she did not know of, and had no reason to know of, such item of community income, and

(4) taking into account all facts and circumstances, it is inequitable to include such item of community income in such individual's gross income,

then, for purposes of this title, such item of community income shall be included in the gross income of the other spouse (and not in the gross income of the individual).

(d) Definitions

For purposes of this section—

(1) Earned income

The term "earned income" has the meaning given to such term by section 911(b).

(2) Community income

The term "community income" means income which, under applicable community property laws, is treated as community income.

(3) Community property laws

The term "community property laws" means the community property laws of a State, a foreign country, or a possession of the United States.

(As amended Pub. L. 98-369, div. A, title IV, § 424(b)(1), (2)(A), (B), July 18, 1984, 98 Stat. 802, 803.)

AMENDMENTS

1984—Pub. L. 98-369, § 424(b)(2)(A), struck out "where spouses live apart" in section catchline.

Subsec. (a). Pub. L. 98-369, § 424(b)(2)(B), substituted "Treatment of community income where spouses live apart" for "General rule" in heading.

Subsecs. (b) to (d). Pub. L. 98-369, § 424(b)(1), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to all taxable years to which the Internal Revenue Code of 1954 applies with corresponding provisions deemed to be included in the Internal Revenue Code of 1939 and applicable to all taxable years to which such Code applies, except subsection (b) of this section is applicable to taxable years beginning after December 31, 1984, see section 424(c) of Pub. L. 98-369, set out as a note under section 6013 of this title.

PART II—ITEMS SPECIFICALLY INCLUDED IN GROSS INCOME

Sec.
86. Social security and tier 1 railroad retirement benefits.
87. Alcohol fuel credit.
88. Certain amounts with respect to nuclear decommissioning costs.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, § 91(f)(2), July 18, 1984, 98 Stat. 608, added item 88.

1983—Pub. L. 98-21, title I, § 121(f)(3), Apr. 20, 1983, 97 Stat. 84, added item 86 and redesignated former item 86 as 87.

§ 71. Alimony and separate maintenance payments

(a) General rule

Gross income includes amounts received as alimony or separate maintenance payments.

(b) Alimony or separate maintenance payments defined

For purposes of this section—

(1) In general

The term "alimony or separate maintenance payment" means any payment in cash if—

(A) such payment is received by (or on behalf of) a spouse under a divorce or separation instrument,

(B) the divorce or separation instrument does not designate such payment as a payment which is not includible in gross income under this section and not allowable as a deduction under section 215,

(C) in the case of an individual legally separated from his spouse under a decree of divorce or of separate maintenance, the payee spouse and the payor spouse are not members of the same household at the time such payment is made, and

(D) there is no liability to make any such payment for any period after the death of the payee spouse and there is no liability to make any payment (in cash or property) as a substitute for such payments after the death of the payee spouse (and the divorce or separation instrument states that there is no such liability).

(2) Divorce or separation instrument

The term "divorce or separation instrument" means—

(A) a decree of divorce or separate maintenance or a written instrument incident to such a decree,

(B) a written separation agreement, or

(C) a decree (not described in subparagraph (A)) requiring a spouse to make payments for the support or maintenance of the other spouse.

(c) Payments to support children

(1) In general

Subsection (a) shall not apply to that part of any payment which the terms of the divorce or separation instrument fix (in terms of an amount of money or a part of the payment) as a sum which is payable for the support of children of the payor spouse.

(2) Treatment of certain reductions related to contingencies involving child

For purposes of paragraph (1), if any amount specified in the instrument will be reduced—

(A) on the happening of a contingency specified in the instrument relating to a child (such as attaining a specified age, marrying, dying, leaving school, or a similar contingency), or

(B) at a time which can clearly be associated with a contingency of a kind specified in paragraph (1),

an amount equal to the amount of such reduction will be treated as an amount fixed as payable for the support of children of the payor spouse.

(3) Special rule where payment is less than amount specified in instrument

For purposes of this subsection, if any payment is less than the amount specified in the instrument, then so much of such payment as does not exceed the sum payable for support shall be considered a payment for such support.

(d) Spouse

For purposes of this section, the term "spouse" includes a former spouse.

(e) Exception for joint returns

This section and section 215 shall not apply if the spouses make a joint return with each other.

(f) Special rules to prevent excess front-loading of alimony payments

(1) Requirement that payments be for more than 6 years

Alimony or separate maintenance payments (in excess of $10,000 during any calendar year) paid by the payor spouse to the payee spouse shall not be treated as alimony or separate maintenance payments unless such payments are to be made by the payor spouse to the payee spouse in each of the 6 post-separation years (not taking into account any termination contingent on the death of either spouse or the remarriage of the payee spouse).

(2) Recomputation where payments decrease by more than $10,000

If there is an excess amount determined under paragraph (3) for any computation year—

(A) the payor spouse shall include such excess amount in gross income for the payor spouse's taxable year beginning in the computation year, and

(B) the payee spouse shall be allowed a deduction in computing adjusted gross income for such excess amount for the payee spouse's taxable year beginning in the computation year.

(3) Determination of excess amount

The excess amount determined under this paragraph for any computation year is the sum of—

(A) the excess (if any) of—

(i) the amount of alimony or separate maintenance payments paid by the payor spouse during the immediately preceding post-separation year, over

(ii) the amount of the alimony or separate maintenance payments paid by the payor spouse during the computation year increased by $10,000, plus

(B) a like excess for each of the other preceding post-separation years.

In determining the amount of the alimony or separate maintenance payments paid by the payor spouse during any preceding post-separation year, the amount paid during such year shall be reduced by any excess previously determined in respect of such year under this paragraph.

(4) Definitions

For purposes of this subsection—

(A) Post-separation year

The term "post-separation year" means any calendar year in the 6 calendar year period beginning with the first calendar year in which the payor spouse paid to the payee spouse alimony or separate maintenance payments to which this section applies.

(B) Computation year

The term "computation year" means the post-separation year for which the excess under paragraph (3) is being determined.

(5) Exceptions

(A) Where payments cease by reason of death or remarriage

Paragraph (2) shall not apply to any post-separation year (and subsequent post-separation years) if—

(i) either spouse dies before the close of such post-separation year or the payee spouse remarries before the close of such post-separation year, and

(ii) the alimony or separate maintenance payments cease by reason of such death or remarriage.

(B) Support payments

For purposes of this subsection, the term "alimony or separate maintenance payment" shall not include any payment received under a decree described in subsection (b)(2)(C).

(C) Fluctuating payments not within control of payor spouse

For purposes of this subsection, the term "alimony or separate maintenance payment" shall not include any payment to the extent it is made pursuant to a continuing liability (over a period of not less than 6 years) to pay a fixed portion of the income from a business or property or from compensation for employment or self-employment.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 422(a), 98 Stat. 795.)

AMENDMENTS

1984—Pub. L. 98-369 amended section generally, substituting present provisions for provisions which had declared in: subsec. (a), a general rule as to decree of divorce or separate maintenance in par. (1), written separation agreement in par. (2), and decree for support in par. (3); subsec. (b), payments to support minor children; subsec. (c), principal sum paid in installments, par. (1) stating a general rule and par. (2) the rule where period for payment is more than 10 years; subsec. (d), the rule for husband in case of transferred property; and subsec. (e), cross references to sections 7701(a)(17), 215, and 682.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 422(e) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending sections 71, 215, 219, 682, 6676, and 7701 of this title] shall apply with respect to divorce or separation instruments (as defined in section 71(b)(2) of the Internal Revenue Code of 1954, as amended by this section) executed after December 31, 1984.

"(2) MODIFICATIONS OF INSTRUMENTS EXECUTED BEFORE JANUARY 1, 1985.—The amendments made by this section shall also apply to any divorce or separation instrument (as so defined) executed before January 1, 1985, but modified on or after such date if the modification expressly provides that the amendments made by this section shall apply to such modification.

"(3) REQUIREMENT OF IDENTIFICATION NUMBER.—Section 215(c) of the Internal Revenue Code of 1954 (as amended by subsection (b)) and the amendments made by subsection (c) [amending section 6676(c) of this title] shall apply to payments made after December 31, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 152, 215, 219 of this title.

§ 72. Annuities; certain proceeds of endowment and life insurance contracts

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Amounts not received as annuities

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Retention of existing rules in certain cases

[*See main edition for text of* (*A*) *to* (*C*)]

(D) Contracts under qualified plans

Except as provided in paragraph (7), this paragraph shall apply to any amount received—

(i) from a trust described in section 401(a) which is exempt from tax under section 501(a),

(ii) from a contract—

[*See main edition for text of* (*I*) *to* (*III*)]

(IV) provided for employees of a life insurance company under a plan described in section 818(a)(3), or

[*See main edition for text of* (*iii*), (*E*), (*6*)]

(7) Special rules for plans where substantially all contributions are employee contributions

(A) In general

In the case of any plan or contract to which this paragraph applies, subparagraph (D) of paragraph (5) shall not apply to any amount received from such plan or contract.

(B) Plans or contracts to which this paragraph applies

This paragraph shall apply to any trust or contract—

(i) which is described in clause (i) or subclause (I), (II), or (III) of clause (ii) of paragraph (5)(D), and

(ii) with respect to which 85 percent of the total contributions during a representative period are derived from employee contributions.

(C) Special rule for certain Federal plans

If the Federal Government or an instrumentality thereof maintains more than 1 plan, subparagraph (B) shall be applied by aggregating all such plans which are actively administered by the Federal Government or such instrumentality.

[*See main edition for text of* (*f*) *to* (*j*)]

[(k) Repealed. Pub. L. 98-369, div. A, title IV, § 421(b)(1), July 18, 1984, 98 Stat. 794]

[*See main edition for text of* (*l*)]

(m) Special rules applicable to employee annuities and distributions under employee plans

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Penalties applicable to certain amounts received by key employees[1]

(A) This paragraph shall apply—

(i) to amounts (other than any amount received by an individual in his capacity as a policyholder of an annuity, endowment, or life insurance contract which is in the nature of a dividend or similar distribution) which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) and which are received by an individual, who is, or has been, a 5-percent owner, before such individual attains the age of 59½ years, for any reason other than the individual's becoming disabled (within the meaning of paragraph (7) of this subsection), but only to the extent that such amounts are attributable to contributions paid on behalf of such individual (other than contributions made by him as a 5-percent owner) while he was a 5-percent owner, and

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[1] So in original. Probably should be "by 5-percent owners".

(ii) to amounts which are received from a qualified trust described in section 401(a) or under a plan described in section 403(a) at any time by an individual who is, or has been, a 5-percent owner or by the successor of such individual, but only to the extent that such amounts are determined, under regulations prescribed by the Secretary, to exceed the benefits provided for such individual under the plan formula.

[*See main edition for text of* (*B*)]

(C) For purposes of this paragraph, the term "5 percent owner" have the same meanings [3] as when used in section 416.

(6) Owner-employee defined

For purposes of this subsection, the term "owner-employee" has the meaning assigned to it by section 401(c)(3) and includes an individual for whose benefit an individual retirement account or annuity described in section 408(a) or (b) is maintained. For purposes of the preceding sentence, the term "owner-employee" shall include an employee within the meaning of section 401(c)(1).

[*See main edition for text of* (*7*) *and* (*8*)]

[(9) Repealed. Pub. L. 98–369, div. A, title VII, § 713(d)(1), July 18, 1984, 98 Stat. 957]

(10) Determination of investment in the contract in the case of qualified domestic relations orders

Under regulations prescribed by the Secretary, in the case of a distribution or payment made to an alternate payee pursuant to a qualified domestic relations order (as defined in section 414(p)), the investment in the contract as of the date prescribed in such regulations shall be allocated on a pro rata basis between the present value of such distribution or payment and the present value of all other benefits payable with respect to the participant to which such order relates.

[*See main edition for text of* (*n*)]

(*o*) Special rules for distributions from qualified plans to which employee made deductible contributions

(1) Treatment of contributions

For purposes of this section and sections 402 and 403, notwithstanding section 414(h), any deductible employee contribution made to a qualified employer plan or government plan shall be treated as an amount contributed by the employer which is not includible in the gross income of the employee.

[*See main edition for text of* (*2*)]

(3) Amounts constructively received

(A) In general

For purposes of this subsection, rules similar to the rules provided by subsection (p) (other than the exception contained in paragraph (2) thereof) shall apply.

[*See main edition for text of* (*B*)]

(4) Special rule for treatment of rollover amounts

For purposes of sections 402(a)(5), 402(a)(7), 403(a)(4), and 408(d)(3), the Secretary shall prescribe regulations providing for such allocations of amounts attributable to accumulated deductible employee contributions, and for such other rules, as may be necessary to insure that such accumulated deductible employee contributions do not become eligible for additional tax benefits (or freed from limitations) through the use of rollovers.

[*See main edition for text of* (*5*) *and* (*6*)]

(p) Loans treated as distributions

For purposes of this section—

[*See main edition for text of* (*1*)]

(2) Exception for certain loans

(A) General rule

Paragraph (1) shall not apply to any loan to the extent that such loan (when added to the outstanding balance of all other loans from such plan whether made on, before, or after August 13, 1982), does not exceed the lesser of—

(i) $50,000, or

(ii) the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) $10,000.

For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (*o*)(5)(B)).

[*See main edition for text of* (*B*) *and* (*C*)]

(3) Qualified employer plan, etc.

For purposes of this subsection, the term "qualified employer plan" means any plan which was (or was determined to be) a qualified employer plan (as defined in section 219(e)(3) other than a plan described in subsection (e)(7)). For purposes of this subsection, such term includes any government plan (as defined in section 219(e)(4)).

[*See main edition for text of* (*4*)]

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[3] So in original. Probably should be " '5-percent owner' " has the same meaning".

(q) 5-percent penalty for premature distributions from annuity contracts

(1) Imposition of penalty

If any taxpayer receives any amount under an annuity contract, the taxpayer's tax under this chapter for the taxable year in which such amount is received shall be increased by an amount equal to 5 percent of the portion of such amount which is includible in gross income.

[*See main edition for text of* (*2*)]

(r) Certain railroad retirement benefits treated as received under employer plans

(1) In general

Notwithstanding any other provision of law, any benefit provided under the Railroad Retirement Act of 1974 (other than a tier 1 railroad retirement benefit) shall be treated for purposes of this title as a benefit provided under an employer plan which meets the requirements of section 401(a).

(2) Tier 2 taxes treated as contributions

(A) In general

For purposes of paragraph (1)—

(i) the tier 2 portion of the tax imposed by section 3201 (relating to tax on employees) shall be treated as an employee contribution,

(ii) the tier 2 portion of the tax imposed by section 3211 (relating to tax on employee representatives) shall be treated as an employee contribution, and

(iii) the tier 2 portion of the tax imposed by section 3221 (relating to tax on employers) shall be treated as an employer contribution.

(B) Tier 2 portion

For purposes of subparagraph (A)—

(i) After 1984

With respect to compensation paid after 1984, the tier 2 portion shall be the taxes imposed by sections 3201(b), 3211(a)(2), and 3221(b).

(ii) After September 30, 1981, and before 1985

With respect to compensation paid before 1985 for services rendered after September 30, 1981, the tier 2 portion shall be—

(I) so much of the tax imposed by section 3201 as is determined at the 2 percent rate, and

(II) so much of the taxes imposed by sections 3211 and 3221 as is determined at the 11.75 percent rate.

With respect to compensation paid for services rendered after December 31, 1983, and before 1985, subclause (I) shall be applied by substituting "2.75 percent" for "2 percent", and subclause (II) shall be applied by substituting "12.75 percent" for "11.75 percent".

(iii) Before October 1, 1981

With respect to compensation paid for services rendered during any period before October 1, 1981, the tier 2 portion shall be the excess (if any) of—

(I) the tax imposed for such period by section 3201, 3211, or 3221, as the case may be (other than any tax imposed with respect to man-hours), over

(II) the tax which would have been imposed by such section for such period had the rates of the comparable taxes imposed by chapter 21 for such period applied under such section.

(C) Contributions not allocable to supplemental annuity or windfall benefits

For purposes of paragraph (1), no amount treated as an employee contribution under this paragraph shall be allocated to—

(i) any supplemental annuity paid under section 2(b) of the Railroad Retirement Act of 1974, or

(ii) any benefit paid under section 3(h), 4(e), or 4(h) of such Act.

(3) Tier 1 railroad retirement benefit

For purposes of paragraph (1), the term "tier 1 railroad retirement benefit" has the meaning given such term by section 86(d)(4).

(s) Required distributions where holder dies before entire interest is distributed

(1) In general

A contract shall not be treated as an annuity contract for purposes of this title unless it provides that—

(A) if the holder of such contract dies on or after the annuity starting date and before the entire interest in such contract has been distributed, the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used as of the date of his death, and

(B) if the holder of such contract dies before the annuity starting date, the entire interest in such contract will be distributed within 5 years after the death of such holder.

(2) Exception for certain amounts payable over life of beneficiary

If—

(A) any portion of the holder's interest is payable to (or for the benefit of) a designated beneficiary,

(B) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(C) such distributions begin not later than 1 year after the date of the holder's death or such later date as the Secretary may by regulations prescribe,

then for purposes of paragraph (1), the portion referred to in subparagraph (A) shall be treated as distributed on the day on which such distributions begin.

(3) Special rule where surviving spouse beneficiary

If the designated beneficiary referred to in paragraph (2)(A) is the surviving spouse of the holder of the contract, paragraphs (1) and (2) shall be applied by treating such spouse as the holder of such contract.

(4) Designated beneficiary

For purposes of this subsection, the term "designated beneficiary" means any individual designated a beneficiary by the holder of the contract.

(t) Cross reference

For limitation on adjustments to basis of annuity contracts sold, see section 1021.

(Aug. 16, 1954, ch. 736, 68A Stat. 20; Oct. 10, 1962, Pub. L. 87-792, § 4(a), (b), 76 Stat. 821; Oct. 16, 1962, Pub. L. 87-834, § 11(b), 76 Stat. 1005; Feb. 26, 1964, Pub. L. 88-272, title II, § 232(b), 78 Stat. 110; June 21, 1965, Pub. L. 89-44, title VIII, § 809(d)(2), 79 Stat. 167; July 30, 1965, Pub. L. 89-97, title I, § 106(d)(2), 79 Stat. 337; Mar. 8, 1966, Pub. L. 89-365, § 1(b), 80 Stat. 32; Dec. 30, 1969, Pub. L. 91-172, title V, § 515(b), 83 Stat. 644; Sept. 2, 1974, Pub. L. 93-406, title II, §§ 2001(e)(5), (g)(1), (2)(A), (h)(2), (3), 2002(g)(10), 2005(c)(3), 2008(b)(2), 88 Stat. 955, 957, 970, 991, 994; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§ 1901(a)(12), (13), 1906(b)(13)(A), 1951(b)(1)(A), 90 Stat. 1765, 1834, 1836; Aug. 13, 1981, Pub. L. 97-34, title III, §§ 311(b)(1), 312(d), (e)(1), 95 Stat. 278, 284; Sept. 3, 1982, Pub. L. 97-248, title II, §§ 236(a), (b), 237(d), 265(a), (b)(1), 96 Stat. 509-511, 544-546; Jan. 12, 1983, Pub. L. 97-448, title I, § 103(c)(3)(B)(i), (6), 96 Stat. 2376; Aug. 12, 1983, Pub. L. 98-76, title II, § 224(a), 97 Stat. 421; July 18, 1984, Pub. L. 98-369, div. A, title II, §§ 211(b)(1), 222(a), (b), title IV, §§ 421(b)(1), 491(d)(3), (4), title V, §§ 521(d), 523(a), (b), title VII, § 713(b)(1), (4), (c)(1)(A), (B), (d)(1), 98 Stat. 754, 774, 794, 849, 868, 871, 872, 956, 957; Aug. 23, 1984, Pub. L. 98-397, title II, § 204(c)(2), 98 Stat. 1448.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (r)(1), (2)(C)(i), (ii), is title I of Pub. L. 93-444, Oct. 16, 1974, 88 Stat. 1305, as amended, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Sections 2(b), 3(h), and 4(e) and (h) of the Railroad Retirement Act of 1974 are classified to sections 231a(b), 231b(h), and 231c(e) and (h), respectively, of Title 45. For complete classification of this Act to the Code, see section 231t of Title 45 and Tables.

AMENDMENTS

1984—Subsec. (e)(5)(D). Pub. L. 98-369, § 523(b)(1), substituted "Except as provided in paragraph (7), this" for "This".

Subsec. (e)(5)(D)(ii)(IV). Pub. L. 98-369, § 211(b)(1), which directed the substitution of "section 818(a)(3)" for "805(d)(3)" in subpar. (D)(i)(IV), was executed to subpar. (D)(ii)(IV) to reflect the probable intent of Congress.

Subsec. (e)(7). Pub. L. 98-369, § 523(a), added par. (7).

Subsec. (k). Pub. L. 98-369, § 421(b)(1), repealed subsec. (k) relating to payments in discharge of alimony.

Subsec. (m)(5). Pub. L. 98-369, § 713(c)(1)(B), substituted "key employees" for "owner-employees" in heading.

Subsec. (m)(5)(A). Pub. L. 98-369, § 521(d)(1), (2), substituted "5-percent owner" for "key employee" wherever appearing and struck out "in a top-heavy plan" at end of cl. (i).

Pub. L. 98-369, § 713(c)(1)(A), substituted "as a key employee" for "as an owner-employee" in cl. (i).

Subsec. (m)(5)(C). Pub. L. 98-369, § 521(d)(3), substituted "the term '5 percent owner' " for "the terms 'key employee' and 'top-heavy plan' ".

Subsec. (m)(9). Pub. L. 98-369, § 713(d)(1), repealed par. (9) relating to return of excess contributions before due date of return.

Subsec. (m)(10). Pub. L. 98-397 added par. (10).

Subsec. (*o*)(1). Pub. L. 98-369, § 491(d)(3), substituted "402 and 403" for "402, 403, and 405".

Subsec. (*o*)(3)(A). Pub. L. 98-369, § 713(b)(1)(A), inserted "(other than the exception contained in paragraph (2) thereof)".

Subsec. (*o*)(4). Pub. L. 98-369, § 491(d)(4), substituted "and 408(d)(3)" for "408(d)(3), and 409(b)(3)(C)".

Subsec. (p)(2)(A). Pub. L. 98-369, § 713(b)(1)(B), added at end thereof "For purposes of clause (ii), the present value of the nonforfeitable accrued benefit shall be determined without regard to any accumulated deductible employee contributions (as defined in subsection (*o*)(5)(B))."

Subsec. (p)(2)(A)(ii). Pub. L. 98-369, § 713(b)(4), substituted as cl. (ii) "the greater of (I) one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan, or (II) $10,000" for "½ of the present value of the nonforfeitable accrued benefit of the employee under the plan (but not less than $10,000)".

Subsec. (p)(3). Pub. L. 98-369, § 523(b)(2), added "other than a plan described in subsection (e)(7)".

Subsec. (q)(1). Pub. L. 98-369, § 222(a), amended par. (1) generally, striking out the designation "(A) In general.—" preceding text, substituting "which is includible in gross income" for "includible in gross income which is properly allocable to any investment in the annuity contract made during the 10-year period ending on the date such amount was received by the taxpayer", and striking out former subpar. (B), which had provided that for purposes of subpar. (A), the amount includible in gross income would be allocated to the earliest investment in the contract with respect to which amounts had not been previously fully allocated under this par.

Subsecs. (s), (t). Pub. L. 98-369, § 222(b), added subsec. (s) and redesignated former subsec. (s) as (t).

1983—Subsec. (*o*)(2)(A). Pub. L. 97-448, § 103(c)(6), struck out "to which the employee made one or more deductible employee contributions" after "from a qualified employer plan or government plan".

Subsec. (p)(3). Pub. L. 97-448, § 103(c)(3)(B)(i), struck out "without regard to subparagraph (D) thereof" after "as defined in section 219(e)(3)".

Subsecs. (r), (s). Pub. L. 98-76 added subsec. (r) and redesignated former subsec. (r) as (s).

1982—Subsec. (e). Pub. L. 97-248, § 265(a), in par. (1) substituted provisions relating to the application of this subsection to amounts received under annuity, endowment, or life insurance contracts which are not received as annuities and to amounts received as dividends for provisions which stated a general rule relating to the includability as gross income of amounts that were received under annuity, endowment, or life insurance contracts which were not received as annuities and also stated that for the purposes of this section amounts which were received as dividends would be treated as amounts not received as an annuity, in par. (2) substituted provisions stating a general rule as to the includability as gross income of amounts received before or after the annuity starting date for provisions which set out those amounts which would be treated as amounts not received as an annuity, and added pars. (3) to (6).

Subsec. (m)(4). Pub. L. 97-248, § 236(b)(1), struck out par. (4) which related to amounts constructively received with respect to assignments or pledges, and loans on contracts.

Subsec. (m)(5). Pub. L. 97-248, § 237(d)(1), (2), in subpar. (A) substituted applicability to key employees for applicability to owner-employees and added subpar. (C).

Subsec. (m)(6). Pub. L. 97-248, § 237(d)(3), struck out "except in applying paragraph (5)," after "shall".

Subsec. (m)(8). Pub. L. 97-248, § 236(b)(1), struck out par. (8) which related to loans to owner-employees.

Subsec. (o)(3)(A). Pub. L. 97-248, § 236(b)(2), substituted reference to subsec. (p) of this section for references to subsec. (m)(4) and (8) of this section.

Subsec. (p). Pub. L. 97-248, § 236(a), added subsec. (p). Former subsec. (p) redesignated (q).

Subsec. (q). Pub. L. 97-248, § 265(b)(1), added subsec. (q). Former subsec. (q) redesignated (r).

Pub. L. 97-248, § 236(a), redesignated former subsec. (p) as (q).

Subsec. (r). Pub. L. 97-248, §§ 236(a), 265(b)(1), redesignated former subsec. (p) as (r).

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-397 effective Jan. 1, 1985, except as otherwise provided, see section 303(d) of Pub. L. 98-397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 211(b)(1) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Section 222(c) of Pub. L. 98-369 provided:

"(1) In general.—The amendments made by this section [amending this section] shall apply to contracts issued after the day which is 6 months after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) Transitional rules for contracts issued before effective date.—In the case of any contract (other than a single premium contract) which is issued on or before the day which is 6 months after the date of the enactment of this Act, for purposes of section 72(q)(1)(A) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act), any investment in such contract which is made during any calendar year shall be treated as having been made on January 1 of such calendar year."

Repeal of subsec. (k) by section 421(b)(1) of Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have repeal apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 491(d)(3), (4) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Amendment by section 521(d) of Pub. L. 98-369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98-369, set out as a note under section 401 of this title.

Section 523(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsecs. (e) and (p) of this section] shall apply to any amount received or loan made after the 90th day after the date of enactment of this Act [July 18, 1984]."

Amendment by section 713 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Effective Date of 1983 Amendments

Section 227(b) of Pub. L. 98-76 provided that:

"(1) In general.—Except as provided in paragraph (2), the amendments made by section 224 [enacting section 6050G of this title, amending sections 72 and 86 of this title and enacting provisions set out as a note under section 231n of Title 45, Railroads] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

"(2) Treatment of certain lump-sum payments received after December 31, 1983.—The amendments made by section 224 shall not apply to any portion of a lump-sum payment received after December 31, 1983, if the generally applicable payment date for such portion was before January 1, 1984.

"(3) No fresh start.—For purposes of determining whether any benefit received after December 31, 1983, is includible in gross income by reason of section 72(r) of the Internal Revenue Code of 1954, as added by this Act, the amendments made by section 224 be treated as having been in effect during all periods before 1984."

Effective Date of 1982 Amendment

Section 236(c) of Pub. L. 97-248, as amended by Pub. L. 97-448, title III, § 306(a)(11), Jan. 12, 1983, 96 Stat. 2404; Pub. L. 98-369, div. A, title V, § 554, title VII, § 713(b)(2), July 18, 1984, 98 Stat. 897, 957, provided that:

[*See main edition for text of* (*1*)]

"(2) Exception for certain loans used to repay outstanding obligations.—

[*See main edition for text of* (*A*) *and* (*B*)]

"(C) Required principal payment.—For purposes of subparagraph (B), the term 'required principal payment' means any principal repayment on a loan made under the plan which was outstanding on August 13, 1982, if such repayment is required to be made after August 13, 1982, and before August 14, 1983 or if such loan was payable on demand.

"(D) Special rule for non-key employees.—In the case of a non-key employee (within the meaning of section 416(i)(2) of the Internal Revenue Code of 1954), this paragraph shall be applied by substituting 'January 1, 1985' for 'August 14, 1983' each place it appears.

[*See main edition for text of* (*3*)]

Amendment by section 237(d) of Pub. L. 97-248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97-248, set out as an Effective Date note under section 416 of this title.

Section Referred to in Other Sections

This section is referred to in sections 22, 26, 55, 79, 101, 122, 402, 403, 406, 407, 408, 414, 415, 457, 691, 817, 1014, 1275, 1302, 1304, 2517, 3405, 4973, 4978, 6050G, 7702 of this title; title 29 sections 1002, 1345; title 45 section 726.

§ 78. Dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit

Section Referred to in Other Sections

This section is referred to in sections 814, 902, 906, 908 of this title.

§ 79. Group-term life insurance purchased for employees

[*See main edition for text of* (*a*)]

(b) Exceptions

Subsection (a) shall not apply to—

(1) the cost of group-term life insurance on the life of an individual which is provided under a policy carried directly or indirectly by an employer after such individual has terminated his employment with such employer

and is disabled (within the meaning of section 72(m)(7)).

[See main edition for text of (2) and (3); (c)]

(d) Nondiscrimination requirements

(1) In general

In the case of a discriminatory group-term life insurance plan—

(A) subsection (a)(1) shall not apply with respect to any key employee, and

(B) the cost of group-term life insurance on the life of any key employee shall be determined without regard to subsection (c).

[See main edition for text of (2) to (7)]

(e) Employee includes former employee

For purposes of this section, the term "employee" includes a former employee.

(As amended Pub. L. 98-369, div. A, title II, § 223(a), (b), July 18, 1984, 98 Stat. 775.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-369, § 223(a)(2), struck out "either has reached the retirement age with respect to such employer or" before "is disabled".

Subsec. (d)(1). Pub. L. 98-369, § 223(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (e). Pub. L. 98-369, § 223(a)(1), added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 223(d) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending sections 79 and 83 of this title] shall apply to taxable years beginning after December 31, 1983.

"(2) INCLUSION OF FORMER EMPLOYEES IN THE CASE OF EXISTING GROUP-TERM INSURANCE PLANS.—

"(A) IN GENERAL.—The amendments made by subsection (a) [enacting subsec. (e) and amending subsec. (b) of this section] shall not apply—

"(i) to any group-term life insurance plan of the employer in existence on January 1, 1984, or

"(ii) to any group-term life insurance plan of the employer (or a successor employer) which is a comparable successor to a plan described in clause (i),

but only with respect to an individual who attained age 55 on or before January 1, 1984, and either was employed by such employer at any time during 1983 or retired from employment with such employer on or before January 1, 1984.

"(B) SPECIAL RULE IN THE CASE OF DISCRIMINATORY GROUP-TERM LIFE INSURANCE PLAN.—In the case of any plan which, after December 31, 1986, is a discriminatory group-term life insurance plan (as defined in section 79(d) of the Internal Revenue Code of 1954), subparagraph (A) shall not apply in the case of any individual retiring under such plan after December 31, 1986.

"(C) BENEFITS TO CERTAIN RETIRED INDIVIDUALS NOT TAKEN INTO ACCOUNT FOR PURPOSES OF DETERMINING WHETHER PLAN IS DISCRIMINATORY.—For purposes of determining whether after December 31, 1986, a plan described in subparagraph (A) meets the requirements of section 79(d) of the Internal Revenue Code of 1954 with respect to group-term life insurance for former employees, coverage provided to employees who retired on or before December 31, 1986, shall not be taken into account."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 83, 125, 419A, 6052, 7701 of this title.

§ 80. Restoration of value of certain securities

(a) General rule

In the case of a domestic corporation subject to the tax imposed by section 11 or 801, if the value of any security (as defined in section 165(g)(2))—

[See main edition for text of (1) and (2)]

is restored in whole or in part during any taxable year by reason of any recovery of money or other property in respect of the property to which such security was related, the value so restored (to the extent that, when added to the value so restored during prior taxable years, it does not exceed the amount of the loss described in paragraph (2)) shall, except as provided in subsection (b), be included in gross income for the taxable year in which such restoration occurs.

[See main edition for text of (b) to (d)]

(As amended Pub. L. 98-369, div. A, title II, § 211(b)(2), July 18, 1984, 98 Stat. 754.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "801" for "802".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

§ 83. Property transferred in connection with performance of services

[See main edition for text of (a) to (d)]

(e) Applicability of section

This section shall not apply to—

[See main edition for text of (1) and (2)]

(3) the transfer of an option without a readily ascertainable fair market value,

(4) the transfer of property pursuant to the exercise of an option with a readily ascertainable fair market value at the date of grant, or

(5) the cost of group-term life insurance to which section 79 applies.

[See main edition for text of (f) to (i)]

(As amended Pub. L. 98-369, div. A, title II, § 223(c), July 18, 1984, 98 Stat. 775.)

AMENDMENTS

1984—Subsec. (e)(5). Pub. L. 98-369 added par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 223(d)(1) of Pub. L. 98-369, set out as a note under section 79 of this title.

TIME FOR MAKING CERTAIN SECTION 83(b) ELECTIONS

Section 556 of Pub. L. 98-369, provided that: "In the case of any transfer of property in connection with the performance of services after June 30, 1976, and on or before November 18, 1982, the election permitted by section 83(b) of the Internal Revenue Code of 1954 may be made, notwithstanding paragraph (2) of such section 83(b), with the income tax return for the first taxable year ending after the date of the enactment of this Act [July 18, 1984], if—

"(1) the amount paid for such property was not less than its fair market value at the time of transfer (determined without regard to any restriction other than a restriction which by its terms will never lapse), and

"(2) the election is consented to by the person transferring such property.

The election shall contain that information required by the Secretary of the Treasury or his delegate for elections permitted by such section 83(b). The period for assessing any tax attributable to a transfer of property which is the subject of an election made pursuant to this section shall not expire before the date which is 3 years after the date such election was made."

Section Referred to in Other Sections

This section is referred to in sections 402, 403, 419, 422A, 457, 1042, 3121 of this title.

§ 85. Unemployment compensation

(a) In general

If the sum for the taxable year of the adjusted gross income of the taxpayer (determined without regard to this section, section 86 and section 221) and the unemployment compensation exceeds the base amount, gross income for the taxable year includes unemployment compensation in an amount equal to the lesser of—

[*See main edition for text of (1) and (2); (b) and (c)*]

(As amended Pub. L. 98-21, title I, §§ 121(f)(1), 122(c)(2), Apr. 20, 1983, 97 Stat. 84, 87.)

Amendments

1983—Subsec. (a). Pub. L. 98-21, § 122(c)(2), struck out ", section 105(d)," after "section 86".

Pub. L. 98-21, § 121(f)(1), added "section 86," after "this section,".

Effective Date of 1983 Amendment

Amendment by section 121 of Pub. L. 98-21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as an Effective Date note under section 86 of this title.

Amendment by section 122 of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

Effective Date

Section 112(d) of Pub. L. 95-600, as amended by Pub. L. 98-369, div. A, title X, § 1075(a), July 18, 1984, 98 Stat. 1053, provided that: "The amendments made by this section [enacting sections 85 and 6050B of this title] shall apply to payments of unemployment compensation made after December 31, 1978, in taxable years ending after such date, except that such amendments shall not apply to payments made for weeks of unemployment ending before December 1, 1978."

Waiver of Statute of Limitations

Pub. L. 98-369, div. A, title X, § 1075(b), July 18, 1984, 98 Stat. 1053, provided that: "If credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) [amending section 112(d) of Pub. L. 95-600, set out as an Effective Date note above] is barred on the date of the enactment of this Act [July 18, 1984] or at any time during the 1-year period beginning on the date of the enactment of this Act by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the amendment made by subsection (a)) may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period."

Section Referred to in Other Sections

This section is referred to in section 6050B of this title.

§ 86. Social security and tier 1 railroad retirement benefits

(a) In general

Gross income for the taxable year of any taxpayer described in subsection (b) (notwithstanding section 207 of the Social Security Act) includes social security benefits in an amount equal to the lesser of—

(1) one-half of the social security benefits received during the taxable year, or

(2) one-half of the excess described in subsection (b)(1).

(b) Taxpayers to whom subsection (a) applies

(1) In general

A taxpayer is described in this subsection if—

(A) the sum of—

(i) the modified adjusted gross income of the taxpayer for the taxable year, plus

(ii) one-half of the social security benefits received during the taxable year, exceeds

(B) the base amount.

(2) Modified adjusted gross income

For purposes of this subsection, the term "modified adjusted gross income" means adusted gross income—

(A) determined without regard to this section and sections 221, 911, 931, and 933, and

(B) increased by the amount of interest received or accrued by the taxpayer during the taxable year which is exempt from tax.

(c) Base Amount

For purposes of this section, the term "base amount" means—

(1) except as otherwise provided in this subsection, $25,000,

(2) $32,000, in the case of a joint return, and

(3) zero, in the case of a taxpayer who—

(A) is married at the close of the taxable year (within the meaning of section 143) but does not file a joint return for such year, and

(B) does not live apart from his spouse at all times during the taxable year.

(d) Social security benefit

(1) In general

For purposes of this section, the term "social security benefit" means any amount received by the taxpayer by reason of entitlement to—

(A) a monthly benefit under title II of the Social Security Act, or

(B) a tier 1 railroad retirement benefit.

For purposes of the preceding sentence, the amount received by any taxpayer shall be determined as if the Social Security Act did not contain section 203(i) thereof.

(2) Adjustment for repayments during year

(A) In general

For purposes of this section, the amount of social security benefits received during any taxable year shall be reduced by any repayment made by the taxpayer during the taxable year of a social security benefit previously received by the taxpayer (whether or not such benefit was received during the taxable year).

(B) Denial of deduction

If (but for this subparagraph) any portion of the repayments referred to in subparagraph (A) would have been allowable as a deduction for the taxable year under section 165, such portion shall be allowable as a deduction only to the extent it exceeds the social security benefits received by the taxpayer during the taxable year (and not repaid during such taxable year).

(3) Workmen's compensation benefits substituted for social security benefits

For purposes of this section, if, by reason of section 224 of the Social Security Act (or by reason of section 3(a)(1) of the Railroad Retirement Act of 1974), any social security benefit is reduced by reason of the receipt of a benefit under a workmen's compensation act, the term "social security benefit" includes that portion of such benefit received under the workmen's compensation act which equals such reduction.

(4) Tier 1 railroad retirement benefit

For purposes of paragraph (1), the term "tier 1 railroad retirement benefit" means a monthly benefit under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974.

(e) Limitation on amount included where taxpayer receives lump-sum payment

(1) Limitation

If—

(A) any portion of a lump-sum payment of social security benefits received during the taxable year is attributable to prior taxable years, and

(B) the taxpayer makes an election under this subsection for the taxable year,

then the amount included in gross income under this section for the taxable year by reason of the receipt of such portion shall not exceed the sum of the increases in gross income under this chapter for prior taxable years which would result solely from taking into account such portion in the taxable years to which it is attributable.

(2) Special rules

(A) Year to which benefit attributable

For purposes of this subsection, a social security benefit is attributable to a taxable year if the generally applicable payment date for such benefit occurred during such taxable year.

(B) Election

An election under this subsection shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Such election, once made, may be revoked only with the consent of the Secretary.

(f) Treatment as pension or annuity for certain purposes

For purposes of—

(1) section 37(c)(3)(A)[4] (relating to reduction for amounts received as pension or annuity),

(2) section 32(c)(2) (defining earned income),

(3) section 219(f)(1) (defining compensation),

(4) section 221(b)(2) (defining earned income), and

(5) section 911(b)(1) (defining foreign earned income),

any social security benefit shall be treated as an amount received as a pension or annuity.

(Added and amended Pub. L. 98–21, title I, § 121(a), title III, § 335(b)(2)(A), Apr. 20, 1983, 97 Stat. 80, 130; Pub. L. 98–76, title II, § 224(d), Aug. 12, 1983, 97 Stat. 424; Pub. L. 98–369, div. A, title IV, § 474(r)(2), div. B, title VI, § 2661(*o*)(1), July 18, 1984, 98 Stat. 839, 1158.)

References in Text

The Social Security Act, referred to in subsecs. (a), (d)(1), (3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of Title 42. Sections 203(i), 207 and 224 of the Social Security Act are classified to sections 403(i), 407, and 424a, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Sections 3(a), (f)(3) and 4(a), (f) of the Railroad Retirement Act of 1974, referred to in subsec. (d)(3) and (4), are classified to sections 231b(a), (f)(3) and 231c(a), (f), respectively, of Title 45, Railroads.

Section 37, referred to in subsec. (f)(1), was renumbered section 22 by section 471(c)(1) of Pub. L. 98-369.

Prior Provisions

A prior section 86 was renumbered section 87 of this title.

Amendments

1984—Subsec. (f)(1). Pub. L. 98-369, § 2661(*o*)(1), added par. (1). Former par. (1) was redesignated par. (2).

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[4] See References in Text note below.

Pub. L. 98-369, § 474(r)(2), substituted "section 32(c)(2)" for "section 43(c)(2)".

Subsec. (f)(2)-(5). Pub. L. 98-369, § 2661(*o*)(1), redesignated pars. (1) to (4) as (2) to (5), respectively.

1983—Subsec. (a). Pub. L. 98-21, § 335(b)(2)(A), added "(notwithstanding section 207 of the Social Security Act)".

Subsec. (d)(4). Pub. L. 98-76 inserted "3(f)(3)," after "3(a),".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(2) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for portions of lump-sum payments received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 227(b) of Pub. L. 98-76 set out as a note under section 72 of this title.

EFFECTIVE DATE

Section 121(g) of Pub. L. 98-21 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting sections 86 and 6050F of this title, amending sections 85, 128, 861, 871, 1441, and 6103 of this title and section 3413 of Title 12, Banks and Banking, and enacting provisions set out as a note under section 401 of Title 42, The Public Health and Welfare] shall apply to benefits received after December 31, 1983, in taxable years ending after such date.

"(2) TREATMENT OF CERTAIN LUMP-SUM PAYMENTS RECEIVED AFTER DECEMBER 31, 1983.—The amendments made by this section shall not apply to any portion of a lump-sum payment of social security benefits (as defined in section 86(d) of the Internal Revenue Code of 1954) received after December 31, 1983, if the generally applicable payment date for such portion was before January 1, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 72, 85, 861, 871, 6050F, 6050G, 6103 of this title.

§ 87. Alcohol fuel credit

Gross income includes the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a).

(Added Pub. L. 96-223, title II, § 232(c)(1), Apr. 2, 1980, 94 Stat. 276, § 86 renumbered § 87, Pub. L. 98-21, title I, § 121(a), Apr. 20, 1983, 97 Stat. 80, and amended Pub. L. 98-369, div. A, title IV, § 474(r)(3), July 18, 1984, 98 Stat. 839.)

AMENDMENTS

1984—Pub. L. 98-369 amended section generally, substituting "the amount of the alcohol fuel credit determined with respect to the taxpayer for the taxable year under section 40(a)" for "an amount equal to the amount of the credit allowable to the taxpayer under section 44E for the taxable year (determined without regard to subsection (e) thereof)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(3) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE

Section applicable to sales or uses after Sept. 30, 1980, in taxable years ending after such date, see section 232(h)(1) of Pub. L. 96-223, set out as a note under section 40 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 55 of this title.

§ 88. Certain amounts with respect to nuclear decommissioning costs

In the case of any taxpayer who is required to include the amount of any nuclear decommissioning costs in the taxpayer's cost of service of ratemaking purposes, there shall be includible in the gross income of such taxpayer the amount so included for any taxable year.

(Added Pub. L. 98-369, div. A, title I, § 91(f)(1), July 18, 1984, 98 Stat. 608.)

EFFECTIVE DATE

Section applicable to amounts with respect to which a deduction would be allowable under chapter 1 of this title after Mar. 31, 1984, or July 18, 1984, see section 91(g) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 461 of this title.

PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

Sec.	
111.	Recovery of tax benefit items.
132.	Certain fringe benefits.
133.	Interest on certain loans used to acquire employer securities.
134.	Cross references to other acts.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, § 171(b), title V, §§ 531(a)(2), 543(b), July 18, 1984, 98 Stat. 699, 881, 892, substituted "Recovery of tax benefit items" for "Recovery of bad debts, prior taxes, and delinquency amounts" in item 111, added items 132 (relating to certain fringe benefits) and 133 (relating to interest on certain loans used to acquire employer securities), and redesignated former item 132 (relating to cross references to other Acts) as item 134.

Pub. L. 98-369, div. A, title I, § 16(a), July 18, 1984, 98 Stat. 505, repealed an amendment made by Pub. L. 97-34, § 302(c). See 1981 Amendment note below.

1981—Pub. L. 97-34, title III, §§ 301(b)(1), 302(c)(1), (d)(1), Aug. 13, 1981, 95 Stat. 270, 272, 274, effective with regard to taxable years beginning after Sept. 30, 1981, redesignated item 128 "Cross References to other Acts" as 129 and added item 128 "Interest on certain savings certificates" and, section 302(c)(1), with regard to taxable years beginning after Dec. 31, 1984, provided that "Partial exclusion of interest" is substituted for "Interest on certain savings certificates" in item 128. Section 16(a) of Pub. L. 98-369, repealed section 302(c) of Pub. L. 97-34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

§ 101. Certain death benefits

[*See main edition for text of* (*a*)]

(b) Employees' death benefits

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Treatment of self-employed individuals

For purposes of this subsection—

(A) Self-employed individual not considered employee

Except as provided in subparagraph (B), the term "employee" does not include a self-employed individual described in section 401(c)(1).

(B) Special rule for certain distributions

In the case of any amount paid or distributed—

(i) by a trust described in section 401(a) which is exempt from tax under section 501(a), or

(ii) under a plan described in section 403(a),

the term "employee" includes a self-employed individual described in section 401(c)(1).

[*See main edition for text of* (c) *and* (d)]

[(e) Repealed. Pub. L. 98-369, div. A, title IV, § 421(b)(2), July 18, 1984, 98 Stat. 794]

(f) Proceeds of flexible premium contracts issued before January 1, 1985 payable by reason of death

(1) In general

Any amount paid by reason of the death of the insured under a flexible premium life insurance contract issued before January 1, 1985 shall be excluded from gross income only if—

[*See main edition for text of* (*A*) *and* (*B*), (*2*) *and* (*3*)]

(Aug. 16, 1954, ch. 736, 68A Stat. 26; Sept. 2, 1958, Pub. L. 85-866, title I, § 23(d), 72 Stat. 1622; Oct. 10, 1962, Pub. L. 87-792, § 7(c), 76 Stat. 829; Mar. 8, 1966, Pub. L. 89-365, § 1(c), 80 Stat. 32; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(1), 83 Stat. 526; Sept. 2, 1974, Pub. L. 93-406, title II, §§ 2005(c)(15), 2008(b)(3), 88 Stat. 992, 994; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§ 1901(a)(16), 1906(b)(13)(A), 90 Stat. 1765, 1834; Sept. 3, 1982, Pub. L. 97-248, title II, §§ 239, 266(a), (b), 96 Stat. 514, 547, 550; July 18, 1984, Pub. L. 98-369, div. A, title II, § 221(b)(2), title IV, § 421(b)(2), title VII, § 713(e), 98 Stat. 772, 794, 958.)

AMENDMENTS

1984—Subsec. (b)(3)(B). Pub. L. 98-369, § 713(e), amended subpar. (B) generally, substituting in catchline "certain distributions" for "certain lump sum distributions", substituting in introductory text "amount paid or distributed" for "lump sum distribution described in the second sentence of paragraph (2)(B)" and adding cls. (i) and (ii).

Subsec. (e). Pub. L. 98-369, § 421(b)(2), repealed subsec. (e) relating to payments of alimony or of income of an estate or trust in case of divorce, etc.

Subsec. (f). Pub. L. 98-369, § 221(b)(2)(B), inserted "issued before January 1, 1985" in heading.

Subsec. (f)(1). Pub. L. 98-369, § 221(b)(2)(A), inserted "issued before January 1, 1985" in introductory provisions.

1982—Subsec. (a)(1). Pub. L. 97-248, § 266(b), substituted ", subsection (d), and subsection (f)" for "and in subsection (d)".

Subsec. (b)(3). Pub. L. 97-248, § 239, amended par. (3) generally, substituting in the paragraph catchline "Treatment of self-employed individuals" for "Self-employed individual not considered an employee", designating existing provisions as subparagraph (A) and, as so designated, adding catchline and exception for subpar. (B), and adding subparagraph (B).

Subsec. (f). Pub. L. 97-248, § 266(a), added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment to subsec. (f) by section 221(b)(2) of Pub. L. 98-369 effective Jan. 1, 1984, see section 221(d)(4) of Pub. L. 98-369, set out as an Effective Date note under section 7702 of this title.

Repeal of subsec. (e) by section 421(b)(2) of Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have repeal apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 713 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Section 266(c)(1) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title II, § 221(b)(1), July 18, 1984, 98 Stat. 772, provided that: "The amendments made by this section [enacting subsec. (f) and amending subsec. (a)(1) of this section] shall apply to contracts entered into before January 1, 1985."

Amendment of subsec. (b)(3) of this section by section 239 of Pub. L. 97-248 applicable to decedents dying after Dec. 31, 1983, see section 241(b), of Pub. L. 97-248, set out as an Effective Date note under section 416 of this title. Such amendment is applicable, in the case of amounts received under the plan of an S corporation, with respect to decedents dying after Dec. 31, 1982, notwithstanding section 241(b) of Pub. L. 97-248, see section 6(b)(2) of Pub. L. 97-354, Oct. 19, 1982, 96 Stat. 1697, set out as a note under section 1361 of this title.

CROSS REFERENCES

Credit for the elderly, prohibition against reduction for exclusion from gross income of life insurance proceeds, see section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 406, 407, 419A, 3405, 7701, 7702 of this title; title 40 section 484.

§ 103. Interest on certain governmental obligations

[*See main edition for text of* (*a*)]

(b) Industrial development bonds

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Certain exempt activities

Paragraph (1) shall not apply to any obligation which is issued as part of an issue substantially all of the proceeds of which are to be used to provide—

[*See main edition for text of* (*A*) *to* (*J*)]

For purposes of subparagraph (E), the local furnishing of electric energy or gas from a facility shall include furnishing solely within the area consisting of a city and 1 contiguous county. For purposes of subparagraph (A), any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes.

[*See main edition for text of* (5)]

(6) Exemption for certain small issues

[*See main edition for text of* (*A*) *to* (*E*)]

(F) Certain capital expenditures not taken into account

For purposes of subparagraph (D)(ii), any capital expenditure—

[*See main edition for text of* (*i*) *to* (*iii*)]

(iv) described in clause (i) or (ii) of section 30(b)(2)(A) for which a deduction was allowed under section 174(a),

shall not be taken into account.

[*See main edition for text of* (*G*) *to* (*M*)]

(N) Termination dates

(i) In general

This paragraph shall not apply to any obligation issued after December 31, 1986 (including any obligations issued to refund an obligation issued on or before such date).

(ii) Obligations used to finance manufacturing facilities

In the case of any obligation which is part of an issue substantially all of the proceeds of which are to be used to provide a manufacturing facility, clause (i) shall be applied by substituting "1988" for "1986".

(iii) Manufacturing facility

For purposes of this subparagraph, the term "manufacturing facility" means any facility which is used in the manufacturing or production of tangible personal property (including the processing resulting in a change in the condition of such property).

[*See main edition for text of* (*O*)]

(P) Aggregation of issues with respect to single project

For purposes of this paragraph, 2 or more issues part or all of which are to be used with respect to a single building, an enclosed shopping mall, or a strip of offices, stores, or warehouses using substantial common facilities shall be treated as 1 issue (and any person who is a principal user with respect to any of such issues shall be treated as a principal user with respect to the aggregated issue).

[(7) Repealed. Pub. L. 98–369, div. A, title VI, § 628(g), July 18, 1984, 98 Stat. 932]

[*See main edition for text of* (*8*) *to* (*12*)]

(13) Exception

Paragraphs (4), (5), (6), and (7) shall not apply with respect to any obligation for any period during which it is held by a person who is a substantial user of the facilities or a related person. For purposes of this paragraph—

(A) a partnership and each of its partners (and their spouses and minor children) shall be treated as related persons, and

(B) an S corporation and each of its shareholders (and their spouses and minor children) shall be treated as related persons.

[*See main edition for text of* (*14*)]

(15) Aggregate limit per taxpayer for small issue exception

(A) In general

Paragraph (6) of this subsection shall not apply to any issue if the aggregate authorized face amount of such issue allocated to any test-period beneficiary (when increased by the outstanding tax-exempt IDB's of such beneficiary) exceeds $40,000,000.

(B) Outstanding tax-exempt IDB's of any person

For purposes of applying subparagraph (A) with respect to any issue, the outstanding tax-exempt IDB's of any person who is a test-period beneficiary with respect to such issue is the aggregate face amount of all industrial development bonds the interest on which is exempt from tax under subsection (a)—

(i) which are allocated to such beneficiary, and

(ii) which are outstanding at the time of such later issue (not including as outstanding any obligation which is to be redeemed from the proceeds of the later issue).

(C) Allocation of face amount of an issue

(i) In general

Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary of a facility financed by the proceeds of such issue (other than an owner of such facility) is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility used by such beneficiary bears to the entire facility.

(ii) Owners

Except as otherwise provided in regulations, the portion of the face amount of an issue allocated to any test-period beneficiary who is an owner of a facility financed by the proceeds of such issue is an amount which bears the same relationship to the entire face amount of such issue as the portion of such facility owned by such beneficiary bears to the entire facility.

(D) Test-period beneficiary

For purposes of this paragraph, except as provided in regulations, the term "test-period beneficiary" means any person who was an owner or a principal user of facilities being financed by the issue at any time during the 3-year period beginning on the later of—

(i) the date such facilities were placed in service, or

(ii) the date of the issue.

(E) Treatment of related persons

For purposes of this paragraph, all persons who are related (within the meaning of paragraph (6)(C)) to each other shall be treated as one person.

(16) Limitation on use for land acquisition

(A) In general

Paragraphs (4), (5), and (6) shall not apply with respect to any obligation issued as part of an issue if—

(i) any portion of the proceeds of such issue are to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes, or

(ii) 25 percent or more of the proceeds of such issue are to be used (directly or indirectly) for the acquisition of land not described in clause (i) (or an interest therein).

In the case of an obligation described in paragraph (5) (relating to industrial parks), clause (i) shall be applied by substituting "50 percent" for "25 percent".

(B) Exception for first-time farmers

(i) In general

If the requirements of clause (ii) are met with respect to any land, subparagraph (A) shall not apply to such land, and paragraph (17) shall not apply to property located thereon or to property to be acquired within 1 year to be used in farming, but only to the extent of expenditures (financed with the proceeds of the issue) not in excess of $250,000.

(ii) Acquisition by first-time farmers

The requirements of this clause are met with respect to any land if—

(I) such land is to be used for farming purposes, and

(II) such land is to be acquired by an individual who is a first-time farmer, who will be the principal user of such land, and who will materially and substantially participate on the farm of which such land is a part in the operation of such farm.

(iii) First-time farmer

For purposes of this subparagraph, the term "first-time farmer" means any individual if such individual has not at any time had any direct or indirect ownership interest in substantial farmland in the operation of which such individual materially participated. For purposes of this subparagraph, any ownership or material participation by an individual's spouse or minor child shall be treated as ownership and material participation by the individual.

(iv) Farm

For purposes of this subparagraph, the term "farm" has the meaning given such term by section 6420(c)(2).

(v) Substantial farmland

The term "substantial farmland" means any parcel of land unless—

(I) such parcel is smaller than 15 percent of the median size of a farm in the county in which such parcel is located, and

(II) the fair market value of the land does not at any time while held by the individual exceed $125,000.

(C) Exception for certain land acquired for environmental purposes

Any land acquired by a public agency in connection with an airport, mass transit, or port development project which consists of facilities described in paragraph (4)(D) shall not be taken into account under subparagraph (A) if—

(i) such land is acquired for a noise abatement, wetland preservation, future use, or other public purpose, and

(ii) there is not other significant use of such land.

(17) Acquisition of existing property not permitted

(A) In general

Paragraphs (4), (5), (6), and (7) shall not apply to any obligation issued as part of an issue if any portion of the proceeds of such issue is to be used for the acquisition of any property (or an interest therein) unless the first use of such property is pursuant to such acquisition.

(B) Exception for certain rehabilitations

Subparagraph (A) shall not apply with respect to any building (and the equipment therefor) if—

(i) the rehabilitation expenditures with respect to such building equals or exceeds

(ii) 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the proceeds of the issue.

A rule similar to the rule of the preceding sentence shall apply in the case of facilities other than a building except that clause (ii) shall be applied by substituting "100 percent" for "15 percent".

(C) Rehabilitation expenditures

For purposes of this paragraph—

(i) In general

Except as provided in this subparagraph, the term "rehabilitation expenditures" means any amount properly chargeable to capital account which is incurred by the person acquiring the building for property (or additions or improvements to property) in connection with the rehabilitation of a building. In the case of an integrated operation contained in a building before its acquisition, such term includes rehabilitating existing equipment in such building or replacing it with equipment having substantially the same function. For purposes of this clause, any amount incurred by a successor to the person acquiring the building or by the seller under a sales contract with such person shall be treated as incurred by such person.

(ii) Certain expenditures not included

The term "rehabilitation expenditures" does not include any expenditure described in section 48(g)(2)(B) (other than clause (i) thereof).

(iii) Period during which expenditures must be incurred

The term "rehabilitation expenditures" shall not include any amount which is incurred after the date 2 years after the later of—

(I) the date on which the building was acquired, or

(II) the date on which the obligation was issued.

(D) Special rule for certain projects

In the case of a project involving 2 or more buildings, this paragraph shall be applied on a project basis.

(18) No portion of bonds may be issued for skyboxes, airplanes, gambling establishments, etc.

Paragraphs (4), (5), and (6) shall not apply to any obligation issued as part of an issue if any portion of the proceeds of such issue is to be used to provide any airplane, skybox, or other private luxury box, any health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(c) Arbitrage

(1) Subsection (a)(1) or (2) not to apply to arbitrage bonds

[*See main edition for text of (1) to (5)*]

(6) Investments in nonpurpose obligations

(A) In general

For purposes of this title, any obligation which is part of an issue of industrial development bonds which does not meet the requirements of subparagraphs (C) and (D) shall be treated as an obligation which is not described in subsection (a).

(B) Exceptions

Subparagraph (A) shall not apply to any obligation described in subsection (b)(4)(A) or to any housing program obligation under section 11(b) of the Housing Act of 1937.

(C) Limitation on investment in nonpurpose obligations

(i) In general

An issue meets the requirements of this subparagraph only if—

(I) at no time during any bond year, the amount invested in nonpurpose obligations with a yield higher than the yield on the issue exceeds 150 percent of the debt service on the issue for the bond year, and

(II) the aggregate amount invested as provided in subclause (I) is promptly and appropriately reduced as the amount of outstanding obligations of the issue is reduced.

(ii) Exception for temporary periods

Clause (i) shall not apply to—

(I) proceeds of the issue invested for an initial temporary period until such proceeds are needed for the governmental purpose of the issue, and

(II) temporary investment periods related to debt service.

(iii) Debt service defined

For purposes of this subparagraph, the debt service on the issue for any bond year is the scheduled amount of interest and amortization of principal payable for such year with respect to such issue. For purposes of the preceding sentence, there shall not be taken into account amounts scheduled with respect to any bond which has been retired before the beginning of the bond year.

(iv) No disposition in case of loss

This subparagraph shall not require the sale or disposition of any investment if such sale or disposition would result in a loss which exceeds the amount which would be paid to the United States (but for such sale or disposition) at the time of such sale or disposition.

(D) Rebate to United States

An issue shall be treated as meeting the requirements of this subparagraph only if an amount equal to the sum of—

(i) the excess of—

(I) the aggregate amount earned on all nonpurpose obligations (other than investments attributable to an excess described in this clause), over

(II) the amount which would have been earned if all nonpurpose obligations were invested at a rate equal to the yield on the issue, plus

(ii) any income attributable to the excess described in clause (i),

is paid to the United States by the issuer in accordance with the requirements of subparagraph (E).

(E) Due date of payments under subparagraph (D)

The amount which is required to be paid to the United States by the issuer shall be paid in installments which are made at least once every 5 years. Each installment shall be in an amount which insures that 90 percent of the amount described in subparagraph (D) with respect to the issue at the time payment of such installment is required will have been paid to the United States. The last installment shall be made no later than 30 days after the day on which the last obligation of the issue is redeemed and shall be in an amount sufficient to pay the remaining balance of the amount described in subparagraph (D) with respect to such issue.

(F) Special rules for applying subparagraph (D)

(i) In general

In determining the aggregate amount earned on nonpurpose obligations for purposes of subparagraph (D)—

(I) any gain or loss on the disposition of a nonpurpose obligation shall be taken into account, and

(II) unless the issuer otherwise elects, any amount earned on a bona fide debt service fund shall not be taken into account if the gross earnings on such fund for the bond year is less than $100,000.

(ii) Temporary investments

Under regulations prescribed by the Secretary, an issue shall, for purposes of this paragraph, be treated as meeting the requirements of subparagraph (D) if the gross proceeds of such issue are expended for the governmental purpose for which the bond was issued by no later than the day which is 6 months after the date of issuance of such issue. Gross proceeds which are held in a bona fide debt service fund shall not be considered gross proceeds for purposes of this clause only.

(G) Exemption from gross income of sum rebated

Gross income does not include the sum described in subparagraph (D). Notwithstanding any other provision of this title, no deduction shall be allowed for any amount paid to the United States under subparagraph (D).

(H) Definitions

For purposes of this paragraph—

(i) Nonpurpose obligations

The term "nonpurpose obligation" means any security (within the meaning of subparagraph (A) or (B) of section 165(g)(2)) or any obligation not described in subsection (a) which—

(I) is acquired with the gross proceeds of an issue, and

(II) is not acquired in order to carry out the governmental purpose of the issue.

(ii) Gross proceeds

The gross proceeds of an issue include—

(I) amounts received (including repayments of principal) as a result of investing the original proceeds of the issue, and

(II) amounts used to pay debt service on the issue.

(iii) Yield

The yield on the issue shall be determined on the basis of the issue price (within the meaning of section 1273 or 1274).

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.

[*See main edition for text of* (d) *to* (g)]

(h) Obligation must not be guaranteed, etc.

(1) In general

An obligation shall not be treated as an obligation described in subsection (a) if such obligation is federally guaranteed.

(2) Federally guaranteed defined

For purposes of paragraph (1), an obligation is federally guaranteed if—

(A) the payment of principal or interest with respect to such obligation is guaranted[1] (in whole or in part) by the United States (or any agency or instrumentality thereof),

(B) such obligation is issued as part of an issue and a significant portion of the proceeds of such issue are to be—

(i) used in making loans the payment of principal or interest with respect to which are to be guaranteed (in whole or in part) by the United States (or any agency or instrumentality thereof), or

(ii) invested (directly or indirectly) in federally insured deposits or accounts, or

(C) the payment of principal or interest on such obligation is otherwise indirectly guaranteed (in whole or in part) by the United States (or an agency or instrumentality thereof).

(3) Exceptions

(A) Certain insurance programs

An obligation shall not be treated as federally guaranteed by reason of—

(i) any guarantee by the Federal Housing Administration, the Veterans' Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or the Government National Mortgage Association,

(ii) any guarantee of student loans and any guarantee by the Student Loan Marketing Association to finance student loans,

(iii) any guarantee by the Small Business Administration with respect to qualified contracts for pollution control facilities (within the meaning of section 404(a) of the Small Business Investment Act of 1958, as in effect on the date of the enactment of the Tax Reform Act of 1984) if—

(I) the Administrator of the Small Business Administration charges a fee for making such guarantee, and

(II) the amount of such fee equals or exceeds 1 percent of the amount guaranteed, or

(iv) any guarantee by the Bonneville Power Authority pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of the enactment of the Tax Reform Act of 1984 with respect to any obligation issued before July 1, 1989.

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[1] So in original. Probably should be "guaranteed".

(B) Debt service, etc.

Paragraph (1) shall not apply to—

(i) proceeds of the issue invested for an initial temporary period until such proceeds are needed for the purpose for which such issue was issued,

(ii) investments of a bona fide debt service fund,

(iii) investments of a reserve which meet the requirements of subsection (c)(4)(B),

(iv) investments in obligations issued by the United States Treasury, or

(v) other investments permitted under regulations.

(C) Exception for housing programs

(i) In general

Except as provided in clause (ii), paragraph (1) shall not apply to—

(I) an obligation described in subsection (b)(4)(A) or a housing program obligation under section 11(b) of the United States Housing Act of 1937,

(II) a qualified mortgage bond (as defined in section 103A(c)(1)), or

(III) a qualified veterans' mortgage bond (as defined in section 103A(c)(3)).

(ii) Exception not to apply where obligation invested in federally insured deposits or accounts

Clause (i) shall not apply to any obligation which is federally guaranteed within the meaning of paragraph (2)(B)(ii).

(D) Loans to, or guarantees by, financial institutions

Except as provided in paragraph (2)(B)(ii), an obligation which is issued as part of an issue shall not be treated as federally guaranteed merely by reason of the fact that the proceeds of such issue are used in making loans to a financial institution or there is a guarantee by a financial institution.

(4) Definitions

For purposes of this subsection—

(A) Treatment of certain entities with authority to borrow from United States

To the extent provided in regulations prescribed by the Secretary, any entity with statutory authority to borrow from the United States shall be treated as an instrumentality of the United States. Except in the case of a private activity bond (as defined in subsection (n)(7)), nothing in the preceding sentence shall be construed as treating the District of Columbia or any possession of the United States as an instrumentality of the United States.

(B) Federally insured deposit or account

The term "federally insured deposit or account" means any deposit or account in a financial institution to the extent such deposit or account is insured under Federal law by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any similar federally chartered corporation.

(5) Certain obligations subsidized under energy program

(A) In general

An obligation to which this paragraph applies shall be treated as an obligation not described in subsection (a) if the payment of the principal or interest with respect to such obligation is to be made (in whole or in part) under a program of the United States, a State, or a political subdivision of a State the principal purpose of which is to encourage the production or conservation of energy.

(B) Obligations to which paragraph applies

This paragraph shall apply to any obligations to which paragraph (1) of subsection (b) does not apply by reason of—

(i) subsection (b)(4)(H) (relating to qualified hydroelectric generating facilities), or

(ii) subsection (g) (relating to qualified steam-generating or alcohol-producing facilities).

[*See main edition for text of* (i) *to* (*l*)]

(m) Obligations exempt other than under this title

(1) Prior exemptions

For purposes of this title, notwithstanding any provisions of this section or section 103A any obligation the interest on which is exempt from taxation under this title under any provision of law which is in effect on the date of the enactment of this subsection (other than a provision of this title) shall be treated as an obligation described in subsection (a). In the case of an obligation issued after December 31, 1983, such obligation shall not be treated as described in this paragraph unless the appropriate requirements of subsections (b), (c), (h), (k), (*l*), and (n) of this section and section 103A are met with respect to such obligation. For purposes of applying such requirements, a possession of the United States shall be treated as a State; except that clause (ii) of subsection (n)(4)(A) shall not apply.

(2) No other interest to be exempt except as provided by this title

Notwithstanding any other provision of law, no interest on any obligation shall be exempt from taxation under this title unless such interest—

(A) is on an obligation described in paragraph (1), or

(B) is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act.

(3) Exceptions

The following obligations shall be treated as obligations described in paragraph (1) (without regard to the second sentence thereof):

(A) Any obligation issued pursuant to the Northwest Power Act (16 U.S.C. 839d) as in effect on the date of the enactment of the Tax Reform Act of 1984.

(B) Any obligation issued pursuant to section 608(6)(A) of Public Law 97-468.[1]

(C) Any obligation issued before June 19, 1984, under section 11(b) of the United States Housing Act of 1937.

(n) Limitation on aggregate amount of private activity bonds issued during any calendar year

(1) In general

A private activity bond issued as part of an issue shall be treated as an obligation not described in subsection (a) if the aggregate amount of private activity bonds issued pursuant to such issue, when added to the aggregate amount of private activity bonds previously issued by the issuing authority during the calendar year, exceeds such authority's private activity bond limit for such calendar year.

(2) Private activity bond limit for State agencies

For purposes of this subsection—

(A) In general

The private activity bond limit for any agency of the State authorized to issue private activity bonds for any calendar year shall be 50 percent of the State ceiling for such calendar year.

(B) Special rule where State has more than 1 agency

If more than 1 agency of the State is authorized to issue private activity bonds, all such agencies shall be treated as a single agency.

(3) Private activity bond limit for other issuers

For purposes of this subsection—

(A) In general

The private activity bond limit for any issuing authority (other than a State agency) for any calendar year shall be an amount which bears the same ratio to 50 percent of the State ceiling for such calendar year as—

(i) the population of the jurisdiction of such issuing authority, bears to

(ii) the population for the entire State.

(B) Overlapping jurisdictions

For purposes of subparagraph (A)(i), the rules of section 103A(g)(3)(B) shall apply.

(4) State ceiling

For purposes of this subsection—

(A) In general

The State ceiling applicable to any State for any calendar year shall be the greater of

(i) an amount equal to $150 multiplied by the State's population, or

(ii) $200,000,000.

(B) Phase in of limitation where amount of 1983 private activity bonds exceeds the ceiling

(i) In general

In the case of any State which has an excess bond amount for 1983, the State ceiling for calendar year 1984 shall be the sum of the State ceiling determined under subparagraph (A) plus 50 percent of the excess bond amount for 1983.

(ii) Excess bond amount for 1983

For purposes of clause (i), the excess bond amount for 1983 in any State is the excess (if any) of—

(I) the aggregate amount of private activity bonds issued by issuing authorities in such State during the first 9 months of calendar year 1983 multiplied by $\frac{4}{3}$, over

(II) the State ceiling determined under subparagraph (A) for calendar year 1984.

(C) Adjustment of ceiling to reflect partial termination of small issue exemption

In the case of calendar years after 1986, subparagraph (A) shall be applied by substituting "$100" for "$150".

(5) Special rule for states with constitutional home rule cities

In the case of any State with 1 or more constitutional home rule cities (as defined in section 103A(g)(5)(C)), the rules of paragraph (5) of section 103A(g) shall apply for purposes of this subsection.

(6) State may provide for different allocation

(A) In general

A State may, by law provide a different formula for allocating the State ceiling among the governmental units in such State having authority to issue private activity bonds.

(B) Interim authority for Governor

(i) In general

The Governor of any State may proclaim a different formula for allocating the State ceiling among the governmental units in such State having authority to issue private activity bonds.

(ii) Termination of authority

The authority provided in clause (i) shall not apply after the earlier of—

(I) the first day of the first calendar year beginning after the legislature has met in regular session for more than 60 days after the date of the enactment of this paragraph, or

(II) the effective date of any State legislation with respect to the allocation of the State ceiling.

(C) State may not alter allocation to constitutional home rule cities

The rules of paragraph (6)(C) of section 103A(g) shall apply for purposes of this paragraph.

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[1] See References in Text note below.

(7) Private activity bond

For purposes of this subsection—

(A) In general

Except as otherwise provided in the paragraph, the term "private activity bond" means any obligation the interest on which is exempt from tax under subsection (a) and which is—

(i) an industrial development bond, or

(ii) a student loan bond.

(B) Exception for multifamily housing

The term "private activity bond" shall not include any obligation described in subsection (b)(4)(A) nor any housing program obligation under section 11(b) of the United States Housing Act of 1937.

(C) Exception for certain facilities described in section 103(b)(4)(C) or (D)

(i) In general

The term "private activity bond" shall not include any obligation described in subparagraph (C) or (D) of subsection (b)(4), but only if the property described in such subparagraph is owned by or on behalf of a governmental unit.

(ii) Exception not to apply to certain parking facilities

For purposes of clause (i), subparagraph (D) of subsection (b)(4) shall be applied as if it did not contain the phrase "parking facilities".

(iii) Determination of whether property owned by governmental unit

For purposes of clause (i), property shall not be treated as not owned by a governmental unit solely by reason of the length of the lease to which it is subject if the lessee makes an irrevocable election (binding on the lessee and all successors in interest under the lease) not to claim depreciation or an investment credit with respect to such property.

(iv) Restriction where significant front end loading

Under regulations prescribed by the Secretary, clause (i) shall not apply in any case where the property is leased under a lease which has significant front end loading of rental accruals or payments.

(D) Refunding issues

The term "private activity bond" shall not include any obligation which is issued to refund another obligation to the extent that the amount of such obligation does not exceed the amount of the refunded obligation. In the case of any student loan bond, the preceding sentence shall apply only if the maturity date of the refunding obligation is not later than the later of—

(i) the maturity of the obligation to be refunded, or

(ii) the date 17 years after the date on which the refunded obligation was issued (or in the case of a series of refundings, the date on which the original obligation was issued).

(8) Student loan bonds

For purposes of this subsection, the term "student loan bond" means an obligation which is issued as part of an issue all or a major portion of the proceeds of which are to be used directly or indirectly to finance loans to individuals for educational expenses.

(9) Population

For purposes of this subsection, determinations of the population of any State (or issuing authority) shall be made with respect to any calendar year on the basis of the most recent census estimate of the resident population of such State (or issuing authority) published by the Bureau of the Census before the beginning of such calendar year.

(10) Elective carryforward of unused limitation for specified project

(A) In general

If—

(i) an issuing authority's private activity bond limit for any calendar year after 1983, exceeds

(ii) the aggregate amount of private activity bonds issued during such calendar year by such authority,

such authority may elect to treat all (or any portion) of such excess as a carryforward for 1 or more carryforward projects.

(B) Election must specify project

In any election under subparagraph (A), the issuing authority shall—

(i) specify the project (or projects) for which the carryforward is elected, and

(ii) specify the portion of the excess described in subparagraph (A) which is to be a carryforward for each such project.

(C) Use of carryforward

(i) In general

If any issuing authority elects a carryforward under subparagraph (A) with respect to any carryforward project, any private activity bonds issued by such authority with respect to such project during the 3 calendar years (or, in the case of a project described in subsection (b)(4)(F), 6 calendar years) following the calendar year in which the carryforward arose shall not be taken into account under paragraph (1) to the extent the amount of such bonds do not exceed the amount of the carryforward elected for such project.

(ii) Order in which carryforward used

Carryforwards elected with respect to any project shall be used in the order of the calendar years in which they arose.

(D) Election

Any election made under this paragraph shall be made at such time and in such manner as the Secretary shall by regulations prescribe. Any such election (and any specification contained therein), once made, shall be irrevocable.

(E) Carryforward project

For purposes of this paragraph, the term "carryforward project" means—

(i) any project described in paragraph (4) or (5) of subsection (b), and

(ii) the purpose of issuing student loan bonds.

(11) Treatment of qualified scholarship funding bonds

In the case of a qualified scholarship funding bond (as defined in subsection (e)), such bond shall be treated for purposes of this subsection as issued by a State or local issuing authority (whichever is appropriate).

(12) Certification of no consideration for allocation

(A) In general

Any private activity bond allocated any portion of the State limit shall not be exempt from tax under subsection (a) unless the public official if any responsible for such allocation certifies under penalty of perjury that the allocation was not made in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign.

(B) Any criminal penalty made applicable

Any person willfully making an allocation described in subparagraph (A) in consideration of any bribe, gift, gratuity, or direct or indirect contribution to any political campaign shall be subject to criminal penalty to the same extent as if such allocation were a willful attempt to evade tax imposed by this title.

(*o*)[3] Consumer loan bonds

(1) Denial of tax exemption

For purposes of this title, any consumer loan bond shall be treated as an obligation which is not described in subsection (a).

(2) Consumer loan bonds

For purposes of this subsection—

(A) In general

The term "consumer loan bond" means any obligation which is issued as part of an issue all or a significant portion of the proceeds of which are reasonably expected to be used directly or indirectly to make or finance loans (other than loans described in subparagraph (C)) to persons who are not exempt persons (within the meaning of subsection (b)(3)).

(B) Excluded obligations

The term "consumer loan bond" shall not include any—

(i) qualified student loan bond,

(ii) industrial development bond, or

(iii) qualified mortgage bond or qualified veterans' mortgage bond.

(C) Excluded loans

A loan is described in this subparagraph if the loan—

(i) enables the borrower to finance any governmental tax or assessment of general application for an essential governmental function, or

(ii) is used to acquire or carry nonpurpose obligations (within the meaning of subsection (c)(6)(G)(i)).

(3) Qualified student loan bonds

For purposes of this subsection, the term "qualified student loan bond" means any obligation which is issued as part of an issue all or a major portion of the proceeds of which are reasonably expected to be used directly or indirectly to make or finance student loans under a program of general application to which the Higher Education Act of 1965 applies if—

(A) limitations are imposed under the program on—

(i) the maximum amount of loans outstanding to any student, and

(ii) the maximum rate of interest payable on any loan,

(B) the loans are directly or indirectly guaranteed by the Federal Government,

(C) the financing of loans under the program is not limited by Federal law to the proceeds of obligations the interest on which is exempt from taxation under this title, and

(D) special allowance payments under section 438 of the Higher Education Act of 1965—

(i) are authorized to be paid with respect to loans made under the program, or

(ii) would be authorized to be made with respect to loans under the program if such loans were not financed with the proceeds of obligations the interest on which is exempt from taxation under this title.

Such term shall not include any obligation issued under a State program which discriminates on the basis of the location (in the United States) at which the educational institution is located.

(*o*)[3] Cross references

For provisions relating to the taxable status of—

(1) Certain obligations issued by Indian tribal governments (or their subdivisions), see section 7871.

(2) Exempt interest dividends of regulated investment companies, see section 852(b)(5)(B).

(3) Puerto Rican bonds, see section 3 of the Act of March 2, 1917, as amended (48 U.S.C. 745).

(4) Virgin Islands insular and municipal bonds, see section 1 of the Act of October 27, 1919[4] (48 U.S.C. 1403).

(5) Certain obligations issued under title I of the Housing Act of 1949, see section 102(g) of title I of such Act (42 U.S.C. 1452(g)).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(4), title VI, §§ 621-624(a), (b)(2), (3), 626(a), 627, 628(a), (c)-(e), (g), 630, 98 Stat. 839, 915, 918, 921, 922, 924, 926, 928, 931-933.)

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[3] So in original. There are two subsecs. designated "(*o*)".

[4] So in original. Probably should be "1949".

References in Text

Sections 8 and 11(b) of the United States Housing Act of 1937, referred to in subsecs. (b)(12)(B)(iii), (C), (c)(6)(B), (h)(3)(C)(i)(I), (m)(3)(C), and (n)(7)(B), are classified to sections 1437f and 1437i, respectively, of Title 42, The Public Health and Welfare.

The Higher Education Act of 1965, referred to in subsecs. (c)(5), (e), and (*o*)(3), relating to qualified scholarship funding bonds, is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended, which is classified principally to chapter 28 (§ 1001 et seq.) of Title 20, Education. Section 438 of the Higher Education Act of 1965 is classified to section 1087-1 of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 20 and Tables.

Section 404(a) of the Small Business Investment Act of 1958, referred to in subsec. (h)(3)(A)(iii), is classified to section 694-1(a) of Title 15, Commerce and Trade.

The date of the enactment of the Tax Reform Act of 1984, referred to in subsecs. (h)(3)(A)(iii), (iv) and (m)(3)(A), is the date of enactment of div. A of Pub. L. 98-369, which was approved July 18, 1984.

The Northwest Power Act, referred to in subsecs. (h)(3)(A)(iv) and (m)(3)(A), probably means the Pacific Northwest Electric Power Planning and Conservation Act, Pub. L. 96-501, Dec. 5, 1980, 94 Stat. 2697, which is classified principally to chapter 12H (§ 839 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 839 of Title 16 and Tables.

Section 608(6)(A) of Pub. L. 97-468, referred to in subsec. (m)(3)(B), probably means section 608(a)(6)(A) of Pub. L. 97-468 which is classified to section 1207(a)(6)(A) of Title 45, Railroads.

The date of enactment of this paragraph, referred to in subsec. (n)(6)(B)(ii)(I), is the date of enactment of Pub. L. 98-369, which was approved July 18, 1984.

The Housing Act of 1949, referred to in subsec. (*o*)(5), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended. Title I of the Housing Act of 1949, which was classified generally to subchapter II (§ 1450 et seq.) of chapter 8A of Title 42, The Public Health and Welfare, including section 102(g) of title I of such Act (42 U.S.C. 1452(g)), were omitted from the Code pursuant to section 5316 of Title 42, which terminated authority to make grants or loans under such title I after Jan. 1, 1975.

Amendments

1984—Subsec. (b)(4). Pub. L. 98-369, § 628(e), added "For purposes of subparagraph (A), any property shall not be treated as failing to be residential rental property merely because part of the building in which such property is located is used for purposes other than residential rental purposes."

Subsec. (b)(6)(F)(iv). Pub. L. 98-369, § 474(r)(4), substituted "section 30(b)(2)(A)" for "section 44F(b)(2)(A)".

Subsec. (b)(6)(N). Pub. L. 98-369, § 630, designated existing provisions as cl. (i) and added cls. (ii) and (iii).

Subsec. (b)(6)(P). Pub. L. 98-369, § 628(c), added subpar. (P).

Subsec. (b)(7). Pub. L. 98-369, § 628(g), repealed par. (7) which related to advance refunding of qualified public facilities.

Subsec. (b)(13). Pub. L. 98-369, § 628(d), added "For purposes of this paragraph— (A) a partnership and each of its partners (and their spouses and minor children) shall be treated as related persons, and (B) an S corporation and each of its shareholders (and their spouses and minor children) shall be treated as related persons."

Subsec. (b)(15). Pub. L. 98-369, § 623, added par. (15).

Subsec. (b)(16) to (18). Pub. L. 98-369, § 627, added pars. (16) to (18).

Subsec. (c). Pub. L. 98-369, § 624(b)(2), struck out "bonds" following "Arbitrage" in heading.

Subsec. (c)(1). Pub. L. 98-369, § 624(b)(3), added "to arbitrage bonds" in heading.

Subsec. (c)(6), (7). Pub. L. 98-369, § 624(a), added par. (6) and redesignated former par. (6) as (7).

Subsec. (h). Pub. L. 98-369, § 622, amended subsec. (h) generally, in par. (1) substituting provisions that obligations are not included in the section if they are federally guaranteed for provisions which excluded obligations guaranteed, in whole or part, by the U.S. under a program to conserve energy, or under other Federal or State programs, in par. (2) substituting provisions defining "federally guaranteed" for provisions setting forth obligations to which this subsection applies, and adding pars. (3) to (5).

Subsec. (m)(1). Pub. L. 98-369, § 628(a)(1), added "In the case of an obligation issued after December 31, 1983, such obligation shall not be treated as described in this paragraph unless the appropriate requirements of subsections (b), (c), (h), (k), (*l*), and (n) of this section and section 103A are met with respect to such obligation. For purposes of applying such requirements, a possession of the United States shall be treated as a State; except that clause (ii) of subsection (n)(4)(A) shall not apply."

Subsec. (m)(2)(B). Pub. L. 98-369, § 628(a)(2), substituted "is exempt from tax under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act" for "is exempt from taxation under any provision of this title".

Subsec. (m)(3). Pub. L. 98-369, § 628(a)(3), added par. (3).

Subsec. (n). Pub. L. 98-369, § 621, added subsec. (n). Former subsec. (n), relating to cross references, redesignated (*o*).

Subsec. (*o*). Pub. L. 98-369, § 626(a), added subsec. (*o*) relating to consumer loan bonds.

Pub. L. 98-369, § 621, redesignated subsec. (n), relating to cross references, as (*o*).

Effective Date of 1984 Amendment

Amendment by section 474(r)(4) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 624(c) of Pub. L. 98-369 provided that:

"(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section [amending sections 103 and 103A of this title] shall apply with respect to bonds issued after December 31, 1984.

"(2) Exception.—The amendments made by this section shall not apply to obligations issued by the Essex County Port Authority of New York and New Jersey as part of an issue approved by Essex County, New Jersey, on July 7, 1981, and approved by the State of New Jersey on December 31, 1981. The aggregate face amount of bonds to which this paragraph applies shall not exceed $350,000,000."

Section 626(b) of Pub. L. 98-369 provided that:

"(1) In general.—Except as otherwise provided in this subsection the amendment made by subsection (a) [enacting subsec. (*o*) of this section] shall apply to obligations issued after the date of enactment of this Act [July 18, 1984].

"(2) Exceptions for certain student loan programs.—

"(A) In general.—The amendments made by this section [enacting subsec. (*o*) of this section] shall not apply to obligations issued by a program described in the following table to the extent the aggregate face amount of such obligations does not exceed the amount of allowable obligations specified in the following table with respect to such program:

Program	Amount of Allowable Obligations
Colorado Student Obligation Bond Authority	$60 million
Connecticut Higher Education Supplementary Loan Authority	$15.5 million
District of Columbia	$50 million
Illinois Higher Education Authority	$11 million
State of Iowa	$16 million
Louisiana Public Facilities Authority	$75 million
Maine Health and Higher Education Facilities Authority	$5 million
Maryland Higher Education Supplemental Loan Program	$24 million
Massachusetts College Student Loan Authority	$90 million
Minnesota Higher Education Coordinating Board	$60 million
New Hampshire Higher Education and Health Facilities Authority	$39 million
New York Dormitory Authority	$120 million
Pennsylvania Higher Education Assistance Agency	$300 million
Georgia Private Colleges and University Authority	$31 million
Wisconsin State Building Commission	$60 million
South Dakota Health and Educational Facilities Authority	$6 million

"(B) Pennsylvania higher education assistance agency.—Subparagraph (A) shall apply to obligations issued by the Pennsylvania Higher Education Assistance Agency only if such obligations are issued solely for the purpose of refunding student loan bonds outstanding on March 15, 1984.

"(3) Certain tax-exempt mortgage subsidy bonds.—For purposes of applying section 103(*o*) of the Internal Revenue Code of 1954, the term 'consumer loan bond' shall not include any mortgage subsidy bond (within the meaning of section 103A(b) of such Code) to which the amendments made by section 1102 of the Mortgage Subsidy Bond Tax Act of 1980 [enacting section 103A of this title] do not apply.

"(4) Refunding exception.—The amendments made by this section [enacting subsection (*o*) of this section] shall not apply to any obligation or series of obligations the proceeds of which are used exclusively to refund obligations issued before March 15, 1984, except that—

"(A) the amount of the refunding obligations may not exceed 101 percent of the aggregate face amount of the refunded obligations, and

"(B) the maturity date of any refunding obligation may not be later than the date which is 17 years after the date on which the refunded obligation was issued (or, in the case of a series of refundings, the date on which the original obligation was issued).

"(5) Exception for certain established programs.—The amendments made by this section [enacting subsec. (*o*) of this section] shall not apply to any obligation substantially all of the proceeds of which are used to carry out a program established under State law which has been in effect in substantially the same form during the 30-year period ending on the date of enactment of this Act [July 18, 1984], but only if such proceeds are used to make loans or to fund similar obligations—

"(A) in the same manner in which,

"(B) in the same (or lesser) amount per participant, and

"(C) for the same purposes for which,

such program was operated on March 15, 1984. This subparagraph shall not apply to obligations issued on or after March 15, 1987.

"(6) Certain bonds for renewable energy property.—The amendments made by this section [enacting subsec. (*o*) of this section] shall not apply to any obligations described in section 243 of the Crude Oil Windfall Profit Tax Act of 1980 [Pub. L. 96-223, set out as a note below]."

Section 631 of Pub. L. 98-369 provided that:

"(a) Private Activity Bond Cap.—

"(1) In general.—Except as otherwise provided in this subsection, the amendment made by section 621 [enacting subsec. (n) of this section and redesignating former subsec. (n) as (*o*)] shall apply to obligations issued after December 31, 1983.

"(2) Inducement resolution before June 19, 1984.—The amendment made by section 621 shall not apply to any issue of obligations if—

"(A) there was an inducement resolution (or other comparable preliminary approval) for the issue before June 19, 1984, and

"(B) the issue is issued before January 1, 1985.

"(3) Certain projects preliminarily approved before October 19, 1983, given approval.—If—

"(A) there was an inducement resolution (or other comparable preliminary approval) for a project before October 19, 1983, by any issuing authority,

"(B) a substantial user of such project notifies the issuing authority within 30 days after the date of the enactment of this Act [July 18, 1984] that it intends to claim its rights under this paragraph, and

"(C) construction of such project began before October 19, 1983, or the substantial user was under a binding contract on such date to incur significant expenditures with respect to such project,

such issuing authority shall allocate its share of the limitation under section 103(n) of such Code for the calendar year during which the obligations were to be issued pursuant to such resolution (or other approval) first to such project. If the amount of obligations required by all projects which meet the requirements of the preceding sentence exceeds the issuing authority's share of the limitation under section 103(n) of such Code, priority under the preceding sentence shall be provided first to those projects for which substantial expenditures were incurred before October 19, 1983. If any issuing authority fails to meet the requirements of this paragraph, the limitation under section 103(n) of such Code for the issuing authority for the calendar year following such failure shall be reduced by the amount of obligations with respect to which such failure occurred.

"(3) [(4)] Exception for certain bonds for a convention center and resource recovery project.—In the case of any city, if—

"(A) the city council of such city authorized a feasibility study for a convention center on June 10, 1982, and

"(B) on November 4, 1983, a municipal authority acting for such city accepted a proposal for the construction of a facility that is capable of generating steam and electricity through the combustion of municipal waste,

the amendment made by section 621 shall not apply to any issue, issued during 1984, 1985, 1986, or 1987 and substantially all of the proceeds of which are to be used to finance the convention center (or access ramps and parking facilities therefor) described in subparagraph (A) or the facility described in subparagraph (B).

"(b) Property Financed With Tax-Exempt Bonds Required To Be Depreciated on Straight-Line Basis.—

"(1) In general.—Except as otherwise provided in this section, the amendments made by section 628(b) [amending section 168(f)(12) of this title] shall apply to property placed in service after December 31, 1983, to the extent such property is financed by the proceeds of an obligation (including a refunding obligation) issued after October 18, 1983.

"(2) Exceptions.—

"(A) Construction or binding agreement.—The amendments made by section 628(b) shall not apply with respect to facilities—

"(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, or

"(ii) with respect to which a binding contract to incur significant expenditures was entered into before October 19, 1983.

"(B) Refunding.—

"(i) In general.—Except as provided in clause (ii), in the case of property placed in service after December 31, 1983, which is financed by the proceeds of an obligation which is issued solely to refund another obligation which was issued before October 19, 1983, the amendments made by section 628(b) shall apply only with respect to an amount equal to the basis in such property which has not been recovered before the date such refunded obligation is issued.

"(ii) Significant expenditures.—In the case of facilities the original use of which commences with the taxpayer and with respect to which significant expenditures are made before January 1, 1984, the amendments made by section 628(b) shall not apply with respect to such facilities to the extent such facilities are financed by the proceeds of an obligation issued solely to refund another obligation which was issued before October 19, 1983.

"(C) Facilities.—In the case of an inducement resolution or other comparable preliminary approval adopted by an issuing authority before October 19, 1983, for purposes of applying subparagraphs (A)(i) and (B)(ii) with respect to obligations described in such resolution, the term 'facilities' means the facilities described in such resolution.

"(c) Other Provisions Relating to Tax-Exempt Bonds.—

"(1) In general.—Except as otherwise provided in this subtitle, the amendments made by this subtitle [sections 621-632 of Pub. L. 98-369, amending sections 103, 103A, and 168 of this title and enacting provisions set out as notes under section 103 of this title] shall apply to obligations issued after December 31, 1983.

"(2) Obligations invested in federally insured deposits.—Notwithstanding any other provision of this section, clause (ii) of section 103(h)(2)(B) of the Internal Revenue Code of 1954 (as amended by this subtitle) shall apply to obligations issued after April 14, 1983; except that such clause shall not apply to any obligation issued pursuant to a binding contract in effect on March 4, 1983.

"(3) Exceptions.—

"(A) Construction or binding agreement.—The amendments made by this subtitle (other than section 621 [enacting subsec. (n) of this section and redesignating former subsec. (n) as (o)]) shall not apply to obligations with respect to facilities—

"(i) the original use of which commences with the taxpayer and the construction, reconstruction, or rehabilitation of which began before October 19, 1983, or

"(ii) with respect to which a binding contract to incur significant expenditures was entered into before October 19, 1983.

"(B) Facilities.—Subparagraph (C) of subsection (b)(2)(A) shall apply for purposes of subparagraph (A) of this paragraph.

"(4) Repeal of advance refunding of qualified public facilities.—The amendment made by section 628(g) [repealing subsec. (b)(7) of this section] shall apply to refunding obligations issued after the date of the enactment of this Act [July 18, 1984]; except that if substantially all the proceeds of the refunded issue were used to provide airports or docks, such amendment shall only apply to refunding obligations issued after December 31, 1984. In the case of any refunding obligation with respect to the Alabama State Docks Department or the Dade County Florida Airport, the preceding sentence shall be applied by substituting 'December 31, 1985' for 'December 31, 1984'.

"(d) Provisions of This Subtitle Not To Apply to Certain Property.—The amendments made by this subtitle [sections 621-632 of Pub. L. 98-369, amending sections 103, 103A, and 168 of this title and enacting provisions set out as notes under section 103 of this title] shall not apply to any property (and shall not apply to obligations issued to finance such property) if such property is described in any of the following paragraphs:

"(1) Any property described in paragraph (5), (6), or (7) of section 31(g) of this Act [set out as an Effective Date of 1984 Amendment note under section 168 of this title].

"(2) Any property described in paragraph (4), (8), or (17) of section 31(g) of this Act [set out as an Effective Date of 1984 Amendment note under section 168 of this title] but only if the obligation is issued before January 1, 1985, and only if before June 19, 1984, the issuer had evidenced an intent to issue obligations exempt from taxation under the Internal Revenue Code of 1954 in connection with such property.

"(3) Any property described in paragraph (3) of section 216(b) of the Tax Equity and Fiscal Responsibility Act of 1982 [set out as an Effective Date of 1982 Amendment note under section 168 of this title].

"(4) Any solid waste disposal facility described in section 103(b)(4)(E) of the Internal Revenue Code of 1954 if—

"(A) a State public authority created pursuant to State legislation which took effect on June 18, 1973, took formal action before October 19, 1983, to commit development funds for such facility,

"(B) such authority issues obligations for any such facility before January 1, 1987, and

"(C) expenditures have been made for the development of any such facility before October 19, 1983.

"(e) Determination of Significant Expenditure.—

"(1) In general.—For purposes of this section, the term 'significant expenditures' means expenditures which equal or exceed the lesser of—

"(A) $15,000,000, or

"(B) 20 percent of the estimated cost of the facilities.

"(2) Certain grants treated as expenditures.—For purposes of paragraph (1), the amount of any UDAG grant preliminarily approved on May 5, 1981, or April 4, 1983, shall be treated as an expenditure with respect to the facility for which such grant was so approved.

"(f) Exceptions for Certain Other Amendments.—If—

"(1) there was an inducement resolution (or other comparable preliminary approval) for an issue before June 19, 1984, by any issuing authority, and

"(2) such issue is issued before January 1, 1985, the following amendments shall not apply:

"(A) the amendments made by section 623 [enacting subsec. (b)(15) of this section],

"(B) the amendments made by subsections (a) and (b) of section 627 [enacting subsec. (b)(16), (17) of this section] (except to the extent such amendments relate to farm land),

"(C) in the case of a race track, the amendment made by section 627(c) [enacting subsec. (b)(18) of this section], and

"(D) the amendments made by section 628(c) [enacting subsec. (b)(6)(P) of this section]."

Effective Date of 1983 Amendment

For effective date of amendment by Pub. L. 97-473, see section 204(2) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

Effective Date of 1982 Amendment

Section 217(e) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title VII, § 712(h), July 18, 1984, 98 Stat. 947, provided that: "The amendments made by this section [enacting subsecs. (b)(4)(J), (10), (11) of this section, amending subsec. (b)(4), (6)(C), and (9)(A), and redesignating former subsec. (b)(10) as (b)(13)] shall apply to obligations issued after the date of the enactment of this Act [Sept. 3, 1982]. For purposes of applying section 168(f)(8)(D)(v) of the Internal Revenue Code of 1954, the amendments made by subsection (c) [amending subsec. (b)(9)(A) of this section] shall apply to agreements entered into after the date of the enactment of this Act."

Section 310(d) of Pub. L. 97-248, as amended by Pub. L. 97-448, title III, § 306(b)(2), 96 Stat. 2405; Pub. L. 98-216, § 6(b), Feb. 14, 1984, 98 Stat. 8, provided that:

"(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 4701 of this title and section 757c-5 of former Title 31, Money and Finance, and amending sections 103, 103A, 163, 165, 312, and 1232 of this title] shall apply to obligations issued after December 31, 1982.

"(2) [Repealed. Pub. L. 98-216, § 6(b), Feb. 14, 1984, 98 Stat. 8.]

"(3) Exception for certain warrants, etc.—The amendments made by subsection (b) [enacting section 4701 of this title, and amending sections 103, 163, 165, 312, and 1232 of this title] shall not apply to any obligations issued after December 31, 1982, on the exercise of a warrant or the conversion of a convertible obligation if such warrant or obligation was offered or sold outside the United States without registration under the Securities Act of 1933 [section 77a et seq. of Title 15, Commerce and Trade] and was issued before August 10, 1982. A rule similar to the rule of the preceding sentence shall also apply in the case of any regulations issued under section 163(f)(2)(C) of the Internal Revenue Code of 1954 (as added by this section) except that the date on which such regulations take effect shall be substituted for 'August 10, 1982'.

"(4) [Repealed. Pub. L. 98-216, § 6(b), Feb. 14, 1984, 98 Stat. 8.]"

Coordination of Certain Amendments Made by Pub. L. 97-424 and Pub. L. 97-473

Section 722(b) of Pub. L. 98-369 provided that: "For purposes of applying the amendments made by section 547 of the Highway Revenue Act of 1982 [Pub. L. 97-424, see 1983 Amendments note above] and the amendment made by section 202(b)(2) of Public Law 97-473 [see 1983 Amendments note above], Public Law 97-473 shall be deemed to have been enacted immediately before the Highway Revenue Act of 1982."

Certain Public Utilities Treated as Exempted Persons Under Section 103(b); Special Rules for Certain Railroads

Section 629 of Pub. L. 98-369 provided that:

"(a) Certain Public Utilities.—For purposes of applying section 103(b)(3) of the Internal Revenue Code with respect to—

"(1) any obligations issued after the date of enactment of this Act [July 18, 1984], and

"(2) any obligations issued after December 31, 1969, which were treated as obligations described in section 103(a) of such Code on the day on which such obligations were issued,

the term 'exempt person' shall include a regulated public utility having any customer service area within a State served by a public power authority which was required as a condition of a Federal Power Commission license specified by an Act of Congress enacted prior to the enactment of section 107 of the Revenue and Expenditure Control Act of 1968 (Public Law 90-364) [June 28, 1968] to contract to sell power to one such utility and which is authorized by State law to sell power to other such utilities, but only with respect to the purchase by any such utility and resale to its customers of any output of any electrical generation facility or any portion thereof or any use of any electrical transmission facility or any portion thereof financed by such power authority and owned by it or by such State, and provided that by agreement between such power authority and any such utility there shall be no markup in the resale price charged by such utility of that component of the resale price which represents the price paid by such utility for such output or use.

"(b) Certain Railroads.—Section 103(b)(1) of the Internal Revenue Code of 1954 shall not apply to any obligation which is described in section 103(b)(6)(A) of such Code if—

"(1) substantially all of the proceeds of such obligation are used to acquire railroad track and right-of-way from a railroad involved in a title 11 or similar proceeding (within the meaning of section 368(a)(3)(A) of such Code), and

"(2) the Federal Railroad Administration provides joint financing for such acquisitions.

"(c) Special Rules for Subsection (a).—

"(1) Obligations subject to cap.—Any obligation described in subsection (a) shall be treated as a private activity bond for purposes of section 103(n) of the Internal Revenue Code of 1954.

"(2) Limitation on amount of obligations to which subsection (a)(1) applies—The aggregate amount of obligations to which subsection (a)(1) applies shall not exceed $625,000,000.

"(3) Limitation on purposes.—Subsection (a)(1) shall only apply to obligations issued as part of an issue substantially all the proceeds of which are used to provide 1 or more of the following:

"(A) Cable facilities.

"(B) Small hydroelectric facilities.

"(C) The acquisition of an interest in an electrical generating facility."

Public Approval Requirement in the Case of Public Airport

Section 628(f) of Pub. L. 98-369 provided that: "If—

"(1) the proceeds of any issue are to be used to finance a facility or facilities located on a public airport, and

"(2) the governmental unit issuing such obligations is the owner or operator of such airport,

such governmental unit shall be deemed to be the only governmental unit having jurisdiction over such airport for purposes of subsection (k) of section 103 of the Internal Revenue Code of 1954 (relating to public approval for industrial development bonds)."

Small Issue Limit in Case of Certain Urban Development Action Grants

Section 628(h) of Pub. L. 98-369 provided that: "In the case of any obligation issued on December 11, 1981, section 103(b)(6)(I) of the Internal Revenue Code of 1954 shall be applied by substituting '$15,000,000' for '$10,000,000' if—

"(1) such obligation is part of an issue,

"(2) substantially all of the proceeds of such issue are used to provide facilities with respect to which an urban development action grant under section 119 of the Housing and Community Development Act of 1974 [42 U.S.C. 5318] was preliminarily approved by the Secretary of Housing and Urban Development on January 10, 1980, and

"(3) the Secretary of Housing and Urban Development determines, at the time such grant is approved, that the amount of such grant will equal or exceed 5 percent of the total capital expenditures incurred with respect to such facilities."

Student Loan Bonds

Section 625 of Pub. L. 98-369 provided that:

"(a) Arbitrage Regulations.—

"(1) In general.—The Secretary shall prescribe regulations which specify the circumstances under which a qualified student loan bond shall be treated as an arbitrage bond for purposes of section 103 of the Internal Revenue Code of 1954. Such regulations may provide that—

"(A) paragraphs (4) and (5) of section 103(c) of such Code shall not apply, and

"(B) rules similar to section 103(c)(6) shall apply, to qualified student loan bonds.

"(2) Definitions.—For purposes of this subsection—

"(A) Qualified student loan bond.—The term 'qualified student loan bond' has the meaning given to such term by section 103(*o*)(3) of the Internal Revenue Code of 1954 (as amended by this Act).

"(B) Arbitrage bond.—The term 'arbitrage bond' has the meaning given to such term by section 103(c)(2).

"(3) Effective date.—

"(A) In general.—Except as otherwise provided in this paragraph, any regulations prescribed by the Secretary under paragraph (1) shall apply to obligations issued after the qualified date.

"(B) Qualified date.—

"(i) In general.—For purposes of this paragraph, the term 'qualified date' means the earlier of—

"(I) the date on which the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.] expires, or

"(II) the date, after the date of enactment of this Act [July 18, 1984], on which the Higher Education Act of 1965 is reauthorized.

"(ii) Publication of regulations.—Notwithstanding clause (i), the qualified date shall not be a date which is prior to the date that is 6 months after the date on which the regulations prescribed under paragraph (1) are published in the Federal Register.

"(C) Refunding obligations.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligation issued exclusively to refund any qualified student loan bond which was issued before the qualified date, except that the requirements of subparagraphs (A) and (B) of section 626(b)(4) of this Act [set out in Effective Date of 1984 Amendment note above] must be met with respect to such refunding.

"(D) Fulfillment of commitments.—Regulations prescribed by the Secretary under paragraph (1) shall not apply to any obligations which are needed to fulfill written commitments to acquire or finance student loans which are originated after June 30, 1984, and before the qualified date, but only if—

"(i) such commitments are binding on the qualified date, and

"(ii) the amount of such commitments is consistent with practices of the issuer which were in effect on March 15, 1984, with respect to establishing secondary markets for student loans.

"(b) Arbitrage Limitation on Student Loan Bonds Which Are Not Qualified Student Loan Bonds.—Under regulations prescribed by the Secretary of the Treasury or his delegate, any student loan bond (other than a qualified student loan bond) issued after December 31, 1985, shall be treated as an obligation not described in subsection (a)(1) or (2) of section 103 of the Internal Revenue Code of 1954 unless the issue of which such obligation is a part meets requirements similar to those of sections 103(c)(6) and 103A(i) of such Code.

"(c) Issuance of Student Loan Bonds Which Are Not Tax-Exempt.—Any issuer who may issue obligations described in section 103(a) of the Internal Revenue Code of 1954 may elect to issue student loan bonds which are not described in such section 103(a) of such Code without prejudice to—

"(1) the status of any other obligations issued, or to be issued, by such issuer as obligations described in section 103(a) of such Code, or

"(2) the status of the issuer as an organization exempt from taxation under such Code.

"(d) Federal Executive Branch Jurisdiction Over Tax-Exempt Status.—For purposes of Federal law, any determination by the executive branch of the Federal Government of whether interest on any obligation is exempt from taxation under the Internal Revenue Code of 1954 shall be exclusively within the jurisdiction of the Department of the Treasury.

"(e) Study on Tax-Exempt Student Loan Bonds.—

"(1) In general.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall conduct studies of—

"(A) the appropriate role of tax-exempt bonds which are issued in connection with the guaranteed student loan program and the PLUS program established under the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.], and

"(B) the appropriate arbitrage rules for such bonds.

"(2) Report.—The Comptroller General of the United States and the Director of the Congressional Budget Office, shall submit to the Committee on Finance and the Committee on Labor and Human Resources of the Senate and the Committee on Ways and Means and the Committee on Education and Labor of the House of Representatives reports on the studies conducted under paragraph (1) by no later than 9 months after the date of enactment of this Act [July 18, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25, 29, 46, 48, 103A, 163, 168, 269A, 414, 465, 593, 643, 667, 811, 813, 822, 832, 851, 871, 1275, 4701, 4940, 4942, 4988, 6049, 6362, 7478, 7701, 7871 of this title; title 15 sections 77c, 78c; title 16 sections 839f, 2708; title 19 section 2345; title 45 section 1207; title 46 App. section 1177; title 48 sections 1574, 1670.

§ 103A. Mortgage subsidy bonds

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Qualified mortgage bond; qualified mortgage issue; qualified veterans' mortgage bond

(1) Qualified mortgage bond defined

[*See main edition for text of* (*A*)]

(B) Termination December 31, 1987

No obligation issued after December 31, 1987, may be treated as a qualified mortgage bond.

[*See main edition for text of* (*2*)]

(3) Qualified veterans' mortgage bond defined

For purposes of this section, the term "qualified veterans' mortgage bond" means any obligation—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) which is part of an issue which meets the requirements of subsection (d), paragraphs (1) and (3) of subsection (j), and subsection (*o*).

[*See main edition for text of* (*d*) *to* (*f*)]

(g) Limitation on aggregate amount of qualified mortgage bonds issued during any calendar year

[*See main edition for text of* (*1*) *to* (*7*)]

(8) Reduction for mortgage credit certificates

The applicable limit of any issuing authority for any calendar year shall be reduced by the sum of—

(A) the amount of qualified mortgage bonds which such authority elects not to issue under section 25(c)(2)(A)(ii) during such year, plus

(B) the amount of any reduction in such ceiling under section 25(f) applicable to such authority for such year.

[See main edition for text of (h)]

(i) Requirements related to arbitrage

(1) In general

An issue meets the requirements of this subsection only if such issue meets the requirements of paragraphs (2), (3), and (4) of this subsection. Such requirements shall be in addition to the requirements of section 103(c) (other than section 103(c)(6)).

(2) Effective rate of mortgage interest cannot exceed bond yield by more than 1.125 percentage points

[See main edition for text of (A) and (B)]

(C) Yield on the issue

For purposes of this subsection, the yield on the issue shall be determined on the basis of—

(i) the issue price (within the meaning of sections 1273(b) and 1274), and

[See main edition for text of (ii), (3) and (4)]

(j) Other requirements

[See main edition for text of (1) and (2)]

(3) Information reporting requirement

(A) In general

An issue meets the requirements of this subsection only if the issuer submits to the Secretary, not later than the 15th day of the 2nd calendar month after the close of the calendar quarter in which the issue is issued (or such later time as the Secretary may prescribe with respect to any portion of the statement) a statement concerning the issue which contains—

(i) the name and address of the issuer,

(ii) the date of the issue, the amount of the lendable proceeds of the issue, and the stated interest rate, term, and face amount of each obligation which is part of the issue,

(iii) such information as the Secretary may require in order to determine whether such issue meets the requirements of this section and the extent to which proceeds of such issue have been made available to low-income individuals, and

(iv) such other information as the Secretary may require.

(B) Extension of time

The Secretary may grant an extension of time for the filing of any statement under subparagraph (A) if there is reasonable cause for the failure to file such statement in a timely fashion.

(4) State certification requirements

(A) In general

An issue meets the requirements of this subsection only if, before the issue, a State official designated by State law (or, where there is no such State official, the Governor) certifies in the manner prescribed by regulations that the issue meets the requirements of subsection (g).

(B) Certification furnished to Secretary

Any certification under subparagraph (A) shall be submitted to the Secretary at the same time as the statement with respect to such issue is submitted under paragraph (3) or such other time as the Secretary may prescribe.

(C) Special rule for constitutional home rule cities

In the case of any constitutional home rule city (as defined in subsection (g)(5)(C)), the certification under subparagraph (A) shall be made by the chief executive officer of such city.

(5) Policy statement

(A) In general

An issue meets the requirements of this subsection only if the applicable elected representative of the governmental unit—

(i) which is the issuer, or

(ii) on whose behalf such issue was issued,

has published (after a public hearing following reasonable public notice) a report described in subparagraph (B) by the last day of the year preceding the year in which such issue is issued and a copy of such report has been submitted to the Secretary on or before such last day.

(B) Report

The report referred to in subparagraph (A) which is published by the applicable elected representative of the governmental unit shall include—

(i) a statement of the policies with respect to housing, development, and low-income housing assistance which such governmental unit is to follow in issuing qualified mortgage bonds and mortgage credit certificates, and

(ii) an assessment of the compliance of such governmental unit during the preceding 1-year period preceding the date of the report with—

(I) the statement of policy on qualified mortgage bonds and mortgage credit certificates that was set forth in the previous report, if any, of an applicable elected representative of such governmental unit, and

(II) the intent of Congress that State and local governments are expected to use their authority to issue qualified mortgage bonds and mortgage credit certificates to the greatest extent feasible (taking into account prevailing interest rates and conditions in the housing market) to assist lower income families to afford home ownership before assisting higher income families.

[See main edition for text of (k) to (n)]

(o) Additional requirements for qualified veterans' mortgage bonds

(1) Veterans to whom financing may be provided

An obligation meets the requirements of this subsection only if each mortgagor to whom financing is provided under the issue is a qualified veteran.

(2) Requirement that State program be in effect before June 22, 1984

An issue meets the requirements of this subsection only if it is a general obligation of a State which issued qualified veterans' mortgage bonds before June 22, 1984.

(3) Volume limitation

(A) In general

An issue meets the requirements of this subsection only if the aggregate amount of bonds issued pursuant thereto (when added to the aggregate amount of qualified veterans' mortgage bonds previously issued by the State during the calendar year) does not exceed the State veterans limit for such calendar year.

(B) State veterans limit

A State veterans limit for any calendar year is the amount equal to—

(i) the aggregate amount of qualified veterans bonds issued by such State during the period beginning on January 1, 1979, and ending on June 22, 1984 (not including the amount of any qualified veterans bond issued by such State during the calendar year (or portion thereof) in such period for which the amount of such bonds so issued was the lowest), divided by

(ii) the number (not to exceed 5) of calendar years after 1979 and before 1985 during which the State issued qualified veterans bonds (determined by only taking into account bonds issued on or before June 22, 1984).

(4) Qualified veteran

For purposes of this subsection, the term "qualified veteran" means any veteran—

(A) who served on active duty at some time before January 1, 1977, and

(B) who applied for the financing before the later of—

(i) the date 30 years after the last date on which such veteran left active service, or

(ii) January 1, 1985.

(5) Good faith effort rules made applicable

Rules similar to the rules of subparagraphs (B) and (C) of subsection (c)(2) shall apply to the requirements of this subsection.

(6) Special rule for certain short-term obligations

In the case of any obligation which has a term of 1 year or less and which was issued to provide financing for property taxes, the amount taken into account under this subsection with respect to such obligation shall be $\frac{1}{15}$ of its principal amount.

(As amended Pub. L. 98–369, div. A, title I, § 42(a)(2), title VI, §§ 611(a)–(c), 612(b), 624(b)(1), July 18, 1984, 98 Stat. 556, 901, 903, 911, 924.)

Amendments

1984—Subsec. (c)(1)(B). Pub. L. 98–369, § 611(a), substituted "December 31, 1987" for "December 31, 1983" in heading and in text.

Subsec. (c)(3)(C). Pub. L. 98–369, § 611(c)(1), substituted "subsection (d), paragraphs (1) and (3) of subsection (j), and subsection (*o*)" for "subsection (j)(1)".

Subsec. (g)(8). Pub. L. 98–369, § 612(b), added par. (8).

Subsec. (i)(1). Pub. L. 98–369, § 624(b)(1), substituted "section 103(c) (other than section 103(c)(6))" for "section 103(c)".

Subsec. (i)(2)(C)(i). Pub. L. 98–369, § 42(a)(2), substituted "sections 1273(b) and 1274" for "section 1232(b)(2)".

Subsec. (j)(3) to (5). Pub. L. 98–369, § 611(b)(1), added pars. (3) to (5).

Subsec. (*o*). Pub. L. 98–369, § 611(c)(2), added subsec. (*o*).

Effective Date of 1984 Amendment

Amendment by section 42(a)(2) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Section 611(d) of Pub. L. 98–369 provided that:

"(1) Subsection (a).—The amendment made by subsection (a) [amending subsec. (c)(1)(B) of this section] shall apply with respect to obligations issued after December 31, 1983.

"(2) Subsection (b).—The amendments made by subsection (b) [enacting subsec. (j)(3)–(5) of this section] shall apply to obligations issued after December 31, 1984.

"(3) Subsection (c).—

"(A) In general.—Except as provided in subparagraph (B), the amendments made by subsection (c) [enacting subsec. (*o*) and amending subsec. (c)(3)(C) of this section] shall apply to obligations issued after the date of the enactment of this Act [July 18, 1984].

"(B) Volume limitation.—The requirements of paragraph (3) of section 103A(*o*) of the Internal Revenue Code of 1954 (as added by this section) shall apply to obligations issued after June 22, 1984. In applying such requirements to obligations issued after such date, obligations issued on or before such date shall not be taken into account under such paragraph (3).

"(C) Qualified veterans' mortgage bonds authorized before October 18, 1983, not taken into account.—The requirements of section 103A(*o*)(3) of the Internal Revenue Code of 1954 shall not apply to any qualified veterans' mortgage bond if—

"(i) the issuance of such bond was authorized by a State referendum before October 18, 1983, or

"(ii) the issuance of such bond was authorized pursuant to a State referendum before December 1, 1983, where such referendum was authorized by action of the State legislature before October 18, 1983.

"(4) Transitional rule where State formula for allocating State ceiling expires.—

"(A) In general.—If a State law which provided a formula for allocating the State ceiling under section 103A(g) of the Internal Revenue Code of 1954 for calendar year 1983 expires as of the close of calendar year 1983, for purposes of section 103A(g) of such Code, such State law shall be treated as remaining in effect after 1983. In any case to which the preceding sentence applies, where the State's expiring allocation formula requires action by a State official to allocate the State ceiling among issuers, actions of such State official in allocating such ceiling shall be effective.

"(B) Termination.—Subparagraph (A) shall not apply on or after the effective date of any State legislation enacted after the date of the enactment of this Act [July 18, 1984] with respect to the allocation of the State ceiling.

"(C) Special rule for Texas.—In the case of Texas, the Governor of such State may take the actions described in subparagraph (A) pursuant to procedures established by the Governor consistent with the State laws of Texas.

"(5) Special rule for determinations of statistical area.—For purposes of applying section 103A of the Internal Revenue Code of 1954 and any other provision of Federal law—

"(A) Rescission.—The Director of the Office of Management and Budget shall rescind the designation of the Kansas City, Missouri primary metropolitan statistical area (KCMO PMSA) and the designation of the Kansas City, Kansas primary metropolitan statistical area (Kansas City, KS PMSA), and shall not take any action to designate such two primary metropolitan statistical areas as a consolidated metropolitan statistical area.

"(B) Designation.—The Director of the Office of Management and Budget shall designate a single metropolitan statistical area which includes the following:

"(i) Kansas City, Kansas.

"(ii) Kansas City, Missouri.

"(iii) The counties of Johnson, Wyandotte, Leavenworth, and Miami in Kansas.

"(iv) The counties of Cass, Clay, Jackson, Platte, Ray, and Lafayette in Missouri.

The metropolitan statistical area designation pursuant to this subsection shall be known as the 'Kansas City Missouri-Kansas Metropolitan Statistical Area'.

"(6) Transitional rule for Kentucky and Nevada.—For purposes of section 103A(g) of the Internal Revenue Code of 1954, in the case of Kentucky and Nevada, subclause (I) of section 103A(g)(6)(B)(ii) of such Code shall be applied as if the first day referred to in such subclause were January 1, 1987.

"(7) Report to Congress.—The Secretary of the Treasury, in consultation with the Secretary of Housing and Urban Development, shall, not later than January 1, 1987, submit a report to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the performance of issuers of qualified mortgage bonds and mortgage credit certificates relative to the intent of Congress described in section 103A(j) of the Internal Revenue Code of 1954."

Amendment by section 612(b) of Pub. L. 98-369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98-369, set out as an Effective Date note under section 25 of this title.

Amendment by section 624(b)(1) of Pub. L. 98-369 applicable with respect to bonds issued after Dec. 31, 1984, see section 624(c) of Pub. L. 98-369, set out as a note under section 103 of this title.

For applicability of amendment by section 624(b)(1) of Pub. L. 98-369 as dependent upon compliance with certain terms and conditions, see section 631 of Pub. L. 98-369, set out as a note under section 103 of this title.

United States Possessions; Formula; State Ceiling; Qualified Mortgage Bonds; Effective Date

Pub. L. 98-454, title II, § 204, Oct. 5, 1984, 98 Stat. 1734, provided that:

"(a) The Governor of any possession of the United States may for calendar years 1984 and 1985 proclaim a formula (different from that provided by section 103A(g) of the Internal Revenue Code of 1954) for allocating the State ceiling under such section among the governmental units in such possession having authority to issue qualified mortgage bonds (as defined in section 103A(c) of such Code).

"(b) The authority provided by subsection (a) shall not apply after the effective date of any legislation with respect to the allocation of the State ceiling enacted by the legislature of the possession after the date of the enactment of this Act [Oct. 5, 1984]."

Effective Dates for Bond Provisions

Section 1104 of Pub. L. 96-499, as amended by Pub. L. 97-248, title II, § 221(c)(2), Sept. 3, 1982, 96 Stat. 478; Pub. L. 98-369, div. A, title VI, § 614, July 18, 1984, 98 Stat. 914, provided that:

[*See main edition for text of* (a) *to* (o)]

"(p) Most Exceptions Not To Apply to Bonds Issued After December 31, 1984.—In addition to any obligations to which the amendments made by section 1102 [enacting this section] apply by reason of the provisions of this section, the amendments made by section 1102 shall apply, notwithstanding any other provision of this section (other than subsection (n)), to obligations issued after December 31, 1984, all or a major portion of the proceeds of which are used to finance new mortgages on single-family residences that are owner occupied.

"(q) Reduction of State Ceiling by Amount of Special Mortgage Bonds Issued Before 1985.—

"(1) In general.—Notwithstanding any other provision of this section (other than subsections (n) and (r)), any obligation—

"(A) which is part of an issue all or a major portion of the proceeds of which are used to finance new mortgages in single-family residences that are owner occupied,

"(B) which were issued by issuing authorities in such State after June 15, 1984, and before January 1, 1985, and

"(C) to which the amendments made by section 1102 [enacting this section] do not apply by reason of any provision of this section other than subsection (n),

shall, for purposes of applying the Internal Revenue Code of 1954, be treated as an obligation which is not described in section 103(a) of such Code if the aggregate face amount of such issue exceeds the portion of the State ceiling that is allocated by the State to such issue prior to the date of issuance of such issue.

"(2) Application of section 103A(g).—For purposes of applying section 103A(g) of such Code, the State ceiling for calendar year 1984 shall be reduced by the aggregate amount allocated by the State to any issues described in paragraph (1).

"(3) State ceiling.—For purposes of this subsection, the term 'State ceiling' has the meaning given to such term by section 103A(g)(4) of the Internal Revenue Code of 1954.

"(r) Exceptions to Subsection (q).—Subsection (q) shall not apply with respect to—

"(1) obligations—

"(A) the proceeds of which are used to finance the River Place Project located in Minneapolis, Minnesota, and

"(B) the aggregate face amount of which does not exceed $55,000,000, or

"(2) obligations—

"(A) the proceeds of which are used to finance the Waseca, Minnesota project, and

"(B) the aggregate face amount of which does not exceed $7,800,000."

Section Referred to in Other Sections

This section is referred to in sections 25, 103, 128, 7871 of this title.

§ 104. Compensation for injuries or sickness

Section Referred to in Other Sections

This section is referred to in sections 22, 105, 130, 6051, 7701 of this title; title 10 section 1403.

§ 105. Amounts received under accident and health plans

[See main edition for text of (a)]

(b) Amounts expended for medical care

Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include amounts referred to in subsection (a) if such amounts are paid, directly or indirectly, to the taxpayer to reimburse the taxpayer for expenses incurred by him for the medical care (as defined in section 213(d)) of the taxpayer, his spouse, and his dependents (as defined in section 152). Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection.

[See main edition for text of (c)]

[(d) Repealed. Pub. L. 98–21, title I, § 122(b), Apr. 20, 1983, 97 Stat. 87]

[See main edition for text of (e) to (h)]

(i) Sick pay under Railroad Unemployment Insurance Act

Notwithstanding any other provision of law, gross income includes benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness; except to the extent such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(As amended Sept. 3, 1982, Pub. L. 97–248, title II, § 202(b)(3)(C), 96 Stat. 421; Apr. 20, 1983, Pub. L. 98–21, title I, § 122(b), 97 Stat. 87; Aug. 12, 1983, Pub. L. 98–76, title II, § 241(a), 97 Stat. 430; July 18, 1984, Pub. L. 98–369, div. A, title IV, § 423(b)(2), 98 Stat. 800.)

REFERENCES IN TEXT

Section 2(a) of the Railroad Unemployment Insurance Act, referred to in subsec. (i), is classified to section 352(a) of Title 45, Railroads.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369 added sentence providing that "Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this subsection."

1983—Subsec. (d). Pub. L. 98–21 struck out subsec. (d) which had provided that no deduction or credit would be allowed with respect to any expenditure which is properly associated with any amount excluded from gross income under subsec. (a).

Subsec. (i). Pub. L. 98–76 added subsec. (i).

1982—Subsec. (b). Pub. L. 97–248 substituted "section 213(d)" for "section 213(e)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98–369, set out as a note under section 2 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 241(b) of Pub. L. 98–76 provided that: "The amendment made by subsection (a) [amending this section] shall apply to amounts received after December 31, 1983, in taxable years ending after such date."

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under former subsec. (d)(6) of this section as in effect the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21 set out as a note under section 22 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to taxable years beginning after Dec. 31, 1983, see section 202(c) of Pub. L. 97–248, set out as a note under section 213 of this title.

CROSS REFERENCES

Credit for the elderly: reduction of section 22 amount inapplicable to exclusions under this section, see section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22, 414, 505, 3401, 7701, 7871 of this title.

§ 108. Income from discharge of indebtedness

[See main edition for text of (a)]

(b) Reduction of tax attributes in title 11 case or insolvency

[See main edition for text of (1)]

(2) Tax attributes affected; order of reduction

Except as provided in paragraph (5), the reduction referred to in paragraph (1) shall be made in the following tax attributes in the following order:

[See main edition for text of (A)]

(B) Research credit and general business credit

Any carryover to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under—

(i) section 30 (relating to credit for increasing research activities), or

(ii) section 38 (relating to general business credit).

For purposes of this subparagraph, there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41.

[See main edition for text of (C) and (D)]

(E) Foreign tax credit carryovers

Any carryover to or from the taxable year of the discharge for purposes of determining the amount of the credit allowable under section 33.[1]

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[1] See References in Text note below.

[*See main edition for text of* (*3*) *to* (*5*); (*c*)]

(d) Meaning of terms; special rules relating to subsections (a), (b), and (c)

[*See main edition for text of* (*1*) *to* (*5*)]

(6) Subsections (a), (b), and (c) to be applied at partner level

In the case of a partnership, subsections (a), (b), and (c) shall be applied at the partner level.

(7) Special rules for S corporation

(A) Subsections (a), (b), and (c) to be applied at corporate level

In the case of an S corporation, subsections (a), (b), and (c) shall be applied at the corporate level.

(B) Reduction in carryover of disallowed losses and deductions

In the case of an S corporation, for purposes of subparagraph (A) of subsection (b)(2), any loss or deduction which is disallowed for the taxable year of the discharge under section 1366(d)(1) shall be treated as a net operating loss for such taxable year. The preceding sentence shall not apply to any discharge to the extent that subsection (a)(1)(C) applies to such discharge.

(C) Coordination with basis adjustments under section 1367(b)(2)

For purposes of subsection (e)(6), a shareholder's adjusted basis in indebtedness of an S corporation shall be determined without regard to any adjustments made under section 1367(b)(2).

(8) Reductions of tax attributes in title 11 cases of individuals to be made by estate

In any case under chapter 7 or 11 of title 11 of the United States Code to which section 1398 applies, for purposes of paragraphs (1) and (5) of subsection (b) the estate (and not the individual) shall be treated as the taxpayer. The preceding sentence shall not apply for purposes of applying section 1017 to property transferred by the estate to the individual.

(9) Time for making election, etc.

(A) Time

An election under paragraph (4) of this subsection or under paragraph (5) of subsection (b) shall be made on the taxpayer's return for the taxable year in which the discharge occurs or at such other time as may be permitted in regulations prescribed by the Secretary.

(B) Revocation only with consent

An election referred to in subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(C) Manner

An election referred to in subparagraph (A) shall be made in such manner as the Secretary may by regulations prescribe.

(10) Cross reference

For provision that no reduction is to be made in the basis of exempt property of an individual debtor, see section 1017(c)(1).

(e) General rules for discharge of indebtedness (including discharges not in title 11 cases or insolvency)

For purposes of this title—

[*See main edition for text of* (*1*) *to* (*9*)]

(10) Indebtedness satisfied by corporation's stock

(A) In general

For purposes of determining income of a debtor from discharge of indebtedness, if a debtor corporation transfers stock to a creditor in satisfaction of its indebtedness, such corporation shall be treated as having satisfied the indebtedness with an amount of money equal to the fair market value of the stock.

(B) Exception for title 11 cases and insolvent debtors

Subparagraph (A) shall not apply in the case of a debtor in a title 11 case or to the extent the debtor is insolvent.

(C) Exception for transfers in certain workouts

(i) In general

Subparagraph (A) shall not apply to any transfer of stock in a qualified workout.

(ii) Qualified workout

For purposes of clause (i), the term "qualified workout" means any plan under which stock is transferred to creditors in satisfaction of indebtedness if—

(I) because of cash flow and credit problems, the corporation making such transfer will have trouble in meeting liabilities coming due during the next 12 months to such an extent that there is a substantial threat of involuntary proceedings relating to insolvency or bankruptcy,

(II) such corporation in any report to its shareholders for the period during which such transfer occurs includes a statement that such corporation believes it meets the requirement of subclause (I) and that it is availing itself of the workout provisions of this subparagraph,

(III) the holders of more than 50 percent of the total indebtedness of the corporation approve such plan, and

(IV) at least 25 percent of the total indebtedness of the corporation is extinguished by transfers pursuant to such plan.

(f) Student loans

(1) In general

In the case of an individual, gross income does not include any amount which (but for this subsection) would be includible in gross income by reason of the discharge (in whole or in part) of any student loan if such discharge was pursuant to a provision of such loan under which all or part of the indebtedness of the individual would be discharged if the individual worked for a certain period of time in certain professions for any of a broad class of employers.

(2) Student loan

For purposes of this subsection, the term "student loan" means any loan to an individual to assist the individual in attending an educational organization described in section 170(b)(1)(A)(ii) made by—

(A) the United States, or an instrumentality or agency thereof,

(B) a State, territory, or possession of the United States, or the District of Columbia, or any political subdivision thereof, or

(C) a public benefit corporation—

(i) which is exempt from taxation under section 501(c)(3),

(ii) which has assumed control over a State, county, or municipal hospital, and

(iii) whose employees have been deemed to be public employees under State law, or

(D) any educational organization so described pursuant to an agreement with any entity described in subparagraph (A), (B), or (C) under which the funds from which the loan was made were provided to such educational organization.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 59(a), (b)(1), title IV, § 474(r)(5), title VII, § 721(b)(2), title X, § 1076(a), 98 Stat. 576, 839, 966, 1053.)

REFERENCES IN TEXT

Section 33, referred to in subsec. (b)(2)(E), was renumbered section 27 by section 471(c)(1) of Pub. L. 98-369.

AMENDMENTS

1984—Subsec. (b)(2)(B). Pub. L. 98-369, § 474(r)(5), substituted provisions relating to research credits and general business credits covering carryovers to or from the taxable year of a discharge of an amount for purposes of determining the amount allowable as a credit under section 30 (relating to credit for increasing research activities), or section 38 (relating to general business credit), and directing that there shall not be taken into account any portion of a carryover which is attributable to the employee stock ownership credit determined under section 41 for former provisions covering carryovers to or from the taxable year of the discharge of an amount for purposes of determining the amount of a credit allowable under section 38 (relating to investment in certain depreciable property), section 40 (relating to expenses of work incentive programs), section 44B (relating to credit for employment of certain new employees), section 44E (relating to alcohol used as a fuel), or section 44F (relating to credit for increasing research activities), and directing that, for purposes of clause (i), there could not be taken into account any portion of a carryover which was attributable to the employee plan credit (within the meaning of section 48(o)(3)).

Subsec. (d)(6). Pub. L. 98-369, § 721(b)(2), struck out "or S corporation shareholder level" in heading and second sentence which provided that "In the case of an S corporation, subsections (a), (b), and (c) shall apply at the shareholder level.". See par. (7)(A).

Subsec. (d)(7) to (10). Pub. L. 98-369, § 721(b)(2), added par. (7) and redesignated former pars. (7) to (9) as (8) to (10), respectively.

Subsec. (e)(10). Pub. L. 98-369, § 59(a), added par. (10).

Subsec. (e)(10)(C). Pub. L. 98-369, § 59(b)(1), added subpar. (C).

Subsec. (f). Pub. L. 98-363, § 1076(a), added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 59(b)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [enacting subsec. (e)(10)(C) of this section] shall take effect as if it had been included in the amendments made by subsections (e) and (f) of section 806 of the Tax Reform Act of 1976 [Pub. L. 94-455]." See Effective Date of 1976 Amendment note set out under section 382 of this title.

Section 59(b) [c] of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [enacting subsec. (e)(10)(A) and (B)] of this section] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) TRANSITIONAL RULE.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act if such transfer is—

"(A) pursuant to a written contract requiring such transfer which was binding on the corporation at all times on June 7, 1984, and at all times after such date but only if the transfer takes place before January 1, 1985, and only if the transferee held the debt at all times on June 7, 1984, or

"(B) pursuant to the exercise of an option to exchange debt for stock but only if such option was in effect at all times on June 7, 1984, and at all times after such date and only if at all times on June 7, 1984, the option and the debt were held by the same person.

"(3) CERTAIN TRANSFERS TO CONTROLLING SHAREHOLDER.—The amendment made by subsection (a) shall not apply to any transfer before January 1, 1985, by a corporation of its stock in exchange for debt of such corporation if—

"(A) such transfer is to another corporation which at all times on June 7, 1984, owned 75 percent or more of the total value of the stock of the corporation making such transfer, and

"(B) immediately after such transfer, the transferee corporation owns 80 percent or more of the total value of the stock of the transferor corporation.

"(4) CERTAIN TRANSFERS PURSUANT TO DEBT RESTRUCTURE AGREEMENT.—The amendment made by subsection (a) shall not apply to the transfer by a corporation of its stock in exchange for debt of the corporation after the date of the enactment of this Act and before January 1, 1985, if—

"(A) such transfer is covered by a debt restructure agreement entered into by the corporation during November 1983, and

"(B) such agreement was specified in a registration statement filed with the Securities and Exchange Commission by the corporation on March 7, 1984."

Amendment by section 474(r)(5) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 721(b) of Pub. L. 98-369 applicable to contributions to capital after Dec. 31, 1980, in taxable years ending after such date, see section 721(y)(2) of Pub. L. 98-369, set out as a note under section 1361 of this title.

Section 1076(b) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting subsec. (f) of this section] shall apply to discharges of indebtedness made on or after January 1, 1983."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 118, 703, 1017 of this title.

§ 111. Recovery of tax benefit items

(a) Deductions

Gross income does not include income attributable to the recovery during the taxable year of any amount deducted in any prior taxable year to the extent such amount did not reduce income subject to tax.

(b) Credits

(1) In general

If—

(A) a credit was allowable with respect to any amount for any prior taxable year, and

(B) during the taxable year there is a downward price adjustment or similar adjustment,

the tax imposed by this chapter for the taxable year shall be increased by the amount of the credit attributable to the adjustment.

(2) Exception where credit did not reduce tax

Paragraph (1) shall not apply to the extent that the credit allowable for the recovered amount did not reduce the amount of tax imposed by this chapter.

(3) Exception for investment tax credit and foreign tax credit

This subsection shall not apply with respect to the credit determined under section 46 and the foreign tax credit.

(c) Treatment of carryovers

For purposes of this section, an increase in a carryover which has not expired before the beginning of the taxable year in which the recovery or adjustment takes place shall be treated as reducing income subject to tax or reducing tax imposed by this chapter, as the case may be.

(d) Special rules for accumulated earnings tax and for personal holding company tax

In applying subsection (a) for the purpose of determining the accumulated earnings tax under section 531 or the tax under section 541 (relating to personal holding companies)—

(1) any excluded amount under subsection (a) allowed for the purposes of this subtitle (other than section 531 or section 541) shall be allowed whether or not such amount resulted in a reduction of the tax under section 531 or the tax under section 541 for the prior taxable year; and

(2) where any excluded amount under subsection (a) was not allowable as a deduction for the prior taxable year for purposes of this subtitle other than of section 531 or section 541 but was allowable for the same taxable year under section 531 or section 541, then such excluded amount shall be allowable if it did not result in a reduction of the tax under section 531 or the tax under section 541.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 171(a), 98 Stat. 698.)

AMENDMENTS

1984—Pub. L. 98-369 amended section generally, substituting provisions relating to recovery of tax benefit items for provisions relating to recovery of bad debts, prior taxes, and delinquency amounts.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 171(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to amounts recovered after December 31, 1983, in taxable years ending after such date."

§ 116. Partial exclusion of dividends received by individuals

[See main edition for text of (a) to (d)]

(e) Dividends from employee stock ownership plans

Subsection (a) shall not apply to any dividend described in section 404(k).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title V, § 542(b), 98 Stat. 891.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-369 added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 542(d) of Pub. L. 98-369, set out as a note under section 404 of this title.

§ 117. Scholarships and fellowship grants

[See main edition for text of (a) to (c)]

(d) Qualified tuition reductions

(1) In general

Gross income shall not include any qualified tuition reduction.

(2) Qualified tuition reduction

For purposes of this subsection, the term "qualified tuition reduction" means the amount of any reduction in tuition provided to an employee of an organization described in section 170(b)(1)(A)(ii) for the education (below the graduate level) at such organization (or another organization described in section 170(b)(1)(A)(ii)) of—

(A) such employee, or

(B) any person treated as an employee (or whose use is treated as an employee use) under the rules of section 132(f).

(3) Reduction must not discriminate in favor of highly compensated, etc.

Paragraph (1) shall apply with respect to any qualified tuition reduction provided with respect to any officer, owner, or highly compensated employee only if such reduction is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of officers, owners, or highly compensated employees.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title V, § 532(a), 98 Stat. 887.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 532(b) of Pub. L. 98-369 provided that: "The amendment made by this section [enacting subsec. (d) of this section] shall apply to qualified tuition reductions (as defined in section 117(d)(2) of the Internal

Revenue Code of 1954) for education furnished after June 30, 1985, in taxable years ending after such date."

Provisions of subsec. (d) treated as in effect on and after Jan. 1, 1984, in case of education described in section 127(c)(8) of this title, see section 1(g)(5) of Pub. L. 98-611, set out as a note under section 127 of this title.

Section Referred to in Other Sections

This section is referred to in sections 74, 125, 127, 1441, 3121, 3231, 3306, 3401, 4941, 4945, 7871 of this title; title 42 section 409.

§ 118. Contributions to the capital of a corporation

[See main edition for text of (a) and (b)]

(c) Statute of limitations

If the taxpayer for any taxable year treats an amount as a contribution to the capital of the taxpayer described in subsection (b), then—

(1) the statutory period for the assessment of any deficiency attributable to any part of such amount shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may prescribe) of—

(A) the amount of the expenditure referred to in subparagraph (A) of subsection (b)(2),

(B) the taxpayer's intention not to make the expenditures referred to in such subparagraph, or

(C) a failure to make such expenditure within the period described in subparagraph (B) of subsection (b)(2); and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(d) Cross references

(1) For basis of property acquired by a corporation through a contribution to its capital, see section 362.

(2) For special rules in the case of contributions of indebtedness, see section 108(e)(6).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 163(a), 98 Stat. 697.)

Amendments

1984—Subsecs. (c), (d). Pub. L. 98-369 added subsec. (c) and redesignated former subsec. (c) as (d).

Effective Date of 1984 Amendment

Section 163(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 118, 6501, and 6511 of this title] shall apply to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of the Internal Revenue Code of 1954 ends after December 31, 1984."

Section Referred to in Other Sections

This section is referred to in sections 108, 362, 6501 of this title.

§ 119. Meals or lodging furnished for the convenience of the employer

Section Referred to in Other Sections

This section is referred to in sections 280A, 1402, 3121, 3306 of this title; title 42 sections 409, 411.

§ 120. Amounts received under qualified group legal services plans

[See main edition for text of (a) to (d)]

(e) Termination

This section and section 501(c)(20) shall not apply to taxable years ending after December 31, 1985.

(f) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(As amended Pub. L. 98-612, § 1(a), (b)(3)(A), Oct. 31, 1984, 98 Stat. 3180, 3181.)

Amendments

1984—Subsec. (e). Pub. L. 98-612, § 1(a), substituted "December 31, 1985" for "December 31, 1984".

Subsec. (f). Pub. L. 98-612, § 1(b)(3)(A), added subsec. (f).

Effective Date of 1984 Amendment

Section 1(d)(1) of Pub. L. 98-612 provided that: "The amendment made by subsection (a) [amending subsec. (e) of this section] shall apply to taxable years ending after December 31, 1984."

Enactment of subsec. (f) of this section by Pub. L. 98-612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98-612, set out as an Effective Date note under section 6039D of this title, as added by Pub. L. 98-612.

Section Referred to in Other Sections

This section is referred to in sections 501, 3121, 3306, 3231, 6039D of this title; title 42 section 409.

§ 124. Qualified transportation provided by employer

Section Referred to in Other Sections

This section is referred to in section 125 of this title.

§ 125. Cafeteria plans

[See main edition for text of (a)]

(b) Exception for highly compensated participants and key employees

(1) Highly compensated participants

In the case of a highly compensated participant, subsection (a) shall not apply to any benefit attributable to a plan year for which the plan discriminates in favor of—

(A) highly compensated individuals as to eligibility to participate, or

(B) highly compensated participants as to contributions and benefits.

(2) Key employees

In the case of a key employee (within the meaning of section 416(i)(1)), subsection (a) shall not apply to any benefit attributable to a plan for which the statutory nontaxable benefits provided to key employees exceed 25 percent of the aggregate of such benefits provided for all employees under the plan. For purposes of the preceding sentence, statutory nontaxable benefits shall be determined without regard to the last sentence of subsection (f).

(3) Year of inclusion

For purposes of determining the taxable year of inclusion, any benefit described in paragraph (1) or (2) shall be treated as received or accrued in the taxable year of the participant or key employee in which the plan year ends.

(c) Discrimination as to benefits or contributions

For purposes of subparagraph (B) of subsection (b)(1), a cafeteria plan does not discriminate where statutory nontaxable benefits and total benefits (or employer contributions allocable to statutory nontaxable benefits and employer contributions for total benefits) do not discriminate in favor of highly compensated participants.

(d) Cafeteria plan defined

For purposes of this section—

(1) In general

The term "cafeteria plan" means a written plan under which—

(A) all participants are employees, and

(B) the participants may choose among 2 or more benefits consisting of cash and statutory nontaxable benefits.

[*See main edition for text of* (2); (*e*)]

(f) Statutory nontaxable benefits defined

For purposes of this section, the term "statutory nontaxable benefit" means any benefit which, with the application of subsection (a) is not includible in the gross income of the employee by reason of an express provision of this chapter (other than section 117, 124, 127, or 132). Such term includes any group term life insurance which is includible in gross income only because it exceeds the dollar limitation of section 79.

[*See main edition for text of* (*g*)]

(h) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the provisions of this section.

(As amended Pub. L. 98-369, div. A, title V, § 531(b)(1)-(4)(A), July 18, 1984, 98 Stat. 881, 882; Pub. L. 98-611, § 1(d)(3)(A), Oct. 31, 1984, 98 Stat. 3177; Pub. L. 98-612, § 1(b)(3)(B), Oct. 31, 1984, 98 Stat. 3181.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 531(b)(3), amended subsec. (b) generally, substituting in heading "and key employees" for "where plan is discriminatory" and in par. (1) heading "Highly compensated participants" for "In general", adding par. (2), redesignating former par. (2) as (3), and inserting therein references to par. (2) and to taxable year of key employee.

Subsec. (c). Pub. L. 98-369, § 531(b)(2)(B), inserted "statutory" before "nontaxable benefits" in two instances.

Subsec. (d)(1). Pub. L. 98-369, § 531(b)(1), substituted in cl. (B) "among 2 or more benefits consisting of cash and statutory nontaxable benefits" for "among two or more benefits" and deleted "The benefits which may be chosen may be nontaxable benefits, or cash, property, or other taxable benefits."

Subsec. (f). Pub. L. 98-369, § 531(b)(2)(A), amended subsec. (f) generally, inserting "Statutory" in heading and "statutory" before "nontaxable benefit" in text, providing that the benefit be excluded by reason of an express provision of this chapter (other than section 117, 124, 127, or 132), and extending the benefit to include group term life insurance.

Subsec. (h). Pub. L. 98-611 and Pub. L. 98-612, made identical amendments, substituting cross reference provision for reporting requirements provisions.

Pub. L. 98-369, § 531(b)(4)(A), added subsec. (h) relating to reporting requirements provisions. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 98-369, § 531(b)(4)(A), redesignated subsec. (h) as (i).

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98-612, set out as an Effective Date note under section 6039D of this title, as added by Pub. L. 98-612.

Amendment by Pub. L. 98-611 effective Jan. 1, 1985, see section 1(g)(2) of Pub. L. 98-611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

EXCEPTION FOR CERTAIN CAFETERIA PLANS AND BENEFITS

Section 531(b)(5) of Pub. L. 98-369 provided that:

"(A) GENERAL TRANSITIONAL RULE.—Any cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules relating to section 125 under proposed Treasury regulations, and any benefit offered under such a cafeteria plan which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations, will not fail to be a cafeteria plan under section 125 or a nontaxable benefit under section 105, 106, 120, or 129 solely because of such failures. The preceding sentence shall apply only with respect to cafeteria plans and benefits provided under cafeteria plans before the earlier of—

"(i) January 1, 1985, or

"(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

"(B) SPECIAL TRANSITION RULE FOR ADVANCE ELECTION BENEFIT BANKS.—Any benefit offered under a cafeteria plan in existence on February 10, 1984, which failed as of such date and continued to fail thereafter to satisfy the rules of section 105, 106, 120, or 129 under proposed Treasury regulations because an employee was assured of receiving (in cash or any other benefit) amounts available but unused for covered reimbursement during the year without regard to whether he incurred covered expenses, will not fail to be a nontaxable benefit under such applicable section solely because of such failure. The preceding sentence shall apply only with respect to benefits provided under cafeteria plans before the earlier of—

"(i) July 1, 1985, or

"(ii) the effective date of any modification to provide additional benefits after February 10, 1984.

Except as provided in Treasury regulations, the special transition rule is available only for benefits with respect to which, after December 31, 1984, contributions are fixed before the period of coverage and taxable cash is not available until the end of such period of coverage.

"(C) PLANS FOR WHICH SUBSTANTIAL IMPLEMENTATION COSTS WERE INCURRED.—For purposes of this paragraph, any plan with respect to which substantial implementation costs had been incurred before February 10, 1984, shall be treated as in existence on February 10, 1984."

Section Referred to in Other Sections

This section is referred to in sections 79, 414, 6039D of this title.

§ 127. Educational assistance programs

(a) Exclusion from gross income

(1) In general

Gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee if the assistance is furnished pursuant to a program which is described in subsection (b).

(2) $5,000 maximum exclusion

If, but for this paragraph, this section would exclude from gross income more than $5,000 of educational assistance furnished to an individual during a calendar year, this section shall apply only to the first $5,000 of such assistance so furnished.

[See main edition for text of (b)*]*

(c) Definitions; special rules

For purposes of this section—

[See main edition for text of (1) to (6)]

(7) Disallowance of excluded amounts as credit or deduction

No deduction or credit shall be allowed to the employee under any other section of this chapter for any amount excluded from income by reason of this section.

(8) Coordination with section 117(d)

In the case of the education of an individual who is a graduate student at an educational organization described in section 170(b)(1)(A)(ii) and who is engaged in teaching or research activities for such organization, section 117(d)(2) shall be applied as if it did not contain the phrase "(below the graduate level)".

(d) Termination

This section shall not apply to taxable years beginning after December 31, 1985.

(e) Cross reference

For reporting and recordkeeping requirements, see section 6039D.

(As amended Pub. L. 98–611, § 1(a)–(c), (d)(3)(B), (e), Oct. 31, 1984, 98 Stat. 3176–3178.)

Amendments

1984—Subsec. (a). Pub. L. 98–611, § 1(b), amended subsec. generally, substituting "Exclusion from gross income" for "General rule" in heading, designating existing provision as par. "(1) In general" and adding par. (2).

Subsec. (c)(7). Pub. L. 98–611, § 1(e), substituted "allowed to the employee" for "allowed".

Subsec. (c)(8). Pub. L. 98–611, § 1(c), added par. (8).

Subsec. (d). Pub. L. 98–611, § 1(a), substituted "December 31, 1985" for "December 31, 1983".

Subsec. (e). Pub. L. 98–611, § 1(d)(3)(B), added subsec. (e).

Effective Date of 1984 Amendment

Section 1(g) of Pub. L. 98–611 provided that:

"(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section [enacting section 6039D of this title and amending sections 125, 127, 3231, and 6652 of this title] shall apply to taxable years beginning after December 31, 1983.

"(2) Subsection (d).—The amendments made by subsection (d) [enacting section 6039D and amending sections 125, 127, and 6652 of this title] shall take effect on January 1, 1985.

"(3) Subsection (f).—The amendment made by subsection (f) [amending section 3231 of this title] shall apply to remuneration paid after December 31, 1984.

"(4) No penalties or interest on failure to withhold.—No penalty or interest shall be imposed on any failure to withhold under subtitle C of the Internal Revenue Code of 1954 (relating to employment taxes) with respect to amounts excluded from gross income under section 127 of such Code (as amended by this section and determined without regard to subsection (a)(2) thereof) with respect to periods during 1984.

"(5) Coordination with section 117(d).—In the case of education described in section 127(c)(8) of the Internal Revenue Code of 1954, as added by this section, section 117(d) of such Code shall be treated as in effect on and after January 1, 1984."

Section Referred to in Other Sections

This section is referred to in sections 125, 3121, 3231, 3306, 3401, 6039D of this title; title 42 section 409.

§ 128. Interest on certain savings certificates

[See main edition for text]

(Added and amended Pub. L. 97–34, title III, §§ 301(a), 302(a), (d)(1), Aug. 13, 1981, 95 Stat. 267, 270, 274; Pub. L. 97–448, title I, §§ 103(a)(1), (5), (b), 109, Jan. 12, 1983, 96 Stat. 2374, 2375, 2391; Pub. L. 98–21, title I, §§ 121(f)(2), (g), 122(c)(3), (d), Apr. 20, 1983, 97 Stat. 84, 87; Pub. L. 98–369, div. A, title I, § 16(a), July 18, 1984, 98 Stat. 505.)

Amendments

1984—Pub. L. 98–369, § 16(a), repealed amendments made by Pub. L. 97–34, § 302(a), as amended. See 1981 Amendment note below.

1981—Pub. L. 97–34, § 302(a), (d)(1), as amended by Pub. L. 97–448, §§ 103(b), 109, and Pub. L. 98–21, §§ 121(f)(2), (g), 122(c)(3), (d), provided for general amendment of this section so as to relate to partial exclusion of interest, applicable to taxable years beginning after Dec. 31, 1984. Section 16(a) of Pub. L. 98–369, repealed section 302(a) of Pub. L. 97–34, and provided that this title shall be applied and administered as if such section 302(a), and the amendments made by section 302(a), had not been enacted.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Repeal of Partial Interest Exclusion

Section 16(a) of Pub. L. 98–369 provided that: "Subsections (a) and (c) [amending sections 46, 128, 265, 854, and 857 of this title] of section 302 of the Economic Recovery Tax Act of 1981 [Pub. L. 97–34] are hereby repealed, and the Internal Revenue Code of 1954 shall be applied and administered as if such subsections (and the amendments made by such subsections) had not been enacted."

Section Referred to in Other Sections

This section is referred to in sections 265, 584, 643, 702 of this title.

§ 129. Dependent care assistance programs

[*See main edition for text of* (*a*)]

(b) Earned income limitation

[*See main edition for text of* (*1*)]

(2) Special rule for certain spouses

For purposes of paragraph (1), the provisions of section 21(d)(2) shall apply in determining the earned income of a spouse who is a student, or incapable of caring for himself.

[*See main edition for text of* (*c*) *and* (*d*)]

(e) Definitions and special rules

For purposes of this section—

(1) Dependent care assistance

The term "dependent care assistance" means the payment of, or provision of, those services which if paid for by the employee would be considered employment-related expenses under section 21(b)(2) (relating to expenses for household and dependent care services necessary for gainful employment).

(2) Earned income

The term "earned income" shall have the meaning given such term in section 32(c)(2), but such term shall not include any amounts paid or incurred by an employer for dependent care assistance to an employee.

[*See main edition for text of* (*3*) *to* (*7*)]

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(6), July 18, 1984, 98 Stat. 839.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-369, § 474(r)(6)(A), substituted "section 21(d)(2)" for "section 44A(e)(2)".

Subsec. (e)(1). Pub. L. 98-369, § 474(r)(6)(B), substituted "section 21(b)(2)" for "section 44A(c)(2)".

Subsec. (e)(2). Pub. L. 98-369, § 474(r)(6)(C), substituted "section 32(c)(2)" for "section 43(c)(2)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

§ 132. Certain fringe benefits

(a) Exclusion from gross income

Gross income shall not include any fringe benefit which qualifies as a—

(1) no-additional-cost service,
(2) qualified employee discount,
(3) working condition fringe, or
(4) de minimis fringe.

(b) No-additional-cost service defined

For purposes of this section, the term "no-additional-cost service" means any service provided by an employer to an employee for use by such employee if—

(1) such service is offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is performing services, and

(2) the employer incurs no substantial additional cost (including forgone revenue) in providing such service to the employee (determined without regard to any amount paid by the employee for such service).

(c) Qualified employee discount defined

For purposes of this section—

(1) Qualified employee discount

The term "qualified employee discount" means any employee discount with respect to qualified property or services to the extent such discount does not exceed—

(A) in the case of property, the gross profit percentage of the price at which the property is being offered by the employer to customers, or

(B) in the case of services, 20 percent of the price at which the services are being offered by the employer to customers.

(2) Gross profit percentage

(A) In general

The term "gross profit percentage" means the percent which—

(i) the excess of the aggregate sales price of property sold by the employer to customers over the aggregate cost of such property to the employer, is of

(ii) the aggregate sale price of such property.

(B) Determination of gross profit percentage

Gross profit percentage shall be determined on the basis of—

(i) all property offered to customers in the ordinary course of the line of business of the employer in which the employee is performing services (or a reasonable classification of property selected by the employer), and

(ii) the employer's experience during a representative period.

(3) Employee discount defined

The term "employee discount" means the amount by which—

(A) the price at which the property or services are provided to the employee by the employer, is less than

(B) the price at which such property or services are being offered by the employer to customers.

(4) Qualified property or services

The term "qualified property or services" means any property (other than real property and other than personal property of a kind held for investment) or services which are offered for sale to customers in the ordinary course of the line of business of the employer in which the employee is peforming [1] services.

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[1] So in original. Probably should be "performing".

(d) Working condition fringe defined

For purposes of this section, the term "working condition fringe" means any property or services provided to an employee of the employer to the extent that, if the employee paid for such property or services, such payment would be allowable as a deduction under section 162 or 167.

(e) De minimis fringe defined

For purposes of this section—

(1) In general

The term "de minimis fringe" means any property or service the value of which is (after taking into account the frequency with which similar fringes are provided by the employer to the employer's employees) so small as to make accounting for it unreasonable or administratively impracticable.

(2) Treatment of certain eating facilities

The operation by an employer of any eating facility for employees shall be treated as a de minimis fringe if—

(A) such facility is located on or near the business premises of the employer, and

(B) revenue derived from such facility normally equals or exceeds the direct operating costs of such facility.

The preceding sentence shall apply with respect to any officer, owner, or highly compensated employee only if access to the facility is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of officers, owners, or highly compensated employees.

(f) Certain individuals treated as employees for purposes of subsections (a)(1) and (2)

For purposes of paragraphs (1) and (2) of subsection (a)—

(1) Retired and disabled employees and surviving spouse of employee treated as employee

With respect to a line of business of an employer, the term "employee" includes—

(A) any individual who was formerly employed by such employer in such line of business and who separated from service with such employer in such line of business by reason of retirement or disability, and

(B) any widow or widower of any individual who died while employed by such employer in such line of business or while an employee within the meaning of subparagraph (A).

(2) Spouse and dependent children

(A) In general

Any use by the spouse or a dependent child of the employee shall be treated as use by the employee.

(B) Dependent child

For purposes of subparagraph (A), the term "dependent child" means any child (as defined in section 151(e)(3)) of the employee—

(i) who is a dependent of the employee, or

(ii) both of whose parents are deceased.

For purposes of the preceding sentence, any child to whom section 152(e) applies shall be treated as the dependent of both parents.

(g) Special rules relating to employer

For purposes of this section—

(1) Controlled groups, etc.

All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(2) Reciprocal agreements

For purposes of paragraph (1) of subsection (a), any service provided by an employer to an employee of another employer shall be treated as provided by the employer of such employee if—

(A) such service is provided pursuant to a written agreement between such employers, and

(B) neither of such employers incurs any substantial additional cost (including forgone revenue) in providing such service or pursuant to such agreement.

(h) Special rules

(1) Exclusions under subsection (a)(1) and (2) apply to officers, etc., only if no discrimination

Paragraphs (1) and (2) of subsection (a) shall apply with respect to any fringe benefit described therein provided with respect to any officer, owner, or highly compensated employee only if such fringe benefit is available on substantially the same terms to each member of a group of employees which is defined under a reasonable classification set up by the employer which does not discriminate in favor of officers, owners, or highly compensated employees.

(2) Special rule for leased sections of department stores

(A) In general

For purposes of paragraph (2) of subsection (a), in the case of a leased section of a department store—

(i) such section shall be treated as part of the line of business of the person operating the department store, and

(ii) employees in the leased section shall be treated as employees of the person operating the department store.

(B) Leased section of department store

For purposes of subparagraph (A), a leased section of a department store is any part of a department store where over-the-counter sales of property are made under a lease or similar arrangement where it appears to the general public that individuals making such sales are employed by the person operating the department store.

(3) Auto salesmen

(A) In general

For purposes of subsection (a)(3), qualified automobile demonstration use shall be treated as a working condition fringe.

(B) Qualified automobile demonstration use

For purposes of subparagraph (A), the term "qualified automobile demonstration use" means any use of an automobile by a full-time automobile salesman in the sales area in which the automobile dealer's sales office is located if—

(i) such use in [1] provided primarily to facilitate the salesman's performance of services for the employer, and

(ii) there are substantial restrictions on the personal use of such automobile by such salesman.

(4) Parking

The term "working condition fringe" includes parking provided to an employee on or near the business premises of the employer.

(5) On-premises gyms and other athletic facilities

(A) In general

Gross income shall not include the value of any on-premises athletic facility provided by an employer to his employees.

(B) On-premises athletic facility

For purposes of this paragraph, the term "on-premises athletic facility" means any gym or other athletic facility—

(i) which is located on the premises of the employer,

(ii) which is operated by the employer, and

(iii) substantially all the use of which is by employees of the employer, their spouses, and their dependent children (within the meaning of subsection (f)).

(i) Customers not to include employees

For purposes of this section (other than subsection (c)(2)(B)), the term "customers" shall only include customers who are not employees.

(j) Section not to apply to fringe benefits expressly provided for elsewhere

This section (other than subsection (e)) shall not apply to any fringe benefits of a type the tax treatment of which is expressly provided for in any other section of this chapter.

(k) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98-369, div. A, title V, § 531(a)(1), July 18, 1984, 98 Stat. 877.)

PRIOR PROVISIONS

A prior section 132 was renumbered section 134 of this title.

EFFECTIVE DATE

Section 531(h) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting sections 132 and 4977 of this title, amending sections 61, 125, 3121, 3231, 3306, 3401, 3501, and 6652 of this title and section 409 of Title 42, The Public Health and Welfare, redesignating former section 132 of this title as 133, and enacting provisions set out as notes under sections 125 and 132 of this title] shall take effect on January 1, 1985."

DETERMINATION OF LINE OF BUSINESS IN CASE OF AFFILIATED GROUP OPERATING RETAIL DEPARTMENT STORES

Section 531(f) of Pub. L. 98-369 provided that: "If—

"(1) as of October 5, 1983, the employees of one member of an affiliated group (as defined in section 1504 of the Internal Revenue Code of 1954 without regard to subsections (b)(2) and (b)(4) thereof) were entitled to employee discounts at the retail department stores operated by another member of such affiliated group, and

"(2) the primary business of the affiliated group is the operation of retail department stores,

then, for purpose of applying section 132(a)(2) of the Internal Revenue Code of 1954, with respect to discounts provided for such employees at the retail department stores operated by such other member, the employer shall be treated as engaged in the same line of business as such other member."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 117, 125, 3121, 3231, 3306, 3401, 4977 of this title; title 42 section 409.

§ 133. Interest on certain loans used to acquire employer securities

(a) In general

Gross income does not include 50 percent of the interest received by—

(1) a bank (within the meaning of section 581),

(2) an insurance company to which subchapter L applies, or

(3) a corporation actively engaged in the business of lending money,

with respect to a securities acquisition loan.

(b) Securities acquisition loan

(1) In general

For purposes of this section, the term "securities acquisition loan" means any loan to a corporation, or to an employee stock ownership plan, to the extent that the proceeds are used to acquire employer securities (within the meaning of section 409(*l*)) for the plan.

(2) Loans between related persons

The term "securities acquisition loan" shall not include—

(A) any loan made between corporations which are members of the same controlled group of corporations, or

(B) any loan made between an employee stock ownership plan and any person that is—

(i) the employer of any employees who are covered by the plan; or

(ii) a member of a controlled group of corporations which includes such employer.

(3) Controlled group of corporations

For purposes of this paragraph, the term "controlled group of corporations" has the meaning given such term by section 409(*l*)(4).

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[1] So in original. Probably should be "is".

(c) Employee stock ownership plan

For purposes of this section, the term "employee stock ownership plan" has the meaning given to such term by section 4975(e)(7).

(Added Pub. L. 98-369, div. A, title V, § 543(a), July 18, 1984, 98 Stat. 891.)

PRIOR PROVISIONS

A prior section 133 was renumbered section 134 of this title.

EFFECTIVE DATE

Section 543(c) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting this section] shall apply to loans used to acquire employer securities after the date of the enactment of this Act [July 18, 1984]."

§ 134. Cross references to other acts

(a) For exemption of—

(1) Allowances and expenditures to meet losses sustained by persons serving the United States abroad, due to appreciation of foreign currencies, see section 5943 of title 5, United States Code.

(2) Amounts credited to the Maritime Administration under section 9(b)(6) of the Merchant Ship Sales Act of 1946, see section 9(c)(1) of that Act (50 U.S.C. App. 1742).

(3) Benefits under laws administered by the Veterans' Administration, see section 3101 of title 38, United States Code.

(4) Earnings of ship contractors deposited in special reserve funds, see section 607(d) of the Merchant Marine Act, 1936 (46 U.S.C. 1177).

(5) Income derived from Federal Reserve banks, including capital stock and surplus, see section 7 of the Federal Reserve Act (12 U.S.C. 531).

(6) Special pensions of persons on Army and Navy medal of honor roll, see 38 U.S.C. 562(a)–(c).

(b) For extension of military income tax-exemption benefits to commissioned officers of Public Health Service in certain circumstances, see section 212 of the Public Health Service Act (42 U.S.C. 213).

(Aug. 16, 1954, ch. 736, 68A Stat. 39, § 121; Aug. 1, 1956, ch. 837, title V, § 501(t), 70 Stat. 885; June 17, 1957, Pub. L. 85-56, title XXII, § 2201(25), 71 Stat. 160; Sept. 2, 1958, Pub. L. 85-857, § 13(t) 72 Stat. 1266; renumbered § 122, Feb. 26, 1964, Pub. L. 88-272, title II, § 206(a), 78 Stat. 38; renumbered § 123, Mar. 8, 1966, Pub. L. 89-365, § 1(a)(1), 80 Stat. 32; renumbered § 124, Dec. 30, 1969, Pub. L. 91-172, title IX, § 901(a), 83 Stat. 709; amended Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1901(a)(21), 90 Stat. 1766; renumbered § 125, Nov. 9, 1978, Pub. L. 95-618, title II, § 242(a), 92 Stat. 3193; renumbered § 128, Pub. L. 95-600, title I, §§ 134(a), 164(a), title V, 543(a), Nov. 6, 1978, 92 Stat. 2783, 2811, 2888; amended Apr. 1, 1980, Pub. L. 96-222, title I, § 101(a)(3), 94 Stat. 195; Dec. 24, 1980, Pub. L. 96-589, § 6(i)(1), 94 Stat. 3410; renumbered § 129, Aug. 13, 1981, Pub. L. 97-34, title III, § 301(a), 95 Stat. 267; renumbered § 130, Aug. 13, 1981, Pub. L. 97-34, title I, § 124(e)(1), 95 Stat. 198; renumbered § 131, Jan. 14, 1983, Pub. L. 97-473, title I, § 101(b)(1), 96 Stat. 2605; renumbered § 132, Jan. 14, 1983, Pub. L. 97-473, title I, § 102(a), 96 Stat. 2606; renumbered § 133, July 18, 1984, Pub. L. 98-369, div. A, title V, § 531(a)(1), 98 Stat. 877; renumbered § 134 and amended July 18, 1984, Pub. L. 98-369, div. A, title V, § 543(a), div. B, title VI, § 2661(o)(2), 98 Stat. 891, 1159.)

REFERENCES IN TEXT

Section 607(d) of the Merchant Marine Act, 1936, referred to in subsec. (a)(4), is classified to section 1177 of Title 46, Appendix, Shipping.

AMENDMENTS

1984—Subsec. (a)(6) to (8). Pub. L. 98-369, § 2661(*o*)(2), struck out par. (6) relating to railroad retirement annuities and pensions, struck out par. (7) relating to railroad unemployment benefits, and redesignated par. (8) as (6).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 2661 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

PART IV—DETERMINATION OF MARITAL STATUS

§ 143. Determination of marital status

[*See main edition for text of* (*a*)]

(b) Certain married individuals living apart

For purposes of those provisions of this title which refer to this subsection, if—

(1) an individual who is married (within the meaning of subsection (a)) and who files a separate return maintains as his home a household which constitutes for more than one-half of the taxable year the principal place of abode of a child (within the meaning of section 151(e)(3)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for paragraph (2) or (4) of section 152(e)),

(2) such individual furnishes over one-half of the cost of maintaining such household during the taxable year, and

(3) during the last 6 months of the taxable year, such individual's spouse is not a member of such household,

such individual shall not be considered as married.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 423(c)(1), 98 Stat. 800.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 amended subsec. generally, substituting in introductory text, "For purposes of those provisions of this title which refer to this subsection" for "For purposes of part V"; in par. (1), "abode of a child (within the meaning of section 151(e)(3)) with respect to whom such individual is entitled to a deduction for the taxable year under section 151 (or would be so entitled but for paragraph (2) or (4) of section 152(e))" for "abode of a dependent (A) who (within the meaning of section 152) is a son, stepson, daughter, or stepdaughter of the individual, and (B) with respect to whom such individual is entitled to a deduction for the taxable year under section 151"; and, in par. (3), "last 6 months of the taxable year," for "the entire taxable year".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98-369, set out as a note under section 2 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 2, 22, 32, 55, 63, 85, 86, 152, 194, 220, 879, 1302, 1304, 1398, 3402, 6012, 6362 of this title; title 38 section 503.

PART V—DEDUCTIONS FOR PERSONAL EXEMPTIONS

§ 151. Allowance of deductions for personal exemptions

[*See main edition for text of* (*a*)]

(b) Taxpayer and spouse

An exemption of the exemption amount for the taxpayer; and an additional exemption of the exemption amount for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(c) Additional exemption for taxpayer or spouse aged 65 or more

(1) For taxpayer

An additional exemption of the exemption amount for the taxpayer if he has attained the age of 65 before the close of his taxable year.

(2) For spouse

An additional exemption of the exemption amount for the spouse of the taxpayer if a joint return is not made by the taxpayer and his spouse, and if the spouse has attained the age of 65 before the close of such taxable year, and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer.

(d) Additional exemption for blindness of taxpayer or spouse

(1) For taxpayer

An additional exemption of the exemption amount for the taxpayer if he is blind at the close of his taxable year.

(2) For spouse

An additional exemption of the exemption amount for the spouse of the taxpayer if a separate return is made by the taxpayer, and if the spouse is blind and, for the calendar year in which the taxable year of the taxpayer begins, has no gross income and is not the dependent of another taxpayer. For purposes of this paragraph, the determination of whether the spouse is blind shall be made as of the close of the taxable year of the taxpayer; except that if the spouse dies during such taxable year such determination shall be made as of the time of such death.

[*See main edition for text of* (*3*)]

(e) Additional exemption for dependents

(1) In general

An exemption of the exemption amount for each dependent (as defined in section 152)—

(A) whose gross income for the calendar year in which the taxable year of the taxpayer begins is less than the exemption amount, or

[*See main edition for text of* (*B*), (*2*) *to* (*4*)]

(5) Certain income of handicapped dependents not taken into account

(A) In general

For purposes of paragraph (1)(A), the gross income of an individual who is permanently and totally disabled shall not include income attributable to services performed by the individual at a sheltered workshop if—

(i) the availability of medical care at such workshop is the principal reason for his presence there, and

(ii) the income arises solely from activities at such workshop which are incident to such medical care.

(B) Sheltered workshop defined

For purposes of subparagraph (A), the term "sheltered workshop" means a school—

(i) which provides special instruction or training designed to alleviate the disability of the individual, and

(ii) which is operated by—

(I) an organization described in section 501(c)(3) and exempt from tax under section 501(a), or

(II) a State, a possession of the United States, any political subdivision of any of the foregoing, the United States, or the District of Columbia.

(C) Permanent and total disability defined

An individual shall be treated as permanently and totally disabled for purposes of this paragraph if such individual would be so treated under paragraph (3) of section 37(e).[1]

(f) Exemption amount

For purposes of this section, the term "exemption amount" means, with respect to any taxable year, $1,000 increased by an amount equal to $1,000 multiplied by the cost-of-living adjustment (as defined in section 1(f)(3)) for the calendar year in which the taxable year begins. If the amount determined under the preceding sentence is not a multiple of $10, such amount shall be rounded to the nearest multiple of $10 (or if such amount is a multiple of $5, such amount shall be increased to the next highest multiple of $10).

(As amended Aug. 13, 1981, Pub. L. 97-34, title I, § 104(c), 95 Stat. 189; July 18, 1984, Pub. L. 98-369, div. A, title IV, § 426(a), 98 Stat. 804.)

SUBSECTION (f) EXEMPTION AMOUNT FOR TAXABLE YEAR BEGINNING IN 1985

For adjustment of exemption amount, see section 4.03 of Revenue Procedure 84-79, set out as a note under section 1 of this title.

REFERENCES IN TEXT

Section 37, referred to in subsec. (e)(5), was renumbered section 22 by section 471(c)(1) of Pub. L. 98-369.

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[1] See References in Text note below.

Amendments

1984—Subsec. (e)(5). Pub. L. 98-369 added par. (5).

1981—Subsecs. (b), (c), (d)(1), (2), (e)(1). Pub. L. 97-34, § 104(c)(1), substituted "the exemption amount" for "$1,000" wherever appearing.

Subsec. (f). Pub. L. 97-34, § 104(c)(2), added subsec. (f).

Effective Date of 1984 Amendment

Section 426(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (e)(5) of this section] shall apply to taxable years beginning after December 31, 1984."

Effective Date of 1981 Amendment

Amendment by Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97-34, set out as a note under section 1 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2, 21, 32, 63, 129, 132, 143, 152, 153, 172, 443, 642, 703, 873, 874, 891, 904, 931, 933, 1211, 1402, 2032A, 3402, 6012 of this title.

§ 152. Dependent defined

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Support test in case of child of divorced parents, etc.

(1) Custodial parent gets exemption

Except as otherwise provided in this subsection, if—

(A) a child (as defined in section 151(e)(3)) receives over half of his support during the calendar year from his parents—

(i) who are divorced or legally separated under a decree of divorce or separate maintenance,

(ii) who are separated under a written separation agreement, or

(iii) who live apart at all times during the last 6 months of the calendar year, and

(B) such child is in the custody of one or both of his parents for more than one-half of the calendar year,

such child shall be treated, for purposes of subsection (a), as receiving over half of his support during the calendar year from the parent having custody for a greater portion of the calendar year (hereinafter in this subsection referred to as the "custodial parent").

(2) Exception where custodial parent releases claim to exemption for the year

A child of parents described in paragraph (1) shall be treated as having received over half of his support during a calendar year from the noncustodial parent if—

(A) the custodial parent signs a written declaration (in such manner and form as the Secretary may by regulations prescribe) that such custodial parent will not claim such child as a dependent for any taxable year beginning in such calendar year, and

(B) the noncustodial parent attaches such written declaration to the noncustodial parent's return for the taxable year beginning during such calendar year.

For purposes of this subsection, the term "noncustodial parent" means the parent who is not the custodial parent.

(3) Exception for multiple-support agreement

This subsection shall not apply in any case where over half of the support of the child is treated as having been received from a taxpayer under the provisions of subsection (c).

(4) Exception for certain pre-1985 instruments

(A) In general

A child of parents described in paragraph (1) shall be treated as having received over half his support during a calendar year from the noncustodial parent if—

(i) a qualified pre-1985 instrument between the parents applicable to the taxable year beginning in such calendar year provides that the noncustodial parent shall be entitled to any deduction allowable under section 151 for such child, and

(ii) the noncustodial parent provides at least $600 for the support of such child during such calendar year.

For purposes of this subparagraph, amounts expended for the support of a child or children shall be treated as received from the noncustodial parent to the extent that such parent provided amounts for such support.

(B) Qualified pre-1985 instrument

For purposes of this paragraph, the term "qualified pre-1985 instrument" means any decree of divorce or separate maintenance or written agreement—

(i) which is executed before January 1, 1985,

(ii) which on such date contains the provision described in subparagraph (A)(i), and

(iii) which is not modified on or after such date in a modification which expressly provides that this paragraph shall not apply to such decree or agreement.

(5) Special rule for support received from new spouse of parent

For purposes of this subsection, in the case of the remarriage of a parent, support of a child received from the parent's spouse shall be treated as received from the parent.

(6) Cross reference

For provision treating child as dependent of both parents for purposes of medical expense deduction, see section 213(d)(5).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, §§ 423(a), 482(b)(2), 98 Stat. 799, 848.)

Amendments

1984—Subsec. (e). Pub. L. 98-369, § 423(a), amended subsec. (e) generally, and in substantially revising support test provisions, enacted par. (1) custodial parent exemption, former par. (1) declaring the general rule that where a child received over one-half of his calendar year support from parents who were divorced or legally separated under a decree of divorce or separate maintenance, or were separated under a written separation agreement and the child was in the custody of one or both parents for more than one-half of the calendar year, the child would be treated as receiving over half of his support from the parent having custody for a greater portion of the calendar year unless treated under special rule provision as having received over half of his support from the parent not having custody; enacted par. (2) release of custodial parent exemption for the year, former par. (2) declaring the special rule that parent without custody would be deemed as furnishing over half of the support where the decree of divorce or separate maintenance, or written agreement, covering the taxable year, provided that parent without custody should be entitled to the section 151 deduction for the child and such parent provided at least $600 calendar year support, or alternatively, such parent without custody provided $1,200 or more calendar year support and the parent with custody did not establish more support of the child than the parent without custody; redesignated as par. (3) former par. (4) provision respecting exception for multiple-support agreement, deleting former par. (3) respecting requirement of an itemized statement of expenditures to resolve more support claims; added par. (4) respecting exception for certain pre-1985 instruments; added par. (5) enunciating special rule for support received from new spouse of parent, deleting former par. (5) regulations prescription provision; and added par. (6) cross reference provision.

Subsec. (e)(6). Pub. L. 98-369, § 482(b)(2), substituted "section 213(d)(5)" for "section 213(d)(4)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 423(a) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98-369, set out as a note under section 2 of this title.

Amendment by section 482(b)(2) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 482(c) of Pub. L. 98-369, set out as a note under section 213 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2, 21, 32, 51, 105, 120, 125, 132, 143, 151, 153, 170, 213, 7701 of this title; title 2 section 707; title 5 section 7342; title 20 section 1232g; title 33 section 909; title 43 section 390bb.

PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

Sec.	
195.	Start-up expenditures.
196.	Deduction for certain unused business credits.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, § 94(b), title IV, § 474(r)(8)(B), July 18, 1984, 98 Stat. 615, 841, reenacted item 195 without change, and substituted "business credits" for "investment credits" in item 196.

§ 162. Trade or business expenses

[See main edition for text of (a) to (h)]

(i) Group health plans

[See main edition for text of (1)]

(2) Group health plan

For purposes of this subsection the term "group health plan" means any plan of, or contributed to by, an employer to provide medical care (as defined in section 213(d) to his employees, former employees, or the families of such employees or former employees, directly or through insurance, reimbursement, or otherwise.

(j) Certain foreign advertising expenses

(1) In general

No deduction shall be allowed under subsection (a) for any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States. This paragraph shall apply only to foreign broadcast undertakings located in a country which denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking.

(2) Broadcast undertaking

For purposes of paragraph (1), the term "broadcast undertaking" includes (but is not limited to) radio and television stations.

(k) Cross references

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

(2) For special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name, see section 1253.

(3) For special rules relating to—

(A) funded welfare benefit plans, see section 419, and

(B) deferred compensation and other deferred benefits, see section 404.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title V, § 512(b), div. B, title III, § 2354(d), 98 Stat. 863, 1102; Oct. 30, 1984, Pub. L. 98-573, title II, § 232(a), 98 Stat. 2991.)

AMENDMENTS

1984—Subsec. (i)(2). Pub. L. 98-369, § 2354(d), substituted "section 213(d)" for "section 213(e)".

Subsec. (j). Pub. L. 98-573 added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (j)(3). Pub. L. 98-369, § 512(b), added par. (3).

Subsec. (k). Pub. L. 98-573 redesignated former subsec. (j) as (k).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 232(b) of Pub. L. 98-573 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Oct. 30, 1984]."

Amendment by section 512(b) of Pub. L. 98-369 applicable to amounts paid or incurred after July 18, 1984, in taxable years ending after such date, subject to an exception for certain extended vacation pay plans, see section 512(c) of Pub. L. 98-369, set out as a note under section 404 of this title.

Amendment by section 2354(d) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status, or interpretation which existed (under the provisions of law involved) before that date, see section 2354(e) of Pub. L. 98-369, set out as a note under section 1320a-1 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41, 46, 57, 83, 114, 127, 132, 163, 172, 183, 192, 263, 274, 280A, 404, 404A, 419, 421, 463, 465, 542, 543, 545, 556, 691, 707, 832, 911, 952, 964, 995, 1054, 1253, 1396, 1402, 7871 of this title; title 15 section 78kkk; title 29 section 623; title 42 sections 403, 411, 1395y.

§ 163. Interest

[See main edition for text of (a) to (c)]

(d) Limitation on interest on investment indebtedness

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Definitions

For purposes of this subsection—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) Investment interest

(i) In general

The term "investment interest" means interest paid or accrued on indebtedness incurred or continued to purchase or carry property held for investment.

(ii) Certain expenses incurred in connection with short sales

For purposes of clause (i), the term "interest" includes any amount allowable as a deduction in connection with personal property used in a short sale.

[*See main edition for text of* (*E*), (*4*) *to* (*7*)]

(e) Original issue discount

(1) In general

In the case of any debt instrument issued after July 1, 1982, the portion of the original issue discount with respect to such debt instrument which is allowable as a deduction to the issuer for any taxable year shall be equal to the aggregate daily portions of the original issue discount for days during such taxable year.

(2) Definitions and special rules

For purposes of this subsection—

(A) Debt instrument

The term "debt instrument" has the meaning given such term by section 1275(a)(1).

(B) Daily portions

The daily portion of the original issue discount for any day shall be determined under section 1272(a) (without regard to paragraph (6) thereof and without regard to section 1273(a)(3)).

(3) Special rule for original issue discount on obligation held by related foreign person

(A) In general

If any debt instrument having original issue discount is held by a related foreign person, any portion of such original issue discount shall not be allowable as a deduction to the issuer until paid.

(B) Related foreign person

For purposes of subparagraph (A), the term "related foreign person" means any person—

(i) who is not a United States person, and

(ii) who is related (within the meaning of section 267(b)) to the issuer.

(4)[1] Exceptions

This subsection shall not apply to any debt instrument described in—

(A) subparagraph (D) of section 1272(a)(2) (relating to obligations issued by natural persons before March 2, 1984), and

(B) subparagraph (E) of section 1272(a)(2) (relating to loans between natural persons).

(4)[1] Cross references

For provision relating to deduction of original issue discount on tax-exempt obligation, see section 1288.

For special rules in the case of the borrower under certain loans for personal use, see section 1275(b).

(f) Denial of deduction for interest on certain obligations not in registered form

[*See main edition for text of* (*1*)]

(2) Registration-required obligation

For purposes of this section—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) Authority to include other obligations

Clauses (ii) and (iii) of subparagraph (A), and subparagraph (B), shall not apply to any obligation if—

(i) in the case of—

(I) subparagraph (A), such obligation is of a type which the Secretary has determined by regulations to be used frequently in avoiding Federal taxes, or

(II) subparagraph (B), such obligation is of a type specified by the Secretary in regulations, and

[*See main edition for text of* (*ii*), (*3*)]

(g) Reduction of deduction where section 25 credit taken

The amount of the deduction under this section for interest paid or accrued during any taxable year on indebtedness with respect to which a mortgage credit certificate has been issued under section 25 shall be reduced by the amount of the credit allowable with respect to such interest under section 25 (determined without regard to section 26).

(h) Cross references

(1) For disallowance of certain amounts paid in connection with insurance, endowment, or annuity contracts, see section 264.

(2) For disallowance of deduction for interest relating to tax-exempt income, see section 265(2).

(3) For disallowance of deduction for carrying charges chargeable to capital account, see section 266.

(4) For disallowance of interest with respect to transactions between related taxpayers, see section 267.

(5) For treatment of redeemable ground rents and real property held subject to liabilities under redeemable ground rents, see section 1055.

(As amended July 18, 1984, Pub. L. 98–369, div. A, title I, §§ 42(a)(3), 56(b), 127(f), 128(c), title VI, § 612(c), 98 Stat. 556, 574, 652, 654, 911.)

AMENDMENTS

1984—Subsec. (d)(3)(D). Pub. L. 98–369, § 56(b), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (e)(1). Pub. L. 98–369, § 42(a)(3), substituted "debt instrument" for "bond" in two places and struck out "by an issuer (other than a natural person)" before ", the portion of the original issue".

Subsec. (e)(2). Pub. L. 98–369, § 42(a)(3), substituted provisions relating to debt instruments for provisions relating to bonds.

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[1] So in original. There are two pars. designated "(4)".

Subsec. (e)(3). Pub. L. 98-369, § 128(c), added par. (3) relating to special rule for original issue discount on obligation held by related foreign person. Former par. (3), relating to exceptions, redesignated (4).

Pub. L. 98-369, § 42(a)(3), enacted par. (3) relating to exceptions.

Subsec. (e)(4). Pub. L. 98-369, § 128(c), redesignated par. (3), relating to exceptions, as (4).

Pub. L. 98-369, § 42(a)(3), enacted par. (4) relating to cross references.

Subsec. (f)(2)(C)(i). Pub. L. 98-369, § 127(f), redesignated existing provision as subcl. (I), and in subcl. (I) as so redesignated, inserted reference to subpar. (A) and substituted "or" for "and", and added subcl. (II).

Subsecs. (g), (h). Pub. L. 98-369, § 612(c), added subsec. (g) and redesignated former subsec. (g) as (h).

Effective Date of 1984 Amendment

Amendment by section 42(a)(3) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Section 56(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 163, 263, and 265 of this title] shall apply to short sales after the date of enactment of this Act [July 18, 1984] in taxable years ending after such date."

Amendment by section 127(f) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

Amendment by section 128(c) of Pub. L. 98-369 applicable to obligations issued after June 9, 1984, see section 128(d)(2) of Pub. L. 98-369, set out as a note under section 871 of this title.

Amendment by section 612(c) of Pub. L. 98-369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98-369, set out as an Effective Date note under section 25 of this title.

Transitional Rule for Treatment of Certain Income From S Corporations

Section 1066 of Pub. L. 98-369 provided that:

"(a) In General.—If—

"(1) a corporation had an election in effect under subchapter S of the Internal Revenue Code of 1954 for the taxable years of such corporation beginning in 1982, 1983, and 1984, and

"(2) a shareholder of such corporation makes an election to have this section apply,

then any qualified income which such shareholder takes into account by reason of holding stock in such corporation for any taxable year of such corporation beginning in 1983 or 1984 shall be treated for purposes of section 163(d) of the Internal Revenue Code of 1954 as such income would have been treated but for the enactment of the Subchapter S Revision Act of 1982 [Pub. L. 97-354, see Tables for classification].

"(b) Qualified Income.—For purposes of subsection (a), the term 'qualified income' means any income other than income which is attributable to personal services performed by the shareholder for the corporation.

"(c) Election.—The election under subsection (a)(2) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe."

Section Referred to in Other Sections

This section is referred to in sections 55, 103, 165, 195, 216, 312, 465, 467, 483, 691, 703, 805, 832, 871, 881, 911, 1255, 1275, 1287, 1288, 1363, 4701, 7872 of this title.

§ 164. Taxes

[See main edition for text of (a) to (e)]

(f) Cross references

(1) For provisions disallowing any deduction for certain taxes, see section 275.

(2) For treatment of taxes imposed by Indian tribal governments (or their subdivisions), see section 7871.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(29)(F), 98 Stat. 844.)

Amendment of Section

Pub. L. 98-21, title I, § 124(c)(1), (d)(2), Apr. 20, 1983, 97 Stat. 90, 91, provided that, applicable to taxable years beginning after Dec. 31, 1989, subsec. (f) of this section is redesignated (g) and a new subsec. (f) is added reading as follows:

(f) Deduction for one-half of self-employment taxes

(1) In general

In the case of an individual, in addition to the taxes described in subsection (a), there shall be allowed as a deduction for the taxable year an amount equal to one-half of the taxes imposed by section 1401 for such taxable year.

(2) Deduction treated as attributable to trade or business

For purposes of this chapter, the deduction allowed by paragraph (1) shall be treated as attributable to a trade or business carried on by the taxpayer which does not consist of the performance of services by the taxpayer as an employee.

Amendments

1984—Subsec. (f). Pub. L. 98-369 redesignated pars. (2) and (3) as pars. (1) and (2), respectively. Former par. (1), which referred to section 1451 for provisions disallowing any deduction for the payment of the tax imposed by subchapter B of chapter 3 (relating to tax-free covenant bonds), was struck out.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

Effective Date of 1983 Amendment

For effective date of amendment by Pub. L. 97-473, see section 204(1) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

Section Referred to in Other Sections

This section is referred to in sections 163, 195, 216, 275, 542, 556, 691, 703, 822, 832, 853, 901, 903, 905, 911, 960, 1001, 1012, 6362, 7871 of this title; title 31 section 6707.

§ 165. Losses

[See main edition for text of (a) and (b)]

(c) Limitation on losses of individuals

In the case of an individual, the deduction under subsection (a) shall be limited to—

[See main edition for text of (1) and (2)]

(3) except as provided in subsection (h), losses of property not connected with a trade or business or a transaction entered into for

profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.

[See main edition for text of (d) to (g)]

(h) Treatment of casualty gains and losses

(1) $100 limitation per casualty

Any loss of an individual described in subsection (c)(3) shall be allowed only to the extent that the amount of the loss to such individual arising from each casualty, or from each theft, exceeds $100.

(2) Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income

(A) In general

If the personal casualty losses for any taxable year exceed the personal casualty gains for such taxable year, such losses shall be allowed for the taxable year only to the extent of the sum of—

(i) the amount of the personal casualty gains for the taxable year, plus

(ii) so much of such excess as exceeds 10 percent of the adjusted gross income of the individual.

(B) Special rule where personal casualty gains exceed personal casualty losses

If the personal casualty gains for any taxable year exceed the personal casualty losses for such taxable year—

(i) all such gains shall be treated as gains from sales or exchanges of capital assets, and

(ii) all such losses shall be treated as losses from sales or exchanges of capital assets.

(3) Definitions of personal casualty gain and personal casualty loss

For purposes of this subsection—

(A) Personal casualty gain

The term "personal casualty gain" means the recognized gain from any involuntary conversion of property which is described in subsection (c)(3) arising from fire, storm, shipwreck, or other casualty, or from theft.

(B) Personal casualty loss

The term "personal casualty loss" means any loss described in subsection (c)(3). For purposes of paragraph (2), the amount of any personal casualty loss shall be determined after the application of paragraph (1).

(4) Special rules

(A) Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains

In any case to which paragraph (2)(A) applies, the deduction for personal casualty losses for any taxable year shall be treated as a deduction allowable in computing adjusted gross income to the extent such losses do not exceed the personal casualty gains for the taxable year.

(B) Joint returns

For purposes of this subsection, a husband and wife making a joint return for the taxable year shall be treated as 1 individual.

(C) Determination of adjusted gross income in case of estates and trusts

For purposes of paragraph (2), the adjusted gross income of an estate or trust shall be computed in the same manner as in the case of an individual, except that the deductions for costs paid or incurred in connection with the administration of the estate or trust shall be treated as allowable in arriving at adjusted gross income.

(D) Coordination with estate tax

No loss described in subsection (c)(3) shall be allowed if, at the time of filing the return, such loss has been claimed for estate tax purposes in the estate tax return.

[See main edition for text of (i)]

(j) Denial of deduction for losses on certain obligations not in registered form

[See main edition for text of (1) and (2)]

(3) Exceptions

The Secretary may, by regulations, provide that this subsection and section 1287 shall not apply with respect to obligations held by any person if—

[See main edition for text of (A) to (D)]

but only if such obligations are held under arrangements provided in regulations or otherwise which are designed to assure that such obligations are not delivered to any United States person other than a person described in subparagraph (A), (B), or (C).

(k) Treatment as disaster loss where taxpayer ordered to demolish or relocate residence in disaster area because of disaster

In the case of a taxpayer whose residence is located in an area which has been determined by the President of the United States to warrant assistance by the Federal Government under the Disaster Relief Act of 1974, if—

(1) not later than the 120th day after the date of such determination, the taxpayer is ordered, by the government of the State or any political subdivision thereof in which such residence is located, to demolish or relocate such residence, and

(2) the residence has been rendered unsafe for use as a residence by reason of the disaster,

any loss attributable to such disaster shall be treated as a loss which arises from a casualty and which is described in subsection (i).

(*l*) Cross references

(1) For special rule for banks with respect to worthless securities, see section 582.

(2) For disallowance of deduction for worthlessness of securities to which subsection (g)(2)(C) applies, if issued by a political party or similar organization, see section 271.

(3) For special rule for losses on stock in a small business investment company, see section 1242.

(4) For special rule for losses of a small business investment company, see section 1243.

(5) For special rule for losses on small business stock, see section 1244.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 42(a)(4), title VII, § 711(c)(1), (2)(A)(i), (ii), title X, § 1051(a), 98 Stat. 556, 943, 1044.)

REFERENCES IN TEXT

The Disaster Relief Act of 1974, referred to in subsecs. (i)(1) and (k), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

AMENDMENTS

1984—Subsec. (c)(3). Pub. L. 98-369, § 711(c)(2)(A)(i), extended limitation to losses of property not connected with a transaction entered into for profit.

Subsec. (h). Pub. L. 98-369, § 711(c)(2)(A)(ii), substituted heading "Treatment of casualty gains and losses" for "Casualty and theft losses"; substituted par. (1) "$100 limitation per casualty" provision for former par. (1) "General rule" provision stating that: "Any loss of an individual described in subsection (c)(3) shall be allowed for any taxable year only to the extent that—

"(A) the amount of loss to such individual arising from each casualty, or from each theft, exceeds $100, and

"(B) the aggregate amount of all such losses sustained by such individual during the taxable year (determined after application of subparagraph (A) exceeds 10 percent of the adjusted gross income of the individual.";

added par. (2) "Net casualty loss allowed only to the extent it exceeds 10 percent of adjusted gross income" provision and par. (3) "Definitions of personal casualty gain and personal casualty loss" provisions; redesignated as par. (4) former par. (2) catchline; added par. (4)(A) "Personal casualty losses allowable in computing adjusted gross income to the extent of personal casualty gains" provision; redesignated as par. (4)(B) former par. (2)(A) joint returns provision, substituting "For purposes of this section" for "For purposes of the $100 and 10 percent limitations described in paragraph (1)" and "individual" for "one individual"; redesignated as par. (4)(C) former par. (2)(B), substituting therein paragraph "(2)" for "(1)"; and redesignated as par. (4)(D) former par. (2)(C).

Pub. L. 98-369, § 711(c)(1), amended par. (2) by redesignating subpar. (B) as (C) and by adding a new subpar. (B) relating to the determination of adjusted gross income in case of estates and trusts.

Subsec. (j)(3). Pub. L. 98-369, § 42(a)(4), substituted "section 1287" for "subsection (d) of section 1232".

Subsecs. (k), (*l*). Pub. L. 98-369, § 1051(a), added subsec. (k) and redesignated former subsec. (k) as (*l*).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(4) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 711(c)(1) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Section 711(c)(2)(A)(v) of Pub. L. 98-369 provided that: "The amendments made by this subparagraph [amending sections 165, 873, 931, and 1231 of this title] shall apply to taxable years beginning after December 31, 1983."

Section 1051(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable years ending after December 31, 1981, with respect to residences in areas determined by the President of the United States, after such date, to warrant assistance by the Federal Government under the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.]."

TRANSITIONAL RULE FOR 1984 AMENDMENT

Section 711(c)(2)(B) of Pub. L. 98-369 provided that: "In the case of taxable years beginning before January 1, 1984—

"(i) For purposes of paragraph (1)(B) of section 165(h) of the Internal Revenue Code of 1954, adjusted gross income shall be determined without regard to the application of section 1231 of such Code to any gain or loss from an involuntary conversion of property described in subsection (c)(3) of section 165 of such Code arising from fire, storm, shipwreck, or other casualty or from theft.

"(ii) Section 1231 of such Code shall be applied after the application of paragraph (1) of section 165(h) of such Code."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 62, 80, 86, 103, 166, 172, 195, 271, 272, 585, 593, 709, 873, 877, 897, 931, 934, 1042, 1212, 1351, 1367, 6405, 6511 of this title.

§ 166. Bad debts

[*See main edition for text of* (*a*) *to* (c)]

(d) Nonbusiness debts

(1) General rule

In the case of a taxpayer other than a corporation—

(A) subsections (a) and (c) shall not apply to any nonbusiness debt; and

(B) where any nonbusiness debt becomes worthless within the taxable year, the loss resulting therefrom shall be considered a loss from the sale or exchange, during the taxable year, of a capital asset held for not more than 6 months.

[*See main edition for text of* (*2*); (*e*) *to* (*g*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1001(b)(1), 98 Stat. 1011.)

AMENDMENTS

1984—Subsec. (d)(1)(B). Pub. L. 98-369 substituted "6 months" for "1 year".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1001(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 166, 341, 402, 403, 423, 582, 584, 631, 642, 702, 818, 852, 856, 857, 1222, 1223, 1231, 1232, 1233, 1234, 1235, 1246, 1247, 1248, and 1251 of this section] shall apply to property acquired after June 22, 1984, and before January 1, 1988."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 81, 108, 163, 172, 271, 461, 582, 585, 586, 593, 595, 805, 1351, 1367, 6511 of this title.

§ 167. Depreciation

[*See main edition for text of* (*a*) *to* (*j*)]

(k) Depreciation of expenditures to rehabilitate low-income rental housing

(1) 60-month rule

The taxpayer may elect, in accordance with regulations prescribed by the Secretary, to compute the depreciation deduction provided by subsection (a) attributable to rehabilitation expenditures incurred with respect to low-income rental housing after July 24, 1969, and before January 1, 1987, under the straight line method using a useful life of 60 months and no salvage value. Such method shall be in lieu of any other method of computing the depreciation deduction under subsection (a), and in lieu of any deduction for amortization, for such expenditures.

[*See main edition for text of* (*2*)]

(3) Definitions

For purposes of this subsection—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) Rehabilitation expenditures incurred

Rehabilitation expenditures incurred pursuant to a binding contract entered into before January 1, 1987, and rehabilitation expenditures incurred with respect to low-income rental housing the rehabilitation of which has begun before January 1, 1987, shall be deemed incurred before January 1, 1987.

[*See main edition for text of* (*l*) *to* (*r*)]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title X, § 1064, 98 Stat. 1047.)

AMENDMENTS

1984—Subsec. (k)(1), (3)(D). Pub. L. 98–369 substituted "January 1, 1987" for "January 1, 1984" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 47, 48, 57, 62, 132, 163, 168, 169, 172, 174, 175, 182, 184, 189, 216, 305, 312, 381, 404, 453, 542, 543, 545, 556, 611, 616, 617, 642, 804, 817, 818, 822, 832, 1016, 1071, 1082, 1221, 1231, 1239, 1245, 1250, 4940, 7701 of this title; title 33 sections 1316, 1326; title 46 App. section 1177.

§ 168. Accelerated cost recovery system

[*See main edition for text of* (*a*)]

(b) Amount of deduction

[*See main edition for text of* (*1*)]

(2) 18-year real property

(A) In general

In the case of 18-year real property, the applicable percentage shall be determined in accordance with a table prescribed by the Secretary. In prescribing such table, the Secretary shall—

(i) assign to the property a 18-year recovery period, and

(ii) assign percentages generally determined in accordance with use of the 175 percent declining balance method, switching to the method described in section 167(b)(1) at a time to maximize the deduction allowable under subsection (a).

In the case of 18-year real property, the applicable percentage in the taxable year in which the property is placed in service shall be determined on the basis of the number of months (using a mid-month convention) in such year during which the property was in service.

(B) Special rule for year of disposition

In the case of a disposition of 18-year real property, the deduction allowable under subsection (a) for the taxable year in which the disposition occurs shall reflect only the months (using a mid-month convention) during such year the property was in service.

(3) Election of different recovery percentage

(A) In general

Except as provided in subsection (f)(2), in lieu of any applicable percentage under paragraph (1), (2), or (4), the taxpayer may elect, with respect to one or more classes of recovery property placed in service during the taxable year, the applicable percentage determined by use of the straight line method over the recovery period elected by the taxpayer in accordance with the following table:

In the case of:	The taxpayer may elect a recovery period of:
3-year property	3, 5, or 12 years.
5-year property	5, 12, or 25 years.
10-year property	10, 25, or 35 years.
18-year real property and low-income housing.	18, 35, or 45.[3]
15-year public utility property.	15, 35, or 45 years.

(B) Operating rules

[*See main edition for text of* (*i*)]

(ii) Real property

In the case of 18-year real property or low-income housing, the taxpayer shall make the election under subparagraph (A) on a property-by-property basis.

(iii) Convention

Under regulations prescribed by the Secretary, the half-year convention shall apply to any election with respect to any recovery property (other than 18-year real property or low-income housing) with respect to which an election is made under this paragraph.

(4) Low-income housing

(A) In general

In the case of low-income housing, the applicable percentage shall be determined in accordance with the table prescribed in paragraph (2) (without regard to the mid-month convention), except that in prescribing such table, the Secretary shall—

(i) assign to the property a 15-year recovery period, and

(ii) assign percentages generally determined in accordance with use of the 200 percent declining balance method, switching to the method described in section 167(b)(1) at a time to maximize the deduction allowable under subsection (a).

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[3] So in original. Probably should be "45 years".

(B) Special rule for year of disposition

In the case of a disposition of low-income housing, the deduction allowable under subsection (a) for the taxable year in which the disposition occurs shall reflect only the months during such year the property was placed in service.

(c) Recovery property

For purposes of this title—

[*See main edition for text of* (*1*)]

(2) Classes of recovery property

Each item of recovery property shall be assigned to one of the following classes of property:

[*See main edition for text of* (*A*) *to* (*C*)]

(D) 18-year real property

The term "18-year real property" means section 1250 class property which—

(i) does not have a present class life of 12.5 years or less, and

(ii) is not low-income housing.

[*See main edition for text of* (*E*)]

(F) Low-income housing

The term "low-income housing" means property described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B).

(G) Special rule for theme parks, etc.

For purposes of subparagraphs (C) and (D), a building (and its structural components) shall not be treated as having a present class life of 12.5 years or less by reason of any use other than the use for which such building was originally placed in service.

(d) Unadjusted basis; adjustments

[*See main edition for text of* (*1*)]

(2) Dispositions

[*See main edition for text of* (*A*)]

(B) Adjustment to basis

Except as provided under regulations prescribed by the Secretary under paragraph (7) or (10) of subsection (f), if any recovery property (other than 18-year real property or low-income housing or property with respect to which an election under subparagraph (A) is made) is disposed of, the unadjusted basis of such property shall cease to be taken into account in determining any recovery deduction allowable under subsection (a) as of the beginning of the taxable year in which such disposition occurs.

[*See main edition for text of* (*C*)]

(e) Property excluded from application of section

For purposes of this title—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Films and video tapes not recovery property

The term "recovery property" shall not include any motion picture film or video tape.

(f) Special rules for application of this section

For purposes of this section—

(1) Components of section 1250 class property

[*See main edition for text of* (*A*)]

(B) Transitional rules

(i) Buildings placed in service before 1981

In the case of any building placed in service by the taxpayer before January 1, 1981, for purposes of applying subparagraph (A) to components of such buildings placed in service after December 31, 1980, and before March 16, 1984, the deduction allowable under subsection (a) with respect to such components shall be computed in the same manner as the deduction allowable with respect to the first such component placed in service after December 31, 1980.

(ii) Buildings placed in service before March 16, 1984

In the case of any building placed in service by the taxpayer before March 16, 1984, for purposes of applying subparagraph (A) to components of such buildings placed in service after March 15, 1984, the deduction allowable under subsection (a) with respect to such components shall be computed in the same manner as the deduction allowable with respect to the first such component placed in service after March 15, 1984.

(iii) First component treated as separate building

For purposes of clause (i) or (ii), the method of computing the deduction allowable with respect to the first component described in such clause shall be determined as if it were a separate building.

[*See main edition for text of* (*C*)]

(2) Recovery property used predominantly outside the United States

[*See main edition for text of* (*A*)]

(B) Real property

(i) In general

Except as provided in subparagraph (C), in the case of 18-year real property or low-income housing which, during the taxable year, is predominantly used outside the United States, the recovery deduction for the taxable year shall be, in lieu of the amount determined under subsection (b), the amount determined by applying to the unadjusted basis of such property the applicable percentage determined under tables prescribed by the Secretary. For purposes of the preceding sentence in prescribing such tables, the Secretary shall—

[*See main edition for text of* (*I*) *and* (*II*)]

(ii) Special rule for disposition

In the case of a disposition of 18-year real property or low-income housing described in clause (i), subsection (b)(2)(B) shall apply.

(C) Election of different recovery percentage

(i) General rule

The taxpayer may elect, with respect to one or more classes of recovery property described in this paragraph, to determine the applicable percentage under this paragraph by use of the straightline method over the recovery period determined in accordance with the following table:

In the case of:	The taxpayer may elect a recovery period of:
3-year property	The present class life, 5 or 12 years.
5-year property	The present class life, 12 or 25 years.
10-year property	The present class life, 25 or 35 years.
18-year real property or low-income housing.	35 or 45 years.
15-year public utility property.	The present class life, 35 or 45 years.

(ii) Operating rules

[See main edition for text of (I)]

(II) Real property

In the case of 18-year real property or low-income housing, the election under clause (i) shall be made on a property-by-property basis.

[See main edition for text of (D)]

(E) Convention

Under regulations prescribed by the Secretary, the half year convention shall apply for purposes of any determination under subparagraph (C) (other than any determination with respect to 18-year real property or low-income housing).

[See main edition for text of (3) and (4)]

(5) Short taxable years

In the case of a taxable year that is less than 12 months, the amount of the deduction under this section shall be an amount which bears the same relationship to the amount of the deduction, determined without regard to this paragraph, as the number of months in the short taxable year bears to 12. In such case, the amount of the deduction for subsequent taxable years shall be appropriately adjusted in accordance with regulations prescribed by the Secretary. The determination of when a taxable year begins shall be made in accordance with regulations prescribed by the Secretary. This paragraph shall not apply to any deduction with respect to any property for the first taxable year of the lessor for which an election under paragraph (8) is in effect with respect to such property. In the case of 18-year real property or low-income housing, the first sentence of this paragraph shall not apply to the taxable year in which the property is placed in service or disposed of.

[See main edition for text of (6) and (7)]

(8) Special rule for leases

(A) In general

In the case of an agreement with respect to qualified leased property, if all of the parties to the agreement characterize such agreement as a lease and elect to have the provisions of this paragraph apply with respect to such agreement, and if the requirements of subparagraph (B) are met, then, except as provided in subsection (i), for purposes of this subtitle—

(i) such agreement shall be treated as a lease entered into by the parties (and any party which is a corporation described in subparagraph (B)(i)(I) shall be deemed to have entered into the lease in the course of carrying on a trade or business), and

(ii) the lessor shall be treated as the owner of the property and the lessee shall be treated as the lessee of the property.

(B) Certain requirements must be met

The requirements of this subparagraph are met if—

(i) the lessor is—

(I) a corporation (other than an S corporation or a personal holding company (within the meaning of section 542(a))) which is not a related person with respect to the lessee,

(II) a partnership all of the partners of which are corporations described in subclause (I), or

(III) a grantor trust with respect to which the grantor and all beneficiaries of the trust are described in subclause (I) or (II),

(ii) the minimum investment of the lessor—

(I) at the time the property is first placed in service under the lease, and

(II) at all times during the term of the lease,

is not less than 10 percent of the adjusted basis of such property, and

(iii) the term of the lease (including any extensions) does not exceed the greater of—

(I) 120 percent of the present class life of the property, or

(II) the period equal to the recovery period determined with respect to such property under subsection (i)(2).

(C) No other factors taken into account

If the requirements of subparagraphs (A) and (B) are met with respect to any transaction described in subparagraph (A), no other factors shall be taken into account in making a determination as to whether subparagraph (A)(i) or (ii) applies with respect to such transaction.

(D) Qualified leased property defined

For purposes of this section—

(i) In general

The term "qualified leased property" means recovery property—

(I) which is new section 38 property of the lessor, which is leased within 3 months after such property was placed in service, and which, if acquired by the lessee, would have been new section 38 property of the lessee, or

(II) which was new section 38 property of the lessee, which is leased within 3 months after such property is placed in service by the lessee, and with respect to which the adjusted basis of the lessor does not exceed the adjusted basis of the lessee at the time of the lease.

(ii) Only 45 percent of the lessee's property may be treated as qualified

The cost basis of all safe harbor lease property (determined without regard to this clause)—

(I) which is placed in service during any calendar year, and

(II) with respect to which the taxpayer is a lessee,

shall not exceed an amount equal to the 45 percent of the cost basis of the taxpayer's qualified base property placed in service during such calendar year.

(iii) Allocation of disqualified basis

The cost basis not treated as qualified leased property under clause (ii) shall be allocated to safe harbor lease property for such calendar year (determined without regard to clause (ii)) in reverse order to when the agreement described in subparagraph (A) with respect to such property was entered into.

(iv) Certain property may not be treated as qualified leased property

The term "qualified leased property" shall not include recovery property—

(I) which is a qualified rehabilitated building (within the meaning of section 48(g)(1)),

(II) which is public utility property (within the meaning of section 167(*l*)(3)(A)),

(III) which is property with respect to which a deduction is allowable by reason of section 291(b),

(IV) with respect to which the lessee of the property (other than property described in clause (v)) under the agreement described in subparagraph (A) is a nonqualified tax-exempt organization, or

(V) property with respect to which the user of such property is a person (other than a United States person) not subject to United States tax on income derived from the use of such property.

(v) Qualified mass commuting vehicles included

The term "qualified leased property" includes recovery property which is a qualified mass commuting vehicle (as defined in section 103(b)(9)) which is financed in whole or in part by obligations the interest on which is excludable under section 103(a).

(vi) Qualified base property

For purposes of this subparagraph, the term "qualified base property" means property placed in service during any calendar year which—

(I) is new section 38 property of the taxpayer,

(II) is safe harbor lease property (not described in subclause (I)) with respect to which the taxpayer is the lessee, or

(III) is designated leased property (other than property described in subclause (I) or (II)) with respect [4] which the taxpayer is the lessee.

Any designated leased property taken into account by any lessee under the preceding sentence shall not be taken into account by the lessor in determining the lessor's qualified base property. The lessor shall provide the lessee with such information with respect to the cost basis of such property as is necessary to carry out the purposes of this clause.

(vii) Definition of designated leased property

For purposes of this subparagraph, the term "designated leased property" means property—

(I) which is new section 38 property,

(II) which is subject to a lease with respect to which the lessor of the property is treated (without regard to this paragraph) as the owner of the property for Federal tax purposes,

(III) with respect to which the term of the lease to which such property is subject is more than 50 percent of the present class life (or, if no present class life, the recovery period used in subsection (i)(2)) of such property, and

(IV) which the lessee designates on his return as designated leased property.

(viii) Definition; special rule

For purposes of this subparagraph—

(I) New section 38 property

The term "new section 38 property" has the meaning given such term by section 48(b).

(II) Property placed in service

For purposes of this title (other than clause (i)), any property described in clause (i) to which subparagraph (A) applies shall be deemed originally placed in service not earlier than the date such property is used under the lease.

(E) Minimum investment

(i) In general

For purposes of subparagraph (A), the term "minimum investment" means the amount the lessor has at risk with respect to the property (other than financing from the lessee or a related party of the lessee).

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[4] So in original. Probably should be followed by "to".

(ii) Special rule for purchase requirement

For purposes of clause (i), an agreement between the lessor and lessee requiring either or both parties to purchase or sell the qualified leased property at some price (whether or not fixed in the agreement) at the end of the lease term shall not affect the amount the lessor is treated as having at risk with respect to the property.

(F) Characterization by parties

For purposes of this paragraph, any determination as to whether a person is a lessor or lessee or property is leased shall be made on the basis of the characterization of such person or property under the agreement described in subparagraph (A).

(G) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including (but not limited to) regulations consistent with such purposes which limit the aggregate amount of (and timing of) deductions and credits in respect of qualified leased property to the aggregate amount (and the timing) allowable without regard to this paragraph.

(H) Definitions

For purposes of this paragraph—

(i) Related person

A person is related to another person if both persons are members of the same affiliated group (within the meaning of subsection (a) of section 1504 and determined without regard to subsection (b) of section 1504).

(ii) Nonqualified tax-exempt organization

(I) In general

The term "nonqualified tax-exempt organization" means, with respect to any agreement to which subparagraph (A) applies, any organization (or predecessor organization which was engaged in substantially similar activities) which was exempt from taxation under this title at any time during the 5-year period ending on the date such agreement was entered into.

(II) Special rule for farmers' cooperatives

The term "nonqualified tax-exempt organization" shall not include any farmers' cooperative organization described in section 521 whether or not exempt from taxation under section 521.

(III) Special rule for property used in unrelated trade or business

An organization shall not be treated as a nonqualified tax-exempt organization with respect to any property if such property is used in an unrelated trade or business (within the meaning of section 513) of such organization which is subject to tax under section 511.

(I) Transitional rules for certain transactions

(i) In general

Except as provided in clause (ii), clause (ii) of subparagraph (D) shall not apply to any transitional safe harbor lease property (within the meaning of section 208(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982).

(ii) Special rules

For purposes of subparagraph (D)(ii)—

(I) Determination of qualified base property

The cost basis of property described in clause (i) (and other property placed in service during 1982 to which subparagraph (D)(ii) does not apply) shall be taken into account in determining the qualified base property of the taxpayer for the taxable year in which such property was placed in service.

(II) Reduction in qualified leased property

The cost basis of property which may be treated as qualified leased property under subparagraph (D)(ii) for the taxable year in which such property was placed in service (determined without regard to this subparagraph) shall be reduced by the cost basis of the property taken into account under subclause (I).

(J) Coordination with at risk rules

(i) In general

For purposes of section 465, in the case of property placed in service after the date of the enactment of this subparagraph, if—

(I) an activity involves the leasing of section 1245 property which is safe harbor lease property, and

(II) the lessee of such property (as determined under this paragraph) would, but for this paragraph, be treated as the owner of such property for purposes of this title,

then the lessor (as so determined) shall be considered to be at risk with respect to such property in an amount equal to the amount the lessee is considered at risk with respect to such property (determined under section 465 without regard to this paragraph).

(ii) Subparagraph not to apply to certain service corporations

Clause (i) shall not apply to any lessor which is a corporation the principal function of which is the performance of services in the field of health, law, engineering, architecture, accounting, actuarial science, performing arts, athletics, or consulting.

(iii) Special rule for property placed in service before date of enactment of this subparagraph

This subparagraph shall apply to property placed in service before the date of enactment of this subparagraph if the provisions of section 465 did not apply to the lessor before such date but become applicable to such lessor after such date.

(K) Cross reference

For special recapture in cases where lessee acquires qualified leased property, see section 1245.

[*See main edition for text of* (*9*) *to* (*11*)]

(12) Limitations on property financed with tax-exempt bonds

[*See main edition for text of* (*A*) *and* (*B*)]

(C) Exception for projects for residential rental property

Subparagraph (A) shall not apply to any recovery property which is placed in service in connection with projects for residential rental property financed by the proceeds of obligations described in section 103(b)(4)(A).

(D) Exception where longer recovery period applicable

Subparagraph (A) shall not apply to any recovery property if the recovery period which would be applicable to such property by reason of an election under subsection (b)(3) exceeds the recovery period for such property determined under subparagraph (B).

(13)[5] Changes in use

The Secretary shall, by regulation, provide for the method of determining the deduction allowable under subsection (a) with respect to any property for any taxable year (and for succeeding taxable years) during which such property changes status under this section but continues to be held by the same person.

(13)[5] Motor vehicle operating leases

(A) In general

For purposes of this title, in the case of a qualified motor vehicle operating agreement which contains a terminal rental adjustment clause—

(i) such agreement shall be treated as a lease if (but for such terminal rental adjustment clause) such agreement would be treated as a lease under this title, and

(ii) the lessee shall not be treated as the owner of the property subject to an agreement during any period such agreement is in effect.

(B) Qualified motor vehicle operating agreement defined

For purposes of this paragraph—

(i) In general

The term "qualified motor vehicle operating agreement" means any agreement with respect to a motor vehicle (including a trailer) which meets the requirements of clauses (ii), (iii), and (iv) of this subparagraph.

(ii) Minimum liability of lessor

An agreement meets the requirements of this clause if under such agreement the sum of—

(I) the amount the lessor is personally liable to repay, and

(II) the net fair market value of the lessor's interest in any property pledged as security for property subject to the agreement,

equals or exceeds all amounts borrowed to finance the acquisition of property subject to the agreement. There shall not be taken into account under subclause (II) any property pledged which is property subject to the agreement or property directly or indirectly financed by indebtedness secured by property subject to the agreement.

(iii) Certification by lessee; notice of tax ownership

An agreement meets the requirements of this clause if such agreement contains a separate written statement separately signed by the lessee—

(I) under which the lessee certifies, under penalty of perjury, that it intends that more than 50 percent of the use of the property subject to such agreement is to be in a trade or business of the lessee, and

(II) which clearly and legibly states that the lessee has been advised that it will not be treated as the owner of the property subject to the agreement for Federal income tax purposes.

(iv) Lessor must have no knowledge that certification is false

An agreement meets the requirements of this clause if the lessor does not know that the certification described in clause (iii)(I) is false.

(C) Terminal rental adjustment clause defined

(i) In general

For purposes of this paragraph, the term "terminal rental adjustment clause" means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property.

(ii) Special rule for lessee dealers

The term "terminal rental adjustment clause" also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in clause (i).

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[5] So in original. There are two pars. designated "(13)".

(14) Special rules for sound recordings

In the case of a sound recording (within the meaning of section 48(r)), the unadjusted basis of such property shall be equal to the production costs (within the meaning of section 48(r)(6)).

(g) Definitions

For purposes of this section—

[See main edition for text of (1)]

(2) Present class life

The term "present class life" means the class life (if any) which would be applicable with respect to any property as of January 1, 1981, under subsection (m) of section 167 (determined without regard to paragraph (4) thereof and as if the taxpayer had made an election under such subsection). If any property (other than section 1250 class property) does not have a present class life within the meaning of the preceding sentence, the Secretary may prescribe a present class life for such property which reasonably reflects the anticipated useful life of such property to the industry or other group.

[See main edition for text of (3) to (8); (h)]

(i) Limitations relating to leases of qualified leased property

For purposes of this subtitle, in the case of safe harbor lease property, the following limitations shall apply:

(1) Lessor may not reduce tax liability by more than 50 percent

(A) In general

The aggregate amount allowable as deductions or credits for any taxable year which are allocable to all safe harbor lease property with respect to which the taxpayer is the lessor may not reduce the liability for tax of the taxpayer for such taxable year (determined without regard to safe harbor lease items) by more than 50 percent of such liability.

(B) Carryover of amounts not allowable as deductions or credits

Any amount not allowable as a deduction or credit under subparagraph (A)—

(i) may be carried over to any subsequent taxable year, and

(ii) shall be treated as a deduction or credit allocable to safe harbor lease property in such subsequent taxable year.

(C) Allocation among deductions and credits

The Secretary shall prescribe regulations for determining the amount—

(i) of any deduction or credit allocable to safe harbor lease property for any taxable year to which subparagraph (A) applies, and

(ii) of any carryover of any such deduction or credit under subparagraph (B) to any subsequent taxable year.

(D) Liability for tax and safe harbor lease items defined

For purposes of this paragraph—

(i) Liability for tax defined

Except as provided in this subparagraph, the term "liability for tax" means the tax imposed by this chapter, reduced by the sum of the credits allowable under subparts A, B, and D of part IV of subchapter A of this chapter.

(ii) Safe harbor lease items defined

The term "safe harbor lease items" means any of the following items which are properly allocable to safe harbor lease property with respect to which the taxpayer is the lessor:

(I) Any deduction or credit allowable under this chapter (other than any deduction for interest).

(II) Any rental income received by the taxpayer from any lessee of such property.

(III) Any interest allowable as a deduction under this chapter on indebtedness of the taxpayer (or any related person within the meaning of subsection (e)(4)(D)) which is paid or incurred to the lessee of such property (or any person so related to the lessee).

(iii) Certain taxes not included

The term "tax imposed by this chapter" shall not include any tax treated as not imposed by this chapter under section 26(b)(2) (other than the tax imposed by section 56).

(2) Method of cost recovery

The deduction allowable under subsection (a) with respect to any safe harbor lease property shall be determined by using the 150 percent declining balance method, switching to the straight-line method at a time to maximize the deduction (with a half-year convention in the first recovery year and without regard to salvage value) and a recovery period determined in accordance with the following table:

In the case of:	The recovery period is:
3-year property	5 years.
5-year property	8 years.
10-year property	15 years.

(3) Investment credit allowed only over 5-year period

In the case of any credit which would otherwise be allowable under section 38 with respect to any safe harbor lease property for any taxable year (determined without regard to this paragraph), only 20 percent of the amount of such credit shall be allowable in such taxable year and 20 percent of such amount shall be allowable in each of the succeeding 4 taxable years.

(4) No carrybacks of credit or net operating loss allocable to elected qualified leased property

(A) Credit carrybacks

In determining the amount of any credit allowable under section 38 which may be carried back to any preceding taxable year—

(i) the liability for tax for the taxable year from which any such credit is to be carried shall be reduced first by any credit not properly allocable to safe harbor lease property, and

(ii) no credit which is properly allocable to safe harbor lease property shall be taken into account in determining the amount of any credit which may be carried back.

(B) Net operating loss carrybacks

The net operating loss carryback provided in section 172(b) for any taxable year shall be reduced by that portion of the amount of such carryback which is properly allocable to the items described in paragraph (1)(D)(ii) with respect to all safe harbor lease property with respect to which the taxpayer is the lessor.

(5) Limitation on deduction for interest paid by the lessor to the lessee

In the case of interest described in paragraph (1)(D)(ii)(III), the amount allowable as a deduction for any taxable year with respect to such interest shall not exceed the amount which would have been computed if the rate of interest under the agreement were equal to the rate of interest in effect under section 6621 at the time the agreement was entered into.

(6) Computation of taxable income of lessee for purposes of percentage depletion

(A) In general

For purposes of section 613 or 613A, the taxable income of any taxpayer who is a lessee of any safe harbor lease property shall be computed as if the taxpayer was the owner of such property, except that the amount of the deduction under subsection (a) of this section shall be determined after application of paragraph (2) of this subsection.

(B) Coordination with crude oil windfall profit tax

Section 4988(b)(3)(A) shall be applied without regard to subparagraph (A).

(7) Transitional rule for application of paragraph (1) to certain transactions

In the case of any deduction or credit with respect to—

(A) any transitional safe harbor lease property (within the meaning of section 208(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982), or

(B) any other safe harbor lease property placed in service during 1982 and to which paragraph (1) does not apply,

paragraph (1) shall not operate to disallow any such deduction or credit for the taxable year for which such deduction or credit would otherwise be allowable but deductions and credits with respect to such property shall be taken into account first in determining whether any deduction or credit is allowable under paragraph (1) with respect to any other safe harbor lease property.

(8) Safe harbor lease property

For purposes of this section, the term "safe harbor lease property" means qualified leased property with respect to which an election under section 168(f)(8) is in effect.

(j) Property leased to governments and other tax-exempt entities

(1) In general

Notwithstanding any other provision of this section, the deduction allowed under subsection (a) (and any other deduction allowable for depreciation or amortization) for any taxable year with respect to tax-exempt use property shall be determined—

(A) by using the straight-line method (without regard to salvage value), and

(B) by using a recovery period determined under the following table:

In the case of:	The recovery period shall be:
(I) Property not described in subclause (II) or subclause (III).....	The present class life.
(II) Personal property with no present class life..........................	12 years.
(III) 18-year real property..........................	40 years.

(2) Operating rules

(A) Recovery period must at least equal 125 percent of lease term

In the case of any tax-exempt use property, the recovery period used for purposes of paragraph (1) shall not be less than 125 percent of the lease term.

(B) Conventions

(i) Property other than 18-year real property

In the case of property other than 18-year real property, the half-year convention shall apply for purposes of paragraph (1).

(ii) 18-year real property

In the case of 18-year real property, the amount determined under paragraph (1) shall be determined on the basis of the number of months (using a mid-month convention) in the year in which the property is in service.

(C) Exception where longer recovery period applies

Paragraph (1) shall not apply to any recovery property if the recovery period which applies to such property (without regard to this subsection) exceeds the recovery period for such property determined under this subsection.

(D) Determination of class for real property which is not recovery property

In the case of any real property which is not recovery property, for purposes of this subsection, the determination of whether such property is 18-year real property shall be made as if such property were recovery property.

(E) Coordination with subsection (f)(12)

Paragraph (12) of subsection (f) shall not apply to any tax-exempt use property to which this subsection applies.

(F) 18-year real property

For purposes of this subsection, the term "18-year real property" includes—

(i) low-income housing, and

(ii) any property which was treated as 15-year real property under this section (as in effect before the amendments made by the Tax Reform Act of 1984).

(3) Tax-exempt use property

For purposes of this subsection—

(A) Property other than 18-year real property

Except as otherwise provided in this subsection, the term "tax-exempt use property" means that portion of any tangible property (other than 18-year real property) leased to a tax-exempt entity.

(B) 18-year real property

(i) In general

In the case of 18-year real property, the term "tax-exempt use property" means that portion of the property leased to a tax-exempt entity in a disqualified lease.

(ii) Disqualified lease

For purposes of this subparagraph, the term "disqualified lease" means any lease of the property to a tax-exempt entity, but only if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103 and such entity (or a related entity) participated in such financing,

(II) under such lease there is a fixed or determinable price purchase or sale option which involves such entity (or a related entity) or there is the equivalent of such an option,

(III) such lease has a lease term in excess of 20 years, or

(IV) such lease occurs after a sale (or other transfer) of the property by, or lease of the property from, such entity (or a related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease.

(iii) 35-percent threshold test

Clause (i) shall apply to any property only if the portion of such property leased to tax-exempt entities in disqualified leases is more than 35 percent of the property.

(iv) Treatment of improvements

For purposes of this subparagraph, improvements to a property (other than land) shall not be treated as a separate property.

(v) Leasebacks during 1st 3 months of use not taken into account

Subclause (IV) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(C) Exception for short-term leases

(i) In general

Property shall not be treated as tax-exempt use property merely by reason of a short-term lease.

(ii) Short-term lease

For purposes of clause (i), the term "short-term lease" means any lease the term of which is—

(I) less than 3 years, and

(II) less than the greater of 1 year or 30 percent of the property's present class life.

In the case of 18-year real property and property with no present class life, subclause (II) shall not apply.

(D) Exception where property used in unrelated trade or business

The term "tax-exempt use property" shall not include any portion of a property if such portion is predominantly used by the tax-exempt entity (directly or through a partnership of which such entity is a partner) in an unrelated trade or business the income of which is subject to tax under section 511.

(4) Tax-exempt entity

(A) In general

For purposes of this subsection, the term "tax-exempt entity" means—

(i) the United States, any State or political subdivision thereof, any possession of the United States, or any agency or instrumentality of any of the foregoing,

(ii) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by this chapter, and

(iii) any foreign person or entity.

(B) Exceptions for certain property used by foreign person or entity

(i) Income from property subject to United States tax

Clause (iii) of subparagraph (A) shall not apply with respect to any property if more than 50 percent of the gross income for the taxable year derived by the foreign person or entity from the use of such property is—

(I) subject to tax under this chapter, or

(II) included under section 951 in the gross income of a United States shareholder for the taxable year with or within which ends the taxable year of the controlled foreign corporation in which such income was derived.

For purposes of the preceding sentence, any exclusion or exemption shall not apply for purposes of determining the amount of the gross income so derived, but shall apply for purposes of determining the portion of such gross income subject to tax under this chapter.

(ii) Movies and sound recordings

Clause (iii) of subparagraph (A) shall not apply with respect to any qualified film (as defined in section 48(k)(1)(B)) or any sound recording (as defined in section 48(r)).

(C) Foreign person or entity

For purposes of this paragraph, the term "foreign person or entity" means—

(i) any foreign government, any international organization, or any agency or instrumentality of any of the foregoing, and

(ii) any person who is not a United States person.

Such term does not include any foreign partnership or other foreign pass-thru entity.

(D) Treatment of certain taxable instrumentalities

For purposes of this subsection and paragraph (5) of section 48(a), a corporation shall not be treated as an instrumentality of the United States or of any State or political subdivision thereof if—

(i) all of the activities of such corporation are subject to tax under this chapter, and

(ii) a majority of the board of directors of such corporation is not selected by the United States or any State or political subdivision thereof.

(E) Certain previously tax-exempt organizations

(i) In general

For purposes of this subsection and paragraph (4) of section 48(a), an organization shall be treated as an organization described in subparagraph (A)(ii) with respect to any property of which such organization is the lessee if such organization was an organization (other than a cooperative described in section 521) exempt from tax imposed by this chapter at any time during the 5-year period ending on the date such property was first leased to such organization. The preceding sentence shall not apply to the Federal Home Loan Mortgage Corporation.

(ii) Election not to have clause (i) apply

(I) In general

In the case of an organization formerly exempt from tax under section 501(a) as an organization described in section 501(c)(12), clause (i) shall not apply to such organization with respect to any property of which such organization is the lessee if such organization elects not to be exempt from tax under section 501(a) during the tax-exempt use period with respect to such property.

(II) Tax-exempt use period

For purposes of subclause (I), the term "tax-exempt use period" means the period beginning with the taxable year in which the property described in subclause (I) is placed in service under the lease and ending with the close of the 15th taxable year following the last taxable year of the recovery period of such property.

(III) Election

Any election under subclause (I), once made, shall be irrevocable.

(iii) Treatment of successor organizations

Any organization which is engaged in activities substantially similar to those engaged in by a predecessor organization shall succeed to the treatment under this subparagraph of such predecessor organization.

(5) Special rules for certain high technology equipment

(A) Exemption where lease term is 5 years or less

For purposes of this subsection, the term "tax-exempt use property" shall not include any qualified technological equipment if the lease to the tax-exempt entity has a lease term of 5 years or less.

(B) Recovery period where lease term is greater than 5 years

In the case of any qualified technological equipment not described in subparagraph (A) and which is not property to which subsection (f)(2) applies, the recovery period used for purposes of paragraph (1) shall be 5 years.

(C) Qualified technological equipment

For purposes of this paragraph—

(i) In general

Except as otherwise provided in this subparagraph, the term "qualified technological equipment" means—

(I) any computer or peripheral equipment,

(II) any high technology telephone station equipment installed on the customer's premises, and

(III) any high technology medical equipment,[6]

(ii) Exception for certain property

The term "qualified technological equipment" shall not include any property leased to a tax-exempt entity if—

(I) part or all of the property was financed (directly or indirectly) by an obligation the interest on which is exempt from tax under section 103,

(II) such lease occurs after a sale (or other transfer) of the property by, or lease of such property from, such entity (or related entity) and such property has been used by such entity (or a related entity) before such sale (or other transfer) or lease, or

(III) such tax-exempt entity is the United States or any agency or instrumentality of the United States.

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[6] So in original. The comma probably should be a period.

(iii) Leasebacks during 1st 3 months of use not taken into account

Subclause (II) of clause (ii) shall not apply to any property which is leased within 3 months after the date such property is first used by the tax-exempt entity (or a related entity).

(iv) Property not subject to rapid obsolescence may be excluded

The term "qualified technological equipment" shall not include any equipment described in subclause (II) or (III) of clause (i)—

(I) which the Secretary determines by regulations is not subject to rapid obsolescence, and

(II) which is placed in service after the date on which final regulations implementing such determination are published in the Federal Register.

(D) Computer or peripheral equipment defined

For purposes of this paragraph—

(i) In general

The term "computer or peripheral equipment" means—

(I) any computer, and

(II) any related peripheral equipment.

(ii) Computer

The term "computer" means a programmable electronically activated device which—

(I) is capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention, and

(II) consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities.

(iii) Related peripheral equipment

The term "related peripheral equipment" means any auxiliary machine (whether on-line or off-line) which is designed to be placed under the control of the central processing unit of a computer.

(iv) Exceptions

The term "computer or peripheral equipment" shall not include—

(I) any equipment which is an integral part of other property which is not a computer,

(II) typewriters, calculators, adding and accounting machines, copiers, duplicating equipment, and similar equipment, and

(III) equipment of a kind used primarily for amusement or entertainment of the user.

(E) High technology medical equipment

For purposes of this paragraph, the term "high technology medical equipment" means any electronic, electromechanical, or computer-based high technology equipment used in the screening, monitoring, observation, diagnosis, or treatment of patients in a laboratory, medical, or hospital environment.

(6) Other special rules

For purposes of this subsection—

(A) Lease

The term "lease" includes any grant of a right to use property.

(B) Lease term

In determining a lease term—

(i) there shall be taken into account options to renew, and

(ii) 2 or more successive leases which are part of the same transaction (or a series of related transactions) with respect to the same or substantially similar property shall be treated as 1 lease.

(C) Special rule for fair rental options on 18-year real property

For purposes of clause (i) of subparagraph (B), in the case of 18-year real property, there shall not be taken into account any option to renew at fair market value, determined at the time of renewal.

(7) Related entities

For purposes of this subsection—

(A)(i) Each governmental unit and each agency or instrumentality of a governmental unit is related to each other such unit, agency, or instrumentality which directly or indirectly derives its powers, rights, and duties in whole or in part from the same sovereign authority.

(ii) For purposes of clause (i), the United States, each State, and each possession of the United States shall be treated as a separate sovereign authority.

(B) Any entity not described in subparagraph (A)(i) is related to any other entity if the 2 entities have—

(i) significant common purposes and substantial common membership, or

(ii) directly or indirectly substantial common direction or control.

(C)(i) An entity is related to another entity if either entity owns (directly or through 1 or more entities) a 50 percent or greater interest in the capital or profits of the other entity.

(ii) For purposes of clause (i), entities treated as related under subparagraph (A) or (B) shall be treated as 1 entity.

(D) An entity is related to another entity with respect to a transaction if such transaction is part of an attempt by such entities to avoid the application of this subsection, section 46(e), paragraph (4) or (5) of section 48(a), or clause (vi) of section 48(g)(2)(B).

(8) Tax-exempt use of property leased to partnerships, etc., determined at partner level

For purposes of this subsection and paragraphs (4) and (5) of section 48(a)—

(A) In general

In the case of any property which is leased to a partnership, the determination of whether any portion of such property is tax-exempt use property shall be made by treating each tax-exempt entity partner's proportionate share (determined under paragraph (9)(C)) of such property as being leased to such partner.

(B) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraph (A) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(C) Presumption with respect to foreign entities

Unless it is otherwise established to the satisfaction of the Secretary, it shall be presumed that the partners of a foreign partnership (and the beneficiaries of any other foreign pass-thru entity) are persons who are not United States persons.

(9) Treatment of property owned by partnerships, etc.

(A) In general

For purposes of this subsection and paragraphs (4) and (5) of section 48(a), if—

(i) any property which (but for this subparagraph) is not tax-exempt use property is owned by a partnership which has both a tax-exempt entity and a person who is not a tax-exempt entity as partners, and

(ii) any allocation to the tax-exempt entity of partnership items is not a qualified allocation,

an amount equal to such tax-exempt entity's proportionate share of such property shall (except as provided in paragraph (3)(D)) be treated as tax-exempt use property.

(B) Qualified allocation

For purposes of subparagraph (A), the term "qualified allocation" means any allocation to a tax-exempt entity which—

(i) is consistent with such entity's being allocated the same distributive share of each item of income, gain, loss deduction, credit, and basis and such share remains the same during the entire period the entity is a partner in the partnership, and

(ii) has substantial economic effect within the meaning of section 704(b)(2).

For purposes of this subparagraph, items allocated under section 704(c) shall not be taken into account.

(C) Determination of proportionate share

(i) In general

For purposes of subparagraph (A), a tax-exempt entity's proportionate share of any property owned by a partnership shall be determined on the basis of such entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)), whichever results in the largest proportionate share.

(ii) Determination where allocations vary

For purposes of clause (i), if a tax-exempt entity's share of partnership items of income or gain (excluding gain allocated under section 704(c)) may vary during the period such entity is a partner in the partnership, such share shall be the highest share such entity may receive.

(D) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraphs (A), (B), and (C) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

(E) Regulations

For purposes of determining whether there is a qualified allocation under subparagraph (B), the regulations prescribed under paragraph (10) for purposes of this paragraph—

(i) shall set forth the proper treatment for partnership guaranteed payments, and

(ii) may provide for the exclusion or segregation of items.

(10) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(k) Cross reference

For special rules with respect to certain gain derived from disposition of recovery property, see sections 1245 and 1250.

(Added Pub. L. 97-34, title II, § 201(a), Aug. 13, 1981, 95 Stat. 204, and amended Pub. L. 97-248, title II, §§ 206, 208(a)(1), (2)(A), (b), 216(a), 224(c)(1), (2), Sept. 3, 1982, 96 Stat. 431, 432, 435, 470, 489; Pub. L. 97-354, § 5(a)(19), Oct. 19, 1982, 96 Stat. 1693; Pub. L. 97-424, title V, § 541(a)(1), Jan. 6, 1983, 96 Stat. 2192; Pub. L. 97-448, title I, § 102(a)(1)-(5), (8), (9), (10)(A), (f)(4), Jan. 12, 1983, 96 Stat. 2367, 2368, 2371; Pub. L. 98-369, div. A, title I, §§ 31(a), (d), 32(a), 111(a)-(e)(4), (9), 113(a)(2), (b)(1), (2)(A), title IV, § 474(r)(7)(A)-(C), title VI, §§ 612(e)(4), 628(b), July 18, 1984, 98 Stat. 509, 518, 530, 631-633, 636, 637, 840, 912, 931.)

Amendment of Subsection (f)(8)

Pub. L. 97-248, title II, §§ 208(d)(5), 209(a), (d)(1), Sept. 3, 1982, 96 Stat. 440, 442, 447; Pub. L. 97-354, § 5(a)(20), Oct. 19, 1982, 96 Stat. 1694; Pub. L. 98-369, div. A, title I, § 12(a)(1)-(3)(A), July 18, 1984, 98 Stat. 503, provided that, applicable with regard to agreements entered into after Dec. 31, 1987, and to agreements entered into between July 1, 1982, and Jan. 1, 1988, if the property subject to such agreement is section 38 property used for farming purposes, subject to an overall limitation of $150,000, except for agreements dealing with qualified mass commuting vehicles described in subsection (f)(8)(D)(v) of this section (as amended by section 208(d)(3) of Pub. L. 97-248) placed in service before Jan. 1, 1988, or placed in service after such date pursuant to a binding contract or commitment entered into before Apr. 1, 1983, and solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee, subsection (f)(8) of this section is amended to read as follows:

(8) Special rules for finance leases

(A) In general

For purposes of this title, except as provided in subsection (i), in the case of any agreement with respect to any finance lease property, the fact that—

(i) a lessee has the right to purchase the property at a fixed price which is not less than 10 percent of the original cost of the property to the lessor, or

(ii) the property is of a type not readily usable by any person other than the lessee,

shall not be taken into account in determining whether such agreement is a lease.

(B) Finance lease property defined

For purposes of this section—

(i) In general

The term "finance lease property" means recovery property which is subject to an agreement which meets the requirements of subparagraph (C) and—

(I) which is new section 38 property of the lessor, which is leased within 3 months after such property was placed in service, and which, if acquired by the lessee, would have been new section 38 property of the lessee, or

(II) which was new section 38 property of the lessee, which is leased within 3 months after such property is placed in service by the lessee, and with respect to which the adjusted basis of the lessor does not exceed the adjusted basis of the lessee at the time of the lease.

(ii) Only 40 percent of the lessee's property may be treated as qualified

The cost basis of all finance lease property (determined without regard to this clause)—

(I) which is placed in service during any calendar year beginning before January 1, 1990, and

(II) with respect to which the taxpayer is a lessee,

shall not exceed an amount equal to 40 percent of the cost basis of the taxpayer's qualified base property placed in service during such calendar year.

(iii) Allocation of disqualified basis

The cost basis not treated as finance lease property under clause (ii) shall be allocated to finance lease property for such calendar year (determined without regard to clause (ii)) in reverse order to when the agreement described in subparagraph (A) with respect to such property was entered into.

(iv) Certain property may not be treated as finance lease property

The term "finance lease property" shall not include recovery property—

(I) which is a qualified rehabilitated building (within the meaning of section 48(g)(1)),

(II) which is public utility property (within the meaning of section 167(l)(3)(A)),

(III) which is property with respect to which a deduction is allowable by reason of section 291(b),

(IV) with respect to which the lessee of the property under the agreement described in subparagraph (A) is a nonqualified tax-exempt organization, or

(V) property with respect to which the user of such property is a person (other than a United States person) not subject to United States tax on income derived from the use of such property.

(v) Qualified base property

For purposes of this subparagraph, the term "qualified base property" means property placed in service during any calendar year which—

(I) is new section 38 property of the taxpayer,

(II) is finance lease property (not described in subclause (I)) with respect to which the taxpayer is the lessee, or

(III) is designated leased property (other than property described in subclause (I) or (II)) with respect to which the taxpayer is the lessee.

Any designated leased property taken into account by any lessee under the preceding sentence shall not be taken into account by the lessor in determining the lessor's qualified base property. The lessor shall provide the lessee with such information with respect to the cost basis of such property as is necessary to carry out the purposes of this clause.

(vi) Definition of designated leased property

For purposes of this subparagraph, the term "designated leased property" means property—

(I) which is new section 38 property,

(II) which is subject to a lease with respect to which the lessor of the property is treated (without regard to this paragraph) as the owner of the property for Federal tax purposes,

(III) with respect to which the term of the lease to which such property is subject is more than 50 percent of the present class life (or, if no present class life, the recovery period under subsection (a)) of such property, and

(IV) which the lessee designates on his return as designated leased property.

(vii) Definition; special rules

For purposes of this subparagraph—

(I) New section 38 property defined

The term "new section 38 property" has the meaning given such term by section 48(b).

(II) Lessee limitation not to apply to certain farm property

Clause (ii) shall not apply to any property which is used for farming pur-

poses (within the meaning of section 2032A(e)(5)) and which is placed in service during the calendar year but only if the cost basis of such property, when added to the cost basis of other finance lease property used for such purpose does not exceed $150,000 (determined under rules similar to the rules of section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982).

(III) Property placed in service

For purposes of this title (other than clause (i), any finance lease property shall be deemed originally placed in service not earlier than the date such property is used under the lease.

(C) Agreements must meet certain requirements

The requirements of this subparagraph are met with respect to any agreement if—

(i) Lessor requirement

Any lessor under the agreement must be—

(I) a corporation (other than an S corporation or a personal holding company within the meaning of section 542(a)),

(II) a partnership all of the partners of which are corporations described in subclause (I), or

(III) a grantor trust with respect to which the grantor and all the beneficiaries of the trust are described in subclause (I) or (II).

(ii) Characterization of agreement

The parties to the agreement characterize such agreement as a lease.

(iii) Agreement contains certain provisions

The agreement contains the provision described in clause (i) or (ii) of subparagraph (A), or both.

(iv) Agreement otherwise lease, etc.

For purposes of this title (determined without regard to the provisions described in clause (iii)), the agreement would be treated as a lease and the lessor under the agreement would be treated as the owner of the property.

(D) Paragraph not to apply to agreements between related persons

This paragraph shall not apply to any agreement if the lessor and lessee are both persons who are members of the same affiliated group (within the meaning of subsection (a) of section 1504 and determined without regard to subsection (b) of section 1504).

(E) Nonqualified tax-exempt organization

(i) In general

The term "nonqualified tax-exempt organization" means, with respect to any agreement to which subparagraph (A) applies, any organization (or predecessor organization which was engaged in substantially similar activities) which was exempt from taxation under this title at any time during the 5-year period ending on the date such agreement was entered into.

(ii) Special rule for farmers' cooperatives

The term "nonqualified tax-exempt organization" shall not include any farmers' cooperative organization which is described in section 521 whether or not exempt from taxation under section 521.

(iii) Special rule for property used in unrelated trade or business

An organization shall not be treated as a nonqualified tax-exempt organization with respect to any property if such property is used in an unrelated trade or business (within the meaning of section 513) of such organization which is subject to taxation under section 511.

(F) Cross reference

For special recapture in case where lessee acquires financed recovery property, see section 1245.

AMENDMENT OF SUBSECTION (i)

Pub. L. 97–248, title II, §§ 208(d)(5), 209(b), (d)(1)(A), Sept. 3, 1982, 96 Stat. 440, 445, 447; Pub. L. 98–369, div. A, title I, § 12(a)(1), (3)(B), title IV, § 474(r)(7)(D), (E), title VI, § 612(e)(5), July 18, 1984, 98 Stat. 503, 840, 912, provided that applicable with regard to agreements entered into after Dec. 31, 1987, except for agreements dealing with qualified mass commuting vehicles described in subsection (f)(8)(D)(v) of this section (as amended by section 208(d)(3) of Pub. L. 97–248) placed in service before Jan. 1, 1988, or placed in service after such date pursuant to a binding contract or commitment entered into before Apr. 1, 1983, and solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee, subsection (i) of this section is amended to read as follows:

(i) Limitations relating to leases of finance lease property

For purposes of this subtitle, in the case of finance lease property, the following limitations shall apply:

(1) Lessor may not reduce tax liability by more than 50 percent

(A) In general

The aggregate amount allowable as deductions or credits for any taxable year which are allocable to all finance lease property with respect to which the taxpayer is the lessor may not reduce the liability for tax of the taxpayer for such taxable year (determined without regard to finance lease items) by more than 50 percent of such liability.

(B) Carryover of amounts not allowable as deductions or credits

Any amount not allowable as a deduction or credit under subparagraph (A)—

(i) may be carried over to any subsequent taxable year, and

(ii) shall be treated as a deduction or credit allocable to finance lease property in such subsequent taxable year.

(C) Allocation among deductions and credits

The Secretary shall prescribe regulations for determining the amount—

(i) of any deduction or credit allocable to finance lease property for any taxable year to which subparagraph (A) applies, and

(ii) of any carryover of any such deduction or credit under subparagraph (B) to any subsequent taxable year.

(D) Liability for tax and finance lease items defined

For purposes of this paragraph—

(i) Liability for tax defined

Except as provided in this subparagraph, the term "liability for tax" means the tax imposed by this chapter, reduced by the sum of the credits allowable under subparts A, B, and D of part IV of subchapter A of this chapter.

(ii) Finance lease items defined

The term "finance lease items" means any of the following items which are properly allocable to finance lease property with respect to which the taxpayer is the lessor:

(I) Any deduction or credit allowable under this chapter.

(II) Any rental income received by the taxpayer from any lessee of such property.

(iii) Certain taxes not included

The term "tax imposed by this chapter" shall not include any tax treated as not imposed by this chapter under section 26(b)(2) (other than the tax imposed by section 56).

(E) Certain safe harbor lease property taken into account

Under regulations prescribed by the Secretary, deductions and credits and safe harbor lease items which are allocable to safe harbor lease property to which this paragraph (as in effect for taxable years beginning in 1983) applies shall be taken into account for purposes of applying this paragraph.

(2) Investment credit allowed only over 5-year period

In the case of any credit which would otherwise be allowable under section 38 with respect to any finance lease property for any taxable year (determined without regard to this paragraph), only 20 percent of the amount of such credit shall be allowable in such taxable year and 20 percent of such amount shall be allowable in each of the succeeding 4 taxable years.

(3) Computation of taxable income of lessee for purposes of percentage depletion

(A) In general

For purposes of section 613 or 613A, the taxable income of any taxpayer who is a lessee of any financed recovery property shall be computed as if the taxpayer was the owner of such property, except that the amount of the deduction under subsection (a) of this section shall be determined after application of paragraph (2) of this subsection.

(B) Coordination with crude oil windfall profit tax

Section 4988(b)(3)(A) shall be applied without regard to subparagraph (A).

(4) Limitations

(A) Termination of certain provisions

(i) Paragraph (1)

Paragraph (1) shall not apply to property placed in service after September 30, 1989, in taxable years beginning after such date.

(ii) Paragraph (2)

Paragraph (2) shall not apply to property placed in service after September 30, 1989.

(B) Certain farm property

This subsection shall not apply to property which is used for farming purposes (within the meaning of section 2032A(e)(5)) and which is placed in service during the taxable year but only if the cost basis of such property, when added to the cost basis of other finance lease property used for such purpose, does not exceed $150,000 (determined under rules similar to the rules of section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982).

REFERENCES IN TEXT

Section 208(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982, referred to in subsecs. (f)(8)(I)(i) and (i)(7)(A), is section 208(d)(3) of Pub. L. 97-248, title II, Sept. 3, 1982, 96 Stat. 439, which is set out as an Effective Date of 1982 Amendments note below.

The date of enactment of this subparagraph, referred to in subsec. (f)(8)(J)(i), (iii), probably means the date of enactment of Pub. L. 97-248, which was approved Sept. 3, 1982.

Section 209(d)(1)(B) of the Tax Equity and Fiscal Responsibility Act of 1982, referred to in subsecs. (f)(8)(B)(vii)(II) and (i)(4)(B), set out in italics above, is section 209(d)(1)(B) of Pub. L. 97-248, title II, Sept. 3, 1982, 96 Stat. 439, which is set out as an Effective Date of 1982 Amendments note below.

The Tax Reform Act of 1984, referred to in subsec. (j)(2)(F)(ii), is div. A of Pub. L. 98-369, which was approved July 18, 1984.

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-369, § 111(a)(1), substituted "18-year real property" for "15-year real property" in heading and wherever appearing in text.

Pub. L. 98–369, § 111(d), inserted in provision following cl. (ii) "(using a mid-month convention)".

Subsec. (b)(2)(A). Pub. L. 98–369, § 111(b)(3)(A), struck out in text following cl. (ii) provision that for purposes of this subparagraph, the term "low-income housing" means property described in section 1250(a)(1)(B)(i), (ii), (iii), or (iv).

Subsec. (b)(2)(A)(i). Pub. L. 98–369, § 111(a)(2), substituted "18-year recovery period" for "15-year recovery period".

Subsec. (b)(2)(A)(ii). Pub. L. 98–369, § 111(a)(3), struck out "(200 percent declining balance method in the case of low-income housing)" after "declining balance method".

Subsec. (b)(2)(B). Pub. L. 98–369, § 111(d), inserted "(using a mid-month convention)".

Subsec. (b)(3)(A). Pub. L. 98–369, § 111(e)(9)(A), substituted "under paragraph (1), (2), or (4)" for "under paragraphs (1) and (2)".

Pub. L. 98–369, § 111(e)(9)(B), substituted in table "18-year real property and low-income housing" for "15-year real property" and "18" for "15" and struck out "years" after "45".

Subsec. (b)(3)(B)(ii). Pub. L. 98–369, § 111(e)(2), substituted "18-year real property or low-income housing," for "15-year real property".

Subsec. (b)(3)(B)(iii). Pub. L. 98–369, § 111(e)(1), substituted "18-year real property or low-income housing" for "15-year real property".

Subsec. (b)(4). Pub. L. 98–369, § 111(b)(1), added par. (4).

Subsec. (c)(2)(D). Pub. L. 98–369, § 111(b)(3)(B), amended subpar. (D) generally, substituting "18-year real property" for "15-year real property" in heading and text and including within such definition section 1250 property which is not low-income housing.

Subsec. (c)(2)(F), (G). Pub. L. 98–369, § 111(b)(2), added subpar. (F) and redesignated former subpar. (F) as (G).

Subsec. (d)(2)(B). Pub. L. 98–369, § 111(e)(3), substituted "18-year real property or low-income housing" for "15-year real property".

Subsec. (e). Pub. L. 98–369, § 113(b)(2)(A), substituted "title" for "section" in provision preceding par. (1).

Subsec. (e)(5). Pub. L. 98–369, § 113(b)(1), added par. (5).

Subsec. (f)(1)(B). Pub. L. 98–369, § 111(c), designated existing provision as cl. (i), and in cl. (i) as so designated, added heading, inserted ", and before March 16, 1984," and struck out provision that for the purposes of the preceding sentence, the method of computing the deduction allowable with respect to such first component be determined as if it were a separate building, which provision is covered in cl. (iii), and added cls. (ii) and (iii).

Subsec. (f)(2)(B). Pub. L. 98–369, § 111(e)(1), substituted "18-year real property or low-income housing" for "15-year real property" wherever appearing.

Subsec. (f)(2)(C)(i). Pub. L. 98–369, § 111(e)(4), substituted in table "18-year real property or low-income housing" for "15-year real property".

Subsec. (f)(2)(C)(ii)(II), (E), (5). Pub. L. 98–369, § 111(e)(1), substituted "18-year real property or low-income housing" for "15-year real property".

Subsec. (f)(12)(C). Pub. L. 98–369, § 628(b)(1), designated provisions preceding cl. (i) and cl. (i) as subpar. (C), and struck out cls. (ii), (iii), and (iv) which dealt with the application of subpar. (A) to a sewage or solid waste disposal facility, an air or water pollution control facility or a facility which has received an urban development action grant under section 119 of the Housing and Community Development Act of 1974.

Subsec. (f)(12)(D), (E). Pub. L. 98–369, § 628(b)(2), redesignated subpar. (E) as (D) and struck out former subpar. (D) which read "For purposes of this paragraph, the term 'existing facility' means a plant or property in operation before July 1, 1982."

Subsec. (f)(13). Pub. L. 98–369, § 32(a), added second par. (13) relating to motor vehicle operating leases.

Subsec. (f)(14). Pub. L. 98–369, § 113(a)(2), added par. (14).

Subsec. (g)(2). Pub. L. 98–369, § 31(d), added: "If any property (other than section 1250 class property) does not have a present class life within the meaning of the preceding sentence, the Secretary may prescribe a present class life for such property which reasonably reflects the anticipated useful life of such property to the industry or other group."

Subsec. (i)(1)(D)(i). Pub. L. 98–369, § 474(r)(7)(A), substituted "subparts A, B, and D of part IV" for "subpart A of part IV".

Subsec. (i)(1)(D)(iii). Pub. L. 98–369, § 612(e)(4), substituted "section 26(b)(2)" for "section 25(b)(2)".

Pub. L. 98–369, § 474(r)(7)(B), substituted "section 25(b)(2)" for "the last sentence of section 53(a)".

Subsec. (i)(4)(A). Pub. L. 98–369, § 474(r)(7)(C), substituted "section 38" for "subpart A of part IV of subchapter A of this chapter".

Subsecs. (j), (k). Pub. L. 98–369, § 31(a), added subsec. (j) and redesignated former subsec. (j) as (k).

Effective Date of 1984 Amendment

Amendment by section 12 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Section 31(g) of Pub. L. 98–369 provided that:

"(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section [amending sections 46, 48, 168, and 7701 of this title] shall apply—

"(A) to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date, and

"(B) to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983.

"(2) Leases entered into on or before May 23, 1983.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if the property is leased pursuant to—

"(A) a lease entered into on or before May 23, 1983 (or a sublease under such a lease), or

"(B) any renewal or extension of a lease entered into on or before May 23, 1983, if such renewal or extension is pursuant to an option exercisable by the tax-exempt entity which was held by the tax-exempt entity on May 23, 1983.

"(3) Binding contracts, etc.—

"(A) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity if such lease is pursuant to 1 or more written binding contracts which, on May 23, 1983, and at all times thereafter, required—

"(i) the taxpayer (or his predecessor in interest under the contract) to acquire, construct, reconstruct, or rehabilitate such property, and

"(ii) the tax-exempt entity (or a tax-exempt predecessor thereof) to be the lessee of such property.

"(B) The amendments made by this section shall not apply with respect to any property owned by a partnership if—

"(i) such property was acquired by such partnership on or before October 21, 1983, or

"(ii) such partnership entered into a written binding contract which, on October 21, 1983, and at all times thereafter, required the partnership to acquire or construct such property.

"(C) The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than any foreign person or entity)—

"(i) if—

"(I) on or before May 23, 1983, the taxpayer (or his predecessor in interest under the contract) or the tax-exempt entity entered into a written binding contract to acquire, construct, reconstruct, or rehabilitate such property and such property had not previously been used by the tax-exempt entity, or

"(II) the taxpayer or the tax-exempt entity acquired the property after June 30, 1982, and on or before May 23, 1983, or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982, and on or before May 23, 1983, and

"(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of such property.

"(4) Official governmental action on or before November 1, 1983.—

"(A) In general.—The amendments made by this section shall not apply with respect to any property leased to a tax-exempt entity (other than the United States, any agency or instrumentality thereof, or any foreign person or entity) if—

"(i) on or before November 1, 1983, there was significant official governmental action with respect to the project or its design, and

"(ii) the lease to the tax-exempt entity is pursuant to a written binding contract entered into before January 1, 1985, which requires the tax-exempt entity to be the lessee of the property.

"(B) Significant official governmental action.—For purposes of subparagraph (A), the term 'significant official governmental action' does not include granting of permits, zoning changes, environmental impact statements, or similar governmental actions.

"(5) Mass commuting vehicles.—The amendments made by this section shall not apply to any qualified mass commuting vehicle (as defined in section 103(b)(9) of the Internal Revenue Code of 1954) which is financed in whole or in part by obligations the interest on which is excludable from gross income under section 103(a) of such Code if—

"(A) such vehicle is placed in service before January 1, 1988, or

"(B) such vehicle is placed in service on or after such date—

"(i) pursuant to a binding contract or commitment entered into before April 1, 1983, and

"(ii) solely because of conditions which, as determined by the Secretary of the Treasury or his delegate, are not within the control of the lessor or lessee.

"(6) Certain turbines and boilers.—The amendments made by this section shall not apply to any property described in section 208(d)(3)(E) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 208(d)(3)(E) of Pub. L. 97-248, set out as an Effective Date of 1982 Amendments note below].

"(7) Certain facilities for which ruling requests filed on or before May 23, 1983.—The amendments made by this section shall not apply with respect to any facilities described in clause (ii) of section 168(f)(12)(C) of the Internal Revenue Code of 1954 (relating to certain sewage or solid waste disposal facilities), as in effect on the day before the date of the enactment of this Act [July 18, 1984], if a ruling request with respect to the lease of such facility to the tax-exempt entity was filed with the Internal Revenue Service on or before May 23, 1983.

"(8) Recovery period for certain qualified sewage facilities.—

"(A) In general.—In the case of any property (other than 15-year real property) which is part of a qualified sewage facility, the recovery period used for purposes of paragraph (1) of section 168(j) of the Internal Revenue Code of 1954 (as added by this section) shall be 12 years. For purposes of the preceding sentence, the term '15-year real property' includes 18-year real property.

"(B) Qualified sewage facility.—For purposes of subparagraph (A), the term 'qualified sewage facility' means any facility which is part of the sewer system of a city, if—

"(i) on June 15, 1983, the City Council approved a resolution under which the city authorized the procurement of equity investments for such facility, and

"(ii) on July 12, 1983, the Industrial Development Board of the city approved a resolution to issue a $100,000,000 industrial development bond issue to provide funds to purchase such facility.

"(9) Property used by the postal service.—In the case of property used by the United States Postal Service, paragraphs (1) and (2) shall be applied by substituting 'October 31' for 'May 23'.

"(10) Existing appropriations.—The amendments made by this section shall not apply to personal property leased to or used by the United States if—

"(A) an express appropriation has been made for rentals under such lease for the fiscal year 1983 before May 23, 1983, and

"(B) the United States or an agency or instrumentality thereof has not provided an indemnification against the loss of all or a portion of the tax benefits claimed under the lease or service contract.

"(11) Special rule for certain partnerships.—

"(A) Partnerships for which qualifying action existed before October 21, 1983.—Paragraph (9) of section 168(j) of the Internal Revenue Code of 1954 (as added by this section) shall not apply to any property acquired, directly or indirectly, before January 1, 1985, by any partnership described in subparagraph (B).

"(B) Application filed before October 21, 1983.—A partnership is described in this subparagraph if—

"(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum number of units in the partnership that would be offered had been circulated,

"(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

"(iii) the marketing of partnership units in such partnership is completed not later than two years after the later of the date of the enactment of this Act [July 18, 1984] or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate number of units in such partnership sold does not exceed the amount described in clause (i).

"(C) Partnerships for which qualifying action existed before March 6, 1984.—Paragraph (9) of section 168(j) of the Internal Revenue Code of 1954 (as added by this section) shall not apply to any property acquired directly or indirectly, before January 1, 1986, by any partnership described in subparagraph (D). For purposes of this subparagraph, property shall be deemed to have been acquired prior to January 1, 1986, if the partnership had entered into a written binding contract to acquire such property prior to January 1, 1986 and the closing of such contract takes place within 6 months of the date of such contract (24 months in the case of new construction).

"(D) Partnership organized before March 6, 1984.—A partnership is described in this subparagraph if—

"(i) before March 6, 1984, the partnership was organized and publicly announced the maximum amount (as shown in the registration statement, prospectus or partnership agreement, whichever is greater) of interests which would be sold in the partnership, and

"(ii) the marketing or partnership interests in such partnership was completed not later than the 90th day after the date of the enactment of this Act [July 18, 1984] and the aggregate amount of interest in such partnership sold does not exceed the maximum amount described in clause (i).

"(12) Special rule for amendment made by subsection (c)(2).—The amendment made by subsection (c)(2) [amending section 48(g)(2)(B)(i) of this title] to the extent it relates to subsection (f)(12) of section 168 of the Internal Revenue Code of 1954 shall take effect as if it had been included in the amendments made by section 216(a) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 216(a) of Pub. L. 97-248, which amended this section].

"(13) Special rule for service contracts not involving tax-exempt entities.—In the case of a service contract or other arrangement described in section 7701(e) of the Internal Revenue Code of 1954 (as added by this section) with respect to which no party is a tax-exempt entity, such section 7701(e) shall not apply to—

"(A) such contract or other arrangement if such contract or other arrangement was entered into before November 5, 1983, or

"(B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on November 5, 1983.

"(14) Property leased to section 593 organizations.—For purposes of the amendment made by subsection (f) [enacting section 46(e)(4) of this title], paragraphs (1), (2), and (4) shall be applied by substituting—

"(A) 'November 5, 1983' for 'May 23, 1983' and 'November 1, 1983', as the case may be, and

"(B) 'organization described in section 593 of the Internal Revenue Code of 1954' for 'tax-exempt entity'.

"(15) Special rules relating to foreign persons or entities—

"(A) In general.—In the case of tax-exempt use property which is used by a foreign person or entity, the amendments made by this section shall not apply to any property which—

"(i) is placed in service by the taxpayer before January 1, 1984, and

"(ii) is used by such foreign person or entity pursuant to a lease entered into before January 1, 1984.

"(B) Special rule for subleases.—If tax-exempt use property is being used by a foreign person or entity pursuant to a sublease under a lease described in subparagraph (A)(ii), subparagraph (A) shall apply to such property only if such property was used before January 1, 1984, by any foreign person or entity pursuant to such lease.

"(C) Binding contracts, etc.—The amendments made by this section shall not apply with respect to any property (other than aircraft described in subparagraph (D)) leased to a foreign person or entity—

"(i) if—

"(I) on or before May 23, 1983, the taxpayer (or a predecessor in interest under the contract) or the foreign person or entity entered into a written binding contract to acquire, construct, or rehabilitate such property and such property had not previously been used by the foreign person or entity, or

"(II) the taxpayer or the foreign person or entity acquired the property or completed the construction, reconstruction, or rehabilitation of the property after December 31, 1982 and on or before May 23, 1983, and

"(ii) if such lease is pursuant to a written binding contract entered into before January 1, 1984, which requires the foreign person or entity to be the lessee of such property.

"(D) Certain aircraft.—The amendments made by this section shall not apply with respect to any wide-body, four-engine, commercial aircraft used by a foreign person or entity if—

"(i) on or before November 1, 1983, the foreign person or entity entered into a written binding contract to acquire such aircraft, and

"(ii) such aircraft is placed in service before January 1, 1986.

"(E) Use after 1983.—Qualified container equipment placed in service before January 1, 1984, which is used before such date by a foreign person shall not, for purposes of section 47 of the Internal Revenue Code of 1954, be treated as ceasing to be section 38 property by reason of the use of such equipment before January 1, 1985, by a foreign person or entity. For purposes of this subparagraph, the term 'qualified container equipment' means any container, container chassis, or container trailer of a United States person with a present class life of not more than 6 years.

"(16) Organizations electing exemption from rules relating to previously tax-exempt organizations must elect taxation of exempt arbitrage profits.—

"(A) In general.—An organization may make the election under section 168(j)(4)(E)(ii) of the Internal Revenue Code of 1954 (relating to election not to have rules relating to previously tax-exempt organizations apply) only if such organization elects the tax treatment of exempt arbitrage profits described in subparagraph (B).

"(B) Taxation of exempt arbitrage profits.—

"(i) In general.—In the case of an organization which elects the application of this subparagraph, there is hereby imposed a tax on the exempt arbitrage profits of such organization.

"(ii) Rate of tax, etc.—The tax imposed by clause (i)—

"(I) shall be the amount of tax which would be imposed by section 11 of such Code if the exempt arbitrage profits were taxable income (and there were no other taxable income), and

"(II) shall be imposed for the first taxable year of the tax-exempt use period (as defined in section 168(j)(4)(E)(ii) of such Code).

"(C) Exempt arbitrage profits.—

"(i) In general.—For purposes of this paragraph, the term exempt arbitrage profits means the aggregate amount described in clauses (i) and (ii) of subparagraph (D) of section 103(c)(6) of such Code for all taxable years for which the organization was exempt from tax under section 501(a) of such Code with respect to obligations—

"(I) associated with property described in section 168(j)(4)(E)(i)(I), and

"(II) issued before January 1, 1985.

"(ii) Application of section 103(b)(6).—For purposes of this paragraph, section 103(b)(6) of such Code shall apply to obligations issued before January 1, 1985, but the amount described in clauses (i) and (ii) of subparagraph (D) thereof shall be determined without regard to clauses (i)(II) and (ii) of subparagraph (F) thereof.

"(D) Other laws applicable.—

"(i) In general.—Except as provided in clause (ii), all provisions of law, including penalties, applicable with respect to the tax imposed by section 11 of such Code shall apply with respect to the tax imposed by this paragraph.

"(ii) No credits against tax, etc.—The tax imposed by this paragraph shall not be treated as imposed by section 11 of such Code for purposes of—

"(I) part VI of subchapter A of chapter 1 of such Code (relating to minimum tax for tax preferences), and

"(II) determining the amount of any credit allowable under subpart A of part IV of such subchapter.

"(E) Election.—Any election under subparagraph (A)—

"(i) shall be made at such time and in such manner as the Secretary may prescribe,

"(ii) shall apply to any successor organization which is engaged in substantially similar activities, and

"(iii) once made, shall be irrevocable.

"(17) Certain transitional leased property.—The amendments made by this section shall not apply to property described in section 168(c)(2)(D) of the Internal Revenue Code of 1954, as in effect on the day before the date of the enactment of this Act [July 18, 1984], and which is described in any of the following subparagraphs:

"(A) Property is described in this subparagraph if such property is leased to a university, and—

"(i) on June 16, 1983, the Board of Administrators of the university adopted a resolution approving the rehabilitation of the property in connection with an overall campus development program; and

"(ii) the property houses a basketball arena and university offices.

"(B) Property is described in this subparagraph if such property is leased to a charitable organization, and—

"(i) on August 21, 1981, the charitable organization acquired the property, with a view towards rehabilitating the property; and

"(ii) on June 12, 1982, an arson fire caused substantial damage to the property, delaying the planned rehabilitation.

"(C) Property is described in this subparagraph if such property is leased to a corporation that is described in section 501(c)(3) of the Internal Revenue Code of 1954 (relating to organizations exempt from tax) pursuant to a contract—

"(i) which was entered into on August 3, 1983; and

"(ii) under which the corporation first occupied the property on December 22, 1983.

"(D) Property is described in this subparagraph if such property is leased to an educational institution for use as an Arts and Humanities Center and with respect to which—

"(i) in November 1982, an architect was engaged to design a planned renovation;

"(ii) in January 1983, the architectural plans were completed;

"(iii) in December 1983, a demolition contract was entered into; and

"(iv) in March 1984, a renovation contract was entered into.

"(E) Property is described in this subparagraph if such property is used by a college as a dormitory, and—

"(i) in October 1981, the college purchased the property with a view towards renovating the property;

"(ii) renovation plans were delayed because of a zoning dispute; and

"(iii) in May 1983, the court of highest jurisdiction in the State in which the college is located resolved the zoning dispute in favor of the college.

"(F) Property is described in this subparagraph if such property is a fraternity house related to a university with respect to which—

"(i) in August 1982, the university retained attorneys to advise the university regarding the rehabilitation of the property;

"(ii) on January 21, 1983, the governing body of the university established a committee to develop rehabilitation plans;

"(iii) on January 10, 1984, the governor of the state in which the university is located approved historic district designation for an area that includes the property; and

"(iv) on February 2, 1984, historic preservation certification applications for the property were filed with a historic landmarks commission.

"(G) Property is described in this subparagraph if such property is leased to a retirement community with respect to which—

"(i) on January 5, 1977, a certificate of incorporation was filed with the appropriate authority of the state in which the retirement community is located; and

"(ii) on November 22, 1983, the Board of Trustees adopted a resolution evidencing the intention to begin immediate construction of the property.

"(H) Property is described in this subparagraph if such property is used by a university, and—

"(i) in July 1982, the Board of Trustees of the university adopted a master plan for the financing of the property; and

"(ii) as of August 1, 1983, at least $60,000 in private expenditures had been expended in connection with the property.

"(I) Property is described in this subparagraph if such property is used by a university as a fine arts center and the Board of Trustees of such university authorized the sale-leaseback agreement with respect to such property on March 7, 1984.

"(J) Property is described in this subparagraph if such property is used by a tax-exempt entity as an international trade center, and

"(i) prior to 1982, an environmental impact study for such property was completed;

"(ii) on June 24, 1981, a developer made a written commitment to provide one-third of the financing for the development of such property; and

"(iii) on October 20, 1983, such developer was approved by the Board of Directors of the tax-exempt entity.

"(K) Property is described in this subparagraph if such property is used by university of osteopathic medicine and health sciences, and on or before December 31, 1983, the Board of Trustees of such university approved the construction of such property.

"(L) Property is described in this subparagraph if such property is used by a tax-exempt entity, and—

"(i) such use is pursuant to a lease with a taxpayer which placed substantial improvements in service;

"(ii) on May 23, 1983, there existed architectural plans and specifications (within the meaning of sec. 48(g)(1)(C)(ii) of the Internal Revenue Code of 1954); and

"(iii) prior to May 23, 1983, at least 10 percent of the total cost of such improvements was actually paid or incurred.

"(M) Property is described in this subparagraph if such property is used as a convention center and on June 2, 1983, the City Council of the city in which the center is located provided for over $6 million for the project.

"(18) Special rule for amendment made by subsection (c)(1).—

"(A) In general.—The amendment made by subsection (c)(1) [enacting section 48(g)(2)(B)(vi) of this title] shall not apply to property—

"(i) leased by the taxpayer on or before November 1, 1983, or

"(ii) leased by the taxpayer after November 1, 1983, if on or before such date the taxpayer entered into a written binding contract requiring the taxpayer to lease such property.

"(B) Limitation.—Subparagraph (A) shall apply to the amendment made by subsection (c)(1) only to the extent such amendment relates to property described in subclause (II), (III), or (IV) of section 168(j)(3)(B)(ii) of the Internal Revenue Code of 1954 (as added by this section).

"(19) Special rule for certain energy management contracts.—

"(A) In general.—The amendments made by subsection (e) [amending section 7701 of this title] shall not apply to property used pursuant to an energy management contract that was entered into prior to May 1, 1984.

"(B) Definition of energy management contract.—For purposes of subparagraph (A), the term 'energy management contract' means a contract for the providing of energy conservation or energy management services.

"(20) Definitions.—For purposes of this subsection—

"(A) Tax-exempt entity.—The term 'tax-exempt entity' has the same meaning as when used in section 168(j) of the Internal Revenue Code of 1954 (as added by this section), except that such term shall include any related entity (within the meaning of such section).

"(B) Treatment of improvements.—

"(i) In general.—For purposes of this subsection, an improvement to property shall not be treated as a separate property unless such improvement is a substantial improvement with respect to such property.

"(ii) Substantial improvement.—For purposes of clause (i), the term 'substantial improvement' has the meaning given such term by section 168(f)(1)(C) of such Code determined—

"(I) by substituting '20 percent' for '25 percent' in clause (ii) thereof, and

"(II) without regard to clause (iii) thereof.

"(C) Foreign person or entity.—The term 'foreign person or entity' has the meaning given to such term by subparagraph (C) of section 168(j)(4) of such Code (as added by this section). For purposes of this subparagraph and subparagraph (A), such subparagraph (C) shall be applied without regard to the last sentence thereof.

"(D) Leases and subleases.—The determination of whether there is a lease or sublease to a tax-exempt entity shall take into account sections 168(j)(6)(A), 168(j)(8)(A), and 7701(e) of the Internal Revenue Code of 1954 (as added by this section)."

Section 32(c) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (f)(13) of this section] shall apply to agreements described in section 168(f)(13) of the Internal Revenue Code of 1954 (as added by subsection (a)) entered into more than 90 days after the date of the enactment of this Act [July 18, 1984]."

Section 111(g) of Pub. L. 98-369 provided that:

"(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section [amending sections 48, 51, 168, 312, and 1245 of this title] shall apply with respect to property placed in service by the taxpayer after March 15, 1984.

"(2) Exception.—The amendments made by this section shall not apply to property placed in service by the taxpayer before January 1, 1987, if—

"(A) the taxpayer or a qualified person entered into a binding contract to purchase or construct such property before March 16, 1984, or

"(B) construction of such property was commenced by or for the taxpayer or a qualified person before March 16, 1984.

For purposes of this paragraph the term 'qualified person' means any person who transfers his rights in such a contract or such property to the taxpayer, but only if such property is not placed in service by such person before such rights are transferred to the taxpayer.

"(3) Special rules for application of paragraph (2).—

"(A) Certain inventory.—In the case of any property which—

"(i) is held by a person as property described in section 1221(1) [26 U.S.C. 1221(1)], and

"(ii) is disposed of by such person before January 1, 1985,

such person shall not, for purposes of paragraph (2), be treated as having placed such property in service before such property is disposed of merely because such person rented such property or held such property for rental. No deduction for depreciation or amortization shall be allowed to such person with respect to such property.

"(B) Certain property financed by bonds.—In the case of any property with respect to which—

"(i) bonds were issued to finance such property before 1984, and

"(ii) an architectural contract was entered into before March 16, 1984,

paragraph (2) shall be applied by substituting 'May 2' for 'March 16'.

"(4) Special rule for components.—For purposes of applying section 168(f)(1)(B) of the Internal Revenue Code of 1954 (as amended by this section) to components placed in service after December 31, 1986, property to which paragraph (2) applies shall be treated as placed in service by the taxpayer before March 16, 1984.

"(5) Special rule for mid-month convention.—In the case of the amendment made by subsection (d) [amending subsec. (b)(2)(A), (B) of this section]—

"(A) paragraph (1) shall be applied by substituting 'June 22, 1984' for 'March 15, 1984', and

"(B) paragraph (2) shall be applied by substituting 'June 23, 1984' for 'March 15, 1984' each place it appears."

Amendment by section 113(a)(2) of Pub. L. 98-369 applicable to property placed in service after Mar. 15, 1984, in taxable years ending after such date, see section 113(c)(1) of Pub. L. 98-369, set out as a note under section 48 of this title.

Section 113(c)(2) of Pub. L. 98-369 provided that:

"(A) The amendments made by paragraphs (1) of subsection (b) [enacting subsec. (e)(5) of this section] shall apply to any motion picture film or video tape placed in service before, on, or after the date of the enactment of this Act [July 18, 1984], except that such amendment shall not apply to—

"(i) any qualified film placed in service by the taxpayer before March 15, 1984, if the taxpayer treated such film as recovery property for purposes of section 168 of the Internal Revenue Code of 1954 on a return of tax under chapter 1 of such Code filed before March 16, 1984, or

"(ii) any qualified film placed in service by the taxpayer before January 1, 1985, if—

"(I) 20 percent or more of the production costs of such film were incurred before March 16, 1984, and

"(II) the taxpayer treats such film as recovery property for purposes of section 168 of such Code.

No credit shall be allowable under section 38 of such Code with respect to any qualified film described in clause (ii), except to the extent provided in section 48(k) of such Code.

"(B) The amendment made by paragraph (2) and (3) of subsection (b) [amending sections 46, 48, and 168 of this title] shall apply as if included in the amendments made by section 201(a), 211(a)(1), and 211(f)(1) of the Economic Recovery Tax Act of 1981 [sections 201(a), 211(a)(1), and 211(f)(1) of Pub. L. 97-34, enacting this section and amending section 46 of this title].

"(C) The amendment made by paragraph (4) of subsection (b) [amending section 48 of this title] shall take effect as if included in the amendments made by section 205(a)(1) of the Tax Equity and Fiscal Responsibility Act of 1982 [section 205(a)(1) of Pub. L. 97-248, amending section 48 of this title].

"(D) For purposes of this paragraph, the terms 'qualified film' and 'production costs' have the same respective meanings as when used in section 48(k) of the Internal Revenue Code of 1954."

Amendment by section 474(r)(7) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 612(e) of Pub. L. 98-369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98-369, set out as an Effective Date note under section 25 of this title.

Amendment of subsec. (f)(12) by section 628(b) of Pub. L. 98-369 applicable to property placed in service after Dec. 31, 1983, with certain conditions and exceptions, see section 631(b) of Pub. L. 98-369, set out as a note under section 103 of this title.

Effective Date of 1982 Amendments

Section 208(d) of Pub. L. 97-248, as amended by Pub. L. 97-448, title III, § 306(a)(4), Jan. 12, 1983, 96 Stat.

2400; Pub. L. 98-369, div. A, title X, § 1067(a), July 18, 1984, 98 Stat. 1048, provided that:

[See main edition for text of (1) and (2)]

“(3) Transitional safe harbor lease property.—For purposes of this subsection, the term ‘transitional safe harbor lease property’ means property described in any of the following subparagraphs:

[See main edition for text of (A) to (F)]

“(G) Coal gasification facilities.—

“(i) In general.—Property is described in this subparagraph if such property—

“(I) is used directly in connection with the manufacture or production of low sulfur gaseous fuel from coal, and

“(II) would be described in subparagraph (A) if ‘July 1, 1984’ were substituted for ‘January 1, 1983’.

“(ii) Special rule.—For purposes of determining whether property described in this subparagraph is described in subparagraph (A), such property shall be treated as having been acquired during the period referred to in subparagraph (A)(ii) if at least 20 percent of the cost of such property is paid during such period.

“(iii) Limitation on amount.—Clause (i) shall only apply to the lease of an undivided interest in the property in an amount which does not exceed the lesser of—

“(I) 50 percent of the cost basis of such property, or

“(II) $67,500,000.

“(iv) Placed in service.—In the case of property to which this subparagraph applies—

“(I) such property shall be treated as placed in service when the taxpayer receives an operating permit with respect to such property from a State environmental protection agency, and

“(II) the term of the lease with respect to such property shall be treated as being 5 years.

[See main edition for text of (4) to (7)]

[Section 1067(c) of Pub. L. 98-369 provided that: “The amendment made by subsection (a) [enacting section 208(d)(3)(G) of Pub. L. 97-248] shall take effect as if included in the provision of section 208(d)(3) of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248].”

Section 209(d) of Pub. L. 97-248; as amended by Pub. L. 98-369, div. A, title I, § 12(a)(1), (2), July 18, 1984, 98 Stat. 503, provided that:

“(1) Subsection (a).—

“(A) In general.—Except as provided in subparagraph (B) and paragraph (2), the amendments made by this section [amending subsecs. (f)(8) and (i) of this section and section 48(b) of this title] shall apply to agreements entered into after December 31, 1987.

“(B) Special rule for farm property aggregating $150,000 or less.—

“(i) In general.—The amendments made by subsection (a) [amending subsec. (f)(8)] shall also apply to any agreement entered into after July 1, 1982, and before January 1, 1988, if the property subject to such agreement is section 38 property which is used for farming purposes (within the meaning of section 2032A(e)(5)).

[See main edition for text of (ii), (2)]

Termination of Safe Harbor Leasing Rules

Section 12(b) of Pub. L. 98-369 provided that: “Paragraph (8) of section 168(f) of the Internal Revenue Code of 1954 (relating to special rules for leasing), as in effect after the amendments made by section 208 of the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248] but before the amendments made by section 209 of such Act, shall not apply to agreements entered into after December 31, 1983. The preceding sentence shall not apply to property described in paragraph (3)(G) or (5) of section 208(d) of such Act [set out as an Effective Date of 1982 Amendments note above].”

Transitional Rules for 1984 Amendment

Section 12(c) of Pub. L. 98-369 provided that:

“(1) In general.—The amendments made by subsection (a) [amending subsecs. (f)(8)(B)(ii)(I) and (i)(4)(A)(i), (ii) of this section and amending section 208(d) of Pub. L. 97-248, set out as an Effective Date of 1982 Amendments note above] shall not apply with respect to any property if—

“(A) a binding contract to acquire or to construct such property was entered into by or for the lessee before March 7, 1984, or

“(B) such property was acquired by the lessee, or the construction of such property was begun, by or for the lessee, before March 7, 1984.

“(2) Special rule for certain automotive property.—

“(A) In general.—The amendments made by subsection (a) shall not apply to property which is placed in service before January 1, 1988—

“(i) which is automotive manufacturing property, and

“(ii) with respect to which the lessee is a qualified lessee (within the meaning of section 208(d)(6) of the Tax Equity and Fiscal Responsibility Act of 1982) [Pub. L. 97-248, set out as an Effective Date of 1982 Amendments note above].

“(B) $150,000,000 limitation.—The provisions of subparagraph (A) shall not apply to any agreement if the sum of—

“(i) the cost basis of the property subject to the agreement, plus

“(ii) the cost basis of any property subject to an agreement to which subparagraph (A) previously applied and with respect to which the lessee was the lessee under the agreement described in clause (i) (or any related person within the meaning of section 168(e)(4)(D) of the Internal Revenue Code of 1954),

exceeds $150,000,000.

“(C) Automotive manufacturing property.—For purposes of this paragraph, the term ‘automotive manufacturing property’ means—

“(i) property used principally by the taxpayer directly in connection with the trade or business of the taxpayer of the manufacturing of automobiles or trucks (other than truck tractors) with a gross vehicle weight of 13,000 pounds or less,

“(ii) machinery, equipment, and special tools of the type included in former depreciation range guideline classes 37.11 and 37.12, and

“(iii) any special tools owned by the taxpayer which are used by a vendor solely for the production of component parts for sale to the taxpayer.

“(3) Special rule for certain cogeneration facilities.—The amendments made by subsection (a) shall not apply with respect to any property which is part of a coal-fired cogeneration facility—

“(A) for which an application for certification was filed with the Federal Energy Regulatory Commission on December 30, 1983,

“(B) for which an application for a construction permit was filed with a State environmental protection agency on February 20, 1984, and

“(C) which is placed in service before January 1, 1986.”

Special Leasing Rule Regarding Coal Gasification Facilities

Section 1067(b) of Pub. L. 98-369 provided that: “The amount of any recapture under section 47 of the Internal Revenue Code of 1954 with respect to the credit allowed under section 38 of such Code with respect to progress expenditures (within the meaning of section 46(d) of such Code) shall apply only to the percentage of the cost basis of the coal gasification facility to which the amendment made by subsection (a) [amending section 208(d) of Pub. L. 97-248, set out as an Effective Date of 1982 Amendments note above] applies."

MOTOR VEHICLE OPERATING LEASES

Section 210 of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title I, § 32(b), title VII, § 712(d), July 18, 1984, 98 Stat. 531, 947, provided that:

"(a) IN GENERAL.—In the case of any qualified motor vehicle agreement entered into on or before the 90th day after the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984], the fact that such agreement contains a terminal rental adjustment clause shall not be taken into account in determining whether such agreement is a lease.

"(b) DEFINITIONS.—For purposes of this section—

[*See main edition for text of* (*1*)]

"(2) TERMINAL RENTAL ADJUSTMENT CLAUSE.—The term 'terminal rental adjustment clause' means a provision of an agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of such property. Such term also includes a provision of an agreement which requires a lessee who is a dealer in motor vehicles to purchase the motor vehicle for a predetermined price and then resell such vehicle where such provision achieves substantially the same results as a provision described in the preceding sentence.

"(c) EXCEPTION WHERE LESSEE TOOK POSITION ON RETURN.—Subsection (a) shall not apply to deny a deduction for interest paid or accrued claimed by a lessee with respect to a qualified motor vehicle agreement on a return of tax imposed by chapter 1 of the Internal Revenue Code of 1954 which was filed before the date of the enactment of this Act [Sept. 3, 1982] or to deny a credit for investment in depreciable property claimed by the lessee on such a return pursuant to an agreement with the lessor that the lessor would not claim the credit."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 47, 48, 57, 167, 280F, 291, 305, 312, 381, 461, 465, 467, 514, 1245, 4162, 6111, 7701 of this title; title 10 section 2401.

§ 170. Charitable, etc., contributions and gifts

(a) Allowance of deduction

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Future interests in tangible personal property

For purposes of this section, payment of a charitable contribution which consists of a future interest in tangible personal property shall be treated as made only when all intervening interests in, and rights to the actual possession or enjoyment of, the property have expired or are held by persons other than the taxpayer or those standing in a relationship to the taxpayer described in section 267(b) or 707(b). For purposes of the preceding sentence, a fixture which is intended to be severed from the real property shall be treated as tangible personal property.

(b) Percentage limitations

(1) Individuals

In the case of an individual, the deduction provided in subsection (a) shall be limited as provided in the succeeding subparagraphs.

(A) General rule

Any charitable contribution to—

[*See main edition for text of* (*i*) *to* (*vi*)]

(vii) a private foundation described in subparagraph (E), or

[*See main edition for text of* (*viii*)]

shall be allowed to the extent that the aggregate of such contributions does not exceed 50 percent of the taxpayer's contribution base for the taxable year.

(B) Other contributions

Any charitable contribution other than a charitable contribution to which subparagraph (A) applies shall be allowed to the extent that the aggregate of such contributions does not exceed the lesser of—

(i) 30 percent of the taxpayer's contribution base for the taxable year, or

(ii) the excess of 50 percent of the taxpayer's contribution base for the taxable year over the amount of charitable contributions allowable under subparagraph (A) (determined without regard to subparagraph (C)).

If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time.

(C) Special limitation with respect to contributions described in subparagraph (A) of certain capital gain property

(i) In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies).

[*See main edition for text of* (*ii*) *to* (*iv*)]

(D) Special limitation with respect to contributions of capital gain property to organizations not described in subparagraph (A)

(i) In general

In the case of charitable contributions (other than charitable contributions to which subparagraph (A) applies) of capital gain property, the total amount of such contributions of such property taken into account under subsection (a) for any taxable year shall not exceed the lesser of—

(I) 20 percent of the taxpayer's contribution base for the taxable year, or

(II) the excess of 30 percent of the taxpayer's contribution base for the taxable year over the amount of the contributions of capital gain property to which subparagraph (C) applies.

For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions.

(ii) Carryover

If the aggregate amount of contributions described in clause (i) exceeds the limitation of clause (i), such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution of capital gain property to which clause (i) applies in each of the 5 succeeding taxable years in order of time.

(E) Certain private foundations

The private foundations referred to in subparagraph (A)(vii) and subsection (e)(1)(B) are—

(i) a private operating foundation (as defined in section 4942(j)(3)),

(ii) any other private foundation (as defined in section 509(a)) which, not later than the 15th day of the third month after the close of the foundation's taxable year in which contributions are received, makes qualifying distributions (as defined in section 4942(g), without regard to paragraph (3) thereof), which are treated, after the application of section 4942(g)(3), as distributions out of corpus (in accordance with section 4942(h)) in an amount equal to 100 percent of such contributions, and with respect to which the taxpayer obtains adequate records or other sufficient evidence from the foundation showing that the foundation made such qualifying distributions, and

(iii) a private foundation all of the contributions to which are pooled in a common fund and which would be described in section 509(a)(3) but for the right of any substantial contributor (hereafter in this clause called "donor") or his spouse to designate annually the recipients, from among organizations described in paragraph (1) of section 509(a), of the income attributable to the donor's contribution to the fund and to direct (by deed or by will) the payment, to an organization described in such paragraph (1), of the corpus in the common fund attributable to the donor's contribution; but this clause shall apply only if all of the income of the common fund is required to be (and is) distributed to one or more organizations described in such paragraph (1) not later than the 15th day of the third month after the close of the taxable year in which the income is realized by the fund and only if all of the corpus attributable to any donor's contribution to the fund is required to be (and is) distributed to one or more of such organizations not later than one year after his death or after the death of his surviving spouse if she has the right to designate the recipients of such corpus.

(F) Contribution base defined

For purposes of this section, the term "contribution base" means adjusted gross income (computed without regard to any net operating loss carryback to the taxable year under section 172).

[*See main edition for text of* (*2*); (*c*) *and* (*d*)]

(e) Certain contributions of ordinary income and capital gain property

(1) General rule

The amount of any charitable contribution of property otherwise taken into account under this section shall be reduced by the sum of—

[*See main edition for text of* (*A*)]

(B) in the case of a charitable contribution—

[*See main edition for text of* (*i*)]

(ii) to or for the use of a private foundation (as defined in section 509(a)), other than a private foundation described in subsection (b)(1)(E),

40 percent (28/46, in the case of a corporation) of the amount of gain which would have been long-term capital gain if the property contributed had been sold by the taxpayer at its fair market value (determined at the time of such contribution).

For purposes of applying this paragraph (other than in the case of gain to which section 617(d)(1), 1245(a), 1250(a), 1252(a) or 1254(a) applies), property which is property used in the trade or business (as defined in section 1231(b)) shall be treated as a capital asset.

[*See main edition for text of* (*2*)]

(3) Special rule for certain contributions of inventory and other property

[*See main edition for text of* (*A*) *and* (*B*)]

(C) This paragraph shall not apply to so much of the amount of the gain described in paragraph (1)(A) which would be long-term capital gain but for the application of sections 617, 1245, 1250, or 1252.

[*See main edition for text of* (*4*)]

(5) Special rule for contributions of stock for which market quotations are readily available

(A) In general

Subparagraph (B)(ii) of paragraph (1) shall not apply to any contribution of qualified appreciated stock.

(B) Qualified appreciated stock

Except as provided in subparagraph (C), for purposes of this paragraph, the term "qualified appreciated stock" means any stock of a corporation—

(i) for which (as of the date of the contribution) market quotations are readily available on an established securities market, and

(ii) which is capital gain property (as defined in subsection (b)(1)(C)(iv)).

(C) Donor may not contribute more than 10 percent of stock of corporation

(i) In general

In the case of any donor, the term "qualified appreciated stock" shall not include any stock of a corporation contributed by the donor in a contribution to which paragraph (1)(B)(ii) applies (determined without regard to this paragraph) to the extent that the amount of the stock so contributed (when increased by the aggregate amount of all prior such contributions by the donor of stock in such corporation) exceeds 10 percent (in value) of all of the outstanding stock of such corporation.

(ii) Special rule

For purposes of clause (i), an individual shall be treated as making all contributions made by any member of his family (as defined in section 267(c)(4)).

(D) Termination

This paragraph shall not apply to contributions made after December 31, 1994.

(f) Disallowance of deduction in certain cases and special rules

[*See main edition for text of (1) to (6)*]

(7) Reformations to comply with paragraph (2)

(A) In general

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e)(3) to apply

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

[*See main edition for text of (g)*]

(h) Qualified conservation contribution

[*See main edition for text of (1) to (4)*]

(5) Exclusively for conservation purposes

For purposes of this subsection—

[*See main edition for text of (A)*]

(B) No surface mining permitted

(i) In general

Except as provided in clause (ii), in the case of a contribution of any interest where there is a retention of a qualified mineral interest, subparagraph (A) shall not be treated as met if at any time there may be extraction or removal of minerals by any surface mining method.

(ii) Special rule

With respect to any contribution of property in which the ownership of the surface estate and mineral interests were separated before June 13, 1976, and remain so separated, subparagraph (A) shall be treated as met if the probability of surface mining occurring on such property is so remote as to be negligible.

[*See main edition for text of (6); (i)*]

(j) Standard mileage rate for use of passenger automobile

For purposes of computing the deduction under this section for use of a passenger automobile the standard mileage rate shall be 12 cents per mile.

(k) Disallowance of deductions in certain cases

For disallowance of deductions for contributions to or for the use of communist controlled organizations, see section 11(a) of the Internal Security Act of 1950 (50 U.S.C. 790).

(*l*) Other cross references

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For charitable contributions of estates and trusts, see section 642(c).

(3) For nondeductibility of contributions by common trust funds, see section 584.

(4) For charitable contributions of partners, see section 702.

(5) For charitable contributions of nonresident aliens, see section 873.

(6) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for the use of the United States, see section 6973 of title 10, United States Code.

(7) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(8) For treatment of gifts of money accepted by the Attorney General for credit to the "Commissary Funds Federal Prisons" as gifts to or for the use of the United States, see section 4043 of title 18, United States Code.

(9) For charitable contributions to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 174(b)(5)(A), title III, § 301(a)-(c), title IV, § 492(b)(1), title X, §§ 1022(b), 1031(a), 1032(b)(1), 1035(a), 98 Stat. 707, 777, 778, 854, 1028, 1033, 1042.)

REFERENCES IN TEXT

Section 25 of the State Department Basic Authorities Act of 1956, referred to in subsec. (*l*)(7), is classified to section 2697 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-369, § 174(b)(5)(A), substituted "section 267(b) or 707(b)" for "section 267(b)".

Subsec. (b)(1)(A)(vii). Pub. L. 98-369, § 301(c)(2)(A), substituted "subparagraph (E)" for "subparagraph (D)".

Subsec. (b)(1)(B). Pub. L. 98-369, § 301(a)(2), added following cl. (ii) "If the aggregate of such contributions exceeds the limitation of the preceding sentence, such excess shall be treated (in a manner consistent with the rules of subsection (d)(1)) as a charitable contribution (to which subparagraph (A) does not apply) in each of the 5 succeeding taxable years in order of time."

Subsec. (b)(1)(B)(i). Pub. L. 98-369, § 301(a)(1), substituted "30 percent" for "20 percent".

Subsec. (b)(1)(C). Pub. L. 98-369, § 301(c)(2)(B), inserted "described in subparagraph (A)" in subpar. (C) heading, and in text of cl. (i) substituted "In the case of charitable contributions described in subparagraph (A) of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this subparagraph applies shall be taken into account after all other charitable contributions (other than charitable contributions to which subparagraph (D) applies)" for "In the case of charitable contributions of capital gain property to which subsection (e)(1)(B) does not apply, the total amount of contributions of such property which may be taken into account under subsection (a) for any taxable year shall not exceed 30 percent of the taxpayer's contribution base for such year. For purposes of this subsection, contributions of capital gain property to which this paragraph applies shall be taken into account after all other charitable contributions".

Subsec. (b)(1)(D) to (F). Pub. L. 98-369, § 301(c)(1), added subpar. (D) and redesignated former subpars. (D) and (E) as (E) and (F), respectively.

Subsec. (e)(1). Pub. L. 98-369, § 492(b)(1)(A), struck out in provision following subpar. (B) "1251(c)," after "1250(a)".

Subsec. (e)(1)(B)(ii). Pub. L. 98-369, § 301(c)(2)(C), substituted "subsection (b)(1)(E)" for "subsection (b)(1)(D)".

Subsec. (e)(3)(C). Pub. L. 98-369, § 492(b)(1)(B), struck out "1251," after "1250,".

Subsec. (e)(5). Pub. L. 98-369, § 301(b), added par. (5).

Subsec. (f)(7). Pub. L. 98-369, § 1022(b), added par. (7).

Subsec. (h)(5)(B). Pub. L. 98-369, § 1035(a), designated existing provisions as cl. (i), in cl. (i) as so designated added "Except as provided in clause (ii)", and added cl. (ii).

Subsec. (j). Pub. L. 98-369, § 1031(a), added subsec. (j). Former subsec. (j) redesignated (k).

Subsec. (k). Pub. L. 98-369, § 1031(a), redesignated subsec. (j) as (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 98-369, § 1032(b)(1), added par. (1) and redesignated former pars. (1) to (8) as (2) to (9), respectively.

Pub. L. 98-369, § 1031(a), redesignated subsec. (k) as (*l*).

Effective Date of 1984 Amendment

Amendment by section 174(b)(5)(A) of Pub. L. 98-369, applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98-369, set out as a note under section 267 of this title.

Section 301(d) of Pub. L. 98-369 provided that:

"(1) Subsections (a) and (c).—The amendments made by subsections (a) and (c) [amending subsecs. (b)(1) and (e)(1) of this section] shall apply to contributions made in taxable years ending after the date of the enactment of this Act [July 18, 1984].

"(2) Subsection (b).—The amendment made by subsection (b) [enacting subsec. (e)(5) of this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Section 492(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 170, 341, 453B, 751, and 1252 of this title and repealing section 1251 of this title] shall apply to taxable years beginning after December 31, 1983."

Amendment by section 1022(b) of Pub. L. 98-369 applicable to reformations after Dec. 31, 1978, except inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98-369, set out as a note under section 2055 of this title.

Section 1031(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [enacting subsec. (j) of this section and redesignating former subsecs. (j) and (k) as (k) and (*l*)] shall apply to taxable years beginning after December 31, 1984."

Section 1032(c) of Pub. L. 98-369 provided that: "The amendments made by subsections (a) and (b) [amending sections 170, 501, 2055, and 2522 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984]."

Section 1035(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (h)(5)(B) of this section] shall apply to contributions made after the date of the enactment of this Act [July 18, 1984]."

Effective Date of 1983 Amendments

For effective date of amendment by Pub. L. 97-473, see section 204(1) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

Substantiation of Charitable Contributions of Property

Section 155(a) of Pub. L. 98-369 provided that:

"(1) In general.—Not later than December 31, 1984, the Secretary shall prescribe regulations under section 170(a)(1) of the Internal Revenue Code of 1954, which require any individual, closely held corporation, or personal service corporation claiming a deduction under section 170 of such Code for a contribution described in paragraph (2)—

"(A) to obtain a qualified appraisal for the property contributed,

"(B) to attach an appraisal summary to the return on which such deduction is first claimed for such contribution, and

"(C) to include on such return such additional information (including the cost basis and acquisition date of the contributed property) as the Secretary may prescribe in such regulations.

Such regulations shall require the taxpayer to retain any qualified appraisal.

"(2) Contributions to which paragraph (1) applies.—For purposes of paragraph (1), a contribution is described in this paragraph—

"(A) if such contribution is of property (other than publicly traded securities), and

"(B) if the claimed value of such property (plus the claimed value of all similar items of property donated to 1 or more donees) exceeds $5,000.

In the case of any property which is nonpublicly traded stock, subparagraph (B) shall be applied by substituting '$10,000' for '$5,000'.

"(3) Appraisal summary.—For purposes of this subsection, the appraisal summary shall be in such form and include such information as the Secretary prescribes by regulations. Such summary shall be signed by the qualified appraiser preparing the qualified appraisal and shall contain the TIN of such appraiser. Such summary shall be acknowledged by the donee of the property appraised in such manner as the Secretary prescribes in such regulations.

"(4) Qualified appraisal.—The term 'qualified appraisal' means an appraisal prepared by a qualified appraiser which includes—

"(A) a description of the property appraised,

"(B) the fair market value of such property on the date of contribution and the specific basis for the valuation, "(C) a statement that such appraisal was prepared for income tax purposes,

"(D) the qualifications of the qualified appraiser,

"(E) the signature and TIN of such appaiser, and

"(F) such additional information as the Secretary prescribes in such regulations.

"(5) QUALIFIED APPRAISER.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'qualified appraiser' means an appraiser qualified to make appraisals of the type of property donated, who is not—

"(i) the taxpayer,

"(ii) a party to the transaction in which the taxpayer acquired the property,

"(iii) the donee,

"(iv) any person employed by any of the foregoing persons or related to any of the foregoing persons under section 267(b) of the Internal Revenue Code of 1954, or

"(v) to the extent provided in such regulations, any person whose relationship to the taxpayer would cause a reasonable person to question the independence of such appraiser.

"(B) APPRAISAL FEES.—For purposes of this subsection, an appraisal shall not be treated as a qualified appraisal if all or part of the fee paid for such appraisal is based on a percentage of the appraised value of the property. The preceding sentence shall not apply to fees based on a sliding scale that are paid to a generally recognized association regulating appraisers.

"(6) OTHER DEFINITIONS.—For purposes of this subsection—

"(A) CLOSELY HELD CORPORATION.—The term 'closely held corporation' means any corporation (other than an S corporation) with respect to which the stock ownership requirement of paragraph (2) of section 542(a) of such Code is met.

"(B) PERSONAL SERVICE CORPORATION.—The term 'personal service corporation' means any corporation (other than an S corporation) which is a service organization (within the meaning of section 414(m)(3) of such Code).

"(C) PUBLICLY TRADED SECURITIES.—The term 'publicly traded securities' means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

"(D) NONPUBLICLY TRADED STOCK.—The term 'nonpublicly traded stock' means any stock of a corporation which is not a publicly traded security.

"(E) THE SECRETARY.—The term 'Secretary' means the Secretary of the Treasury or his delegate."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21, 30, 55, 63, 79, 101, 103, 108, 117, 127, 151, 152, 162, 381, 410, 467, 501, 507 to 509, 512, 514, 535, 545, 556, 584, 642, 664, 674, 677, 702, 703, 805, 873, 882, 931, 1011, 1255, 1303, 1398, 2039, 2055, 2056, 2503, 2517, 4041, 4221, 4253, 4911, 4940, 4941, 4942, 4944, 4945, 4947, 4948, 4994, 5214, 6033, 6050L, 6659, 7428, 7611, 7871 of this title; title 2 sections 31-1, 439a; title 12 section 3015; title 16 sections 1246, 1285, 3502; title 20 sections 76m, 954; title 22 sections 2876, 3307, 4603; title 29 section 1052; title 42 sections 2996b, 10702.

§ 171. Amortizable bond premium

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 75, 163, 805, 811, 822, 852, 1016 of this title.

§ 172. Net operating loss deduction

[See main edition for text of (a)]

(b) Net operating loss carrybacks and carryovers

(1) Years to which loss may be carried

(A) Except as provided in subparagraphs (D), (E), (F), (G), (H), (I), (J), and (K), a net operating loss for any taxable year shall be a net operating loss carryback to each of the 3 taxable years preceding the taxable year of such loss.

[See main edition for text of (B) to (G)]

(H) In the case of a net operating loss of the Federal National Mortgage Association for any taxable year beginning after December 31, 1981, or a net operating loss of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984—

(i) such loss, to the extent it exceeds the mortgage disposition loss (within the meaning of subsection (i)), shall be—

(I) a net operating loss carryback to each of the 10 taxable years preceding the taxable year of the loss, and

(II) a net operating loss carryover to each of the 5 taxable years following the taxable year of the loss, and

(ii) the mortgage disposition loss shall be—

(I) a net operating loss carryback to each of the 3 taxable years preceding the taxable year of the loss, and

(II) a net operating loss carryover to each of the 15 taxable years following the taxable year of the loss.

[See main edition for text of (I) and (J)]

(K) Special rule for deferred statutory or tort liability losses.—In the case of a taxpayer which has a deferred statutory or tort liability loss (as defined in subsection (k)) for any taxable year beginning after December 31, 1983, the deferred statutory or tort liability loss shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss.

(2) Amount of carrybacks and carryovers

Except as provided in subsection (g), the entire amount of the net operating loss for any taxable year (hereinafter in this section referred to as the "loss year") shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the taxable income for each of the prior taxable years to which such loss may be carried. For purposes of the preceding sentence, the taxable income for any such prior taxable year shall be computed—

(A) with the modifications specified in subsection (d) other than paragraphs (1), (4), and (5) thereof; and

[See main edition for text of (B)]

and the taxable income so computed shall not be considered to be less than zero. For purposes of this paragraph, if a portion of the net operating loss for the loss year is attributable to a foreign expropriation loss to which paragraph (1)(D) applies, such portion shall be considered to be a separate net operating loss for such year to be applied after the other portion of such net operating loss, and, if a portion of a foreign expropriation loss for the loss year is attributable to a Cuban expropriation loss, such portion shall be considered to be a separate foreign expropriation loss for such year to be applied after the other portion of such foreign expropriation loss.

[*See main edition for text of* (*3*); (c)]

(d) Modifications

The modifications referred to in this section are as follows:

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Nonbusiness deductions of taxpayers other than corporations

In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) any deduction allowed under section 404 to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.

[*See main edition for text of* (*5*)]

(6)[1] In the case of any taxable year for which part II of subchapter M (relating to real estate investment trusts) applies to the taxpayer—

(A) the net operating loss for such taxable year shall be computed by taking into account the adjustments described in section 857(b)(2) (other than the deduction for dividends paid described in section 857(b)(2)(B)); and

(B) where such taxable year is a "prior taxable year" referred to in paragraph (2) of subsection (b), the term "taxable income" in such paragraph shall mean "real estate investment trust taxable income" (as defined in section 857(b)(2)).

(7) Zero bracket amount

In the case of a taxpayer other than a corporation, the zero bracket amount shall be treated as a deduction allowed by this chapter. For purposes of subsection (c)—

(A) the deduction provided by the preceding sentence shall be in lieu of any itemized deductions of the taxpayer, and

(B) such sentence shall not apply to an individual who elects to itemize deductions.

[*See main edition for text of* (e) *to* (g)]

(h) Foreign expropriation loss defined

For purposes of this section—

[*See main edition for text of* (*1*) *to* (*3*)]

(i) Rules relating to mortgage disposition loss of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation

(1) Mortgage disposition loss defined

(A) In general

For purposes of subsection (b)(1)(H) and this subsection, the term "mortgage disposition loss" means for any taxable year the excess (if any) of—

[*See main edition for text of* (i) *and* (ii)]

(B) Mortgage disposition loss cannot exceed the net operating loss for the year

The amount of the mortgage disposition loss for any taxable year shall not be greater than the net operating loss for such year.

[*See main edition for text of* (*C*)]

(2) Coordination with subsection (b)(2)

In applying paragraph (2) of subsection (b), a mortgage disposition loss shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated.

(j) Rules relating to product liability losses

For purposes of this section—

[*See main edition for text of* (*1*) *to* (*3*)]

(k) Definitions and special rules relating to deferred statutory or tort liability losses

For purposes of this section—

(1) Deferred statutory or tort liability loss

The term "deferred statutory or tort liability loss" means, for any taxable year, the lesser of—

(A) the net operating loss for such taxable year, reduced by any portion thereof attributable to—

(i) a foreign expropriation loss, or

(ii) a product liability loss, or

(B) the sum of the amounts allowable as a deduction under this chapter (other than any deduction described in subsection (j)(1)(B)) which—

(i) is taken into account in computing the net operating loss for such taxable year, and

(ii) is for an amount incurred with respect to a liability which arises under a Federal or State law or out of any tort of the taxpayer and—

(I) in the case of a liability arising out of a Federal or State law, the act (or failure to act) giving rise to such liability occurs at least 3 years before the beginning of such taxable year, or

---

[1] So in original. Par. (6) enacted without a heading.

(II) in the case of a liability arising out of a tort, such liability arises out of a series of actions (or failures to act) over an extended period of time a substantial portion of which occurs at least 3 years before the beginning of such taxable year.

A liability shall not be taken into account under the preceding sentence unless the taxpayer used an accrual method of accounting throughout the period or periods during which the acts or failures to act giving rise to such liability occurred.

(2) Special rule for nuclear powerplants

Except as provided in regulations prescribed by the Secretary, that portion of a deferred statutory or tort liability loss which is attributable to amounts incurred in the decommissioning of a nuclear powerplant (or any unit thereof) may, for purposes of subsection (b)(1)(K), be carried back to each of the taxable years during the period—

(A) beginning with the taxable year in which such plant (or unit thereof) was placed in service, and

(B) ending with the taxable year preceding the loss year.

(3) Coordination with subsection (b)(2)

In applying paragraph (2) of subsection (b), a deferred statutory or tort liability loss shall be treated in a manner similar to the manner in which a foreign expropriation loss is treated.

(4) No carryback to taxable years beginning before January 1, 1984

No deferred statutory or tort liability loss may be carried back to a taxable year beginning before January 1, 1984, unless such loss may be carried back to such year without regard to subsection (b)(1)(K).

(*l*) Cross references

(1) For treatment of net operating loss carryovers in certain corporate acquisitions, see section 381.

(2) For special limitation on net operating loss carryovers in case of a corporate change of ownership, see section 382.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 91(d), 177(c), title IV, § 491(d)(5), title VII, § 722(a)(4), 98 Stat. 606, 710, 849, 973.)

AMENDMENTS

1984—Subsec. (b)(1)(A). Pub. L. 98-369, § 91(d)(3)(A), substituted "(J), and (K)" for "and (J)".

Subsec. (b)(1)(H). Pub. L. 98-369, § 177(c)(1)(A), added ", or a net operating loss of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984" in introductory provisions.

Subsec. (b)(1)(H)(i), (ii). Pub. L. 98-369, § 177(c)(1)(B), (C), struck out "FNMA" before "mortgage disposition loss".

Subsec. (b)(1)(K). Pub. L. 98-369, § 91(d)(1), added subpar. (K).

Subsec. (b)(2)(A). Pub. L. 98-369, § 722(a)(4)(A), substituted "and (5)" for "and (6)".

Subsec. (d)(4)(D). Pub. L. 98-369, § 491(d)(5), struck out "or section 405(c)" after "section 404".

Subsec. (d)(6) to (8). Pub. L. 98-369, § 722(a)(4)(B), redesignated pars. (7) and (8) as (6) and (7), respectively.

Subsec. (h). Pub. L. 98-369, § 91(d)(3)(B), substituted "this section" for "subsection (b)" in introductory provisions.

Subsec. (i). Pub. L. 98-369, § 177(c)(2), substituted "Mortgage disposition loss of the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation" for "FNMA mortgage disposition loss" heading and struck out "FNMA" before "mortgage disposition loss" wherever appearing.

Subsec. (j). Pub. L. 98-369, § 91(d)(3)(B), substituted "this section" for "subsection (b)" in introductory provisions.

Subsecs. (k), (*l*). Pub. L. 98-369, § 91(d)(2), added subsec. (k) and redesignated former subsec. (k) as (*l*).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 91(d) of Pub. L. 98-369 applicable to amounts with respect to which a deduction would be allowable under chapter 1 of this title after Mar. 31, 1984, or July 18, 1984, see section 91(g) of Pub. L. 98-369, set out as a note under section 461 of this title.

Section 177(d) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendments made by this section [amending sections 172 and 246 of this title and section 1452 of Title 12, Banks and Banking] shall take effect on January 1, 1985.

"(2) ADJUSTED BASIS OF ASSETS.—

"(A) IN GENERAL.—Except as otherwise provided in subparagraph (B), the adjusted basis of any asset of the Federal Home Loan Mortgage Corporation held on January 1, 1985, shall—

"(i) for purposes of determining any loss, be equal to the lesser of the adjusted basis of such asset or the fair market value of such asset as of such date, and

"(ii) for purposes of determining any gain, be equal to the higher of the adjusted basis of such asset or the fair market value of such asset as of such date.

"(B) SPECIAL RULE FOR TANGIBLE DEPRECIABLE PROPERTY.—In the case of any tangible property which—

"(i) is of a character subject to the allowance for depreciation provided by section 167 of the Internal Revenue Code of 1954, and

"(ii) is held by the Federal Home Loan Mortgage Corporation on January 1, 1985,

the adjusted basis of such property shall be equal to the lesser of the basis of such property or the fair market value of such property as of such date.

"(3) TREATMENT OF PARTICIPATION CERTIFICATES.—

"(A) IN GENERAL.—Paragraph (2) shall not apply to any right to receive income with respect to any mortgage pool participation certificate or other similar interest in any mortgage (not including any mortgage).

"(B) TREATMENT OF CERTAIN SALES AFTER MARCH 15, 1984, AND BEFORE JANUARY 1, 1985.—If any gain is realized on the sale or exchange of any right described in subparagraph (A) after March 15, 1984, and before January 1, 1985, the gain shall not be recognized when realized but shall be recognized on January 1, 1985.

"(4) NO ACCUMULATED EARNINGS AND PROFITS ON JANUARY 1, 1985.—For purposes of the Internal Revenue Code of 1954, the accumulated profits of the Federal Home Loan Mortgage Corporation as of January 1, 1985, shall be treated as zero.

"(5) ADJUSTED BASIS.—For purposes of this subsection, the adjusted basis of any asset shall be determined under part II of subchapter O of the Internal Revenue Code of 1954.

"(6) NO CARRYBACKS FOR YEARS BEFORE 1985.—No net operating loss, capital loss, or excess credit of the Federal Home Loan Mortgage Corporation for any taxable year beginning after December 31, 1984, shall be allowed as a carryback to any taxable year beginning before January 1, 1985.

"(7) NO DEDUCTION ALLOWED FOR INTEREST ON REPLACEMENT OBLIGATIONS.—

"(A) IN GENERAL.—The Federal Home Loan Mortgage Corporation shall not be allowed any deduction for interest accruing after December 31, 1984, on any replacement obligation.

"(B) REPLACEMENT OBLIGATION DEFINED.—For purposes of subparagraph (A), the term 'replacement obligation' means any obligation to any person created after March 15, 1984, which the Secretary of the Treasury or his delegate determines replaces any equity or debt interest of a Federal Home Loan Bank or any other person in the Federal Home Loan Mortgage Corporation existing on such date. The preceding sentence shall not apply to any obligation with respect to which the Federal Home Loan Mortgage Corporation establishes that there is no tax avoidance effect."

Amendment by section 491(d)(5) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Amendment by section 722(a)(4) of Pub. L. 98-369 effective as if included in provisions of Technical Corrections Act of 1982, Pub. L. 97-448, to which such amendment relates, see section 722(a)(6) of Pub. L. 98-369, set out as a note under section 57 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 56, 170, 186, 246, 381, 481, 512, 527, 528, 535, 537, 545, 556, 584, 613A, 642, 703, 805, 822, 823, 844, 852, 904, 907, 1212, 1242, 1244, 1247, 1314, 1341, 1351, 1374, 1375, 1398, 1402, 6164, 6411 of this title; title 42 section 411; title 49 App. section 1376.

§ 173. Circulation expenditures

[See main edition for text of (a)]

(b) Cross reference

For election of 3-year amortization of expenditures allowable as a deduction under subsection (a), see section 59(i).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 711(a)(3)(C), 98 Stat. 942.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted "3-year" for "10-year".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 58, 312, 1016 of this title.

§ 174. Research and experimental expenditures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30, 57, 58, 103, 168, 170, 195, 263, 993, 1016 of this title.

§ 175. Soil and water conservation expenditures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 1252 of this title.

§ 177. Trademark and trade name expenditures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 1016 of this title.

§ 179. Election to expense certain depreciable business assets

[See main edition for text of (a)]

(b) Dollar limitation

(1) In general

The aggregate cost which may be taken into account under subsection (a) for any taxable year shall not exceed the following applicable amount:

If the taxable year begins in:	The applicable amount is:
1983, 1984, 1985, 1986, or 1987	$5,000
1988 or 1989	7,500
1990 or thereafter	10,000.

[See main edition for text of (2); (c) and (d)]

(As amended Pub. L. 98-369, div. A, title I, § 13, July 18, 1984, 98 Stat. 505.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-369 amended the table by dropping items setting applicable amounts of $0 for 1981 and $5,000 for 1982, substituting an applicable amount of $5,000 for 1983, 1984, 1985, 1986, and 1987 for former table items which had set applicable amounts of $5,000 for 1983, $7,500 for 1984, $7,500 for 1985, and $10,000 for 1986 or thereafter, and added items setting applicable amounts of $7,500 for 1988 or 1989, and $10,000 for 1990 or thereafter.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98-369, set out as a note under section 48 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 168, 263, 280F, 312, 1245 of this title.

§ 182. Expenditures by farmers for clearing land

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 1252 of this title.

§ 189. Amortization of real property construction period interest and taxes

[See main edition for text of (a) to (c)]

(d) Certain property excluded

This section shall not apply to any—

(1) low-income housing,

(2) real property acquired, constructed, or carried if such property is not, and cannot reasonably expected to be, held in a trade or business, or in an activity conducted for profit.

(e) Definitions

For purposes of this section—

[See main edition for text of (1) to (3)]

(4) Residential real property

The term "residential real property" means property which is or can reasonably be expected to be—

(A) residential rental property as defined in section 167(j)(2)(B),

(B) real property described in section 1221(1) held for sale as dwelling units (within the meaning of section 167(k)(3)(C)), or

(C) real property held by a cooperative housing corporation (as defined in section 216(b)) and used for dwelling purposes.

[*See main edition for text of* (5); (*f*)]

(As amended Pub. L. 98-369, div. A, title I, § 93(a), title VII, § 712(c), July 18, 1984, 98 Stat. 614, 947.)

Amendments

1984—Subsec. (d)(2), (3). Pub. L. 98-369, § 93(a), redesignated par. (3) as (2), and struck out former par. (2) which related to residential real property (other than low income housing) acquired, constructed, or carried by a corporation other than an S corporation, a personal holding company (within the meaning of section 542), or a foreign personal holding company (within the meaning of section 552).

Subsec. (e)(4)(C). Pub. L. 98-369, § 712(c), added subpar. (C).

Effective Date of 1984 Amendment

Section 93(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (d) of this section] shall apply to taxable years beginning after December 31, 1984, with respect to construction beginning after March 15, 1984."

Amendment by section 712(c) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Section Referred to in Other Sections

This section is referred to in sections 267, 312 of this title.

§ 190. Expenditures to remove architectural and transportation barriers to the handicapped and elderly

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Limitation

The deduction allowed by subsection (a) for any taxable year shall not exceed $35,000.

(d) Application of section

This section shall apply to—

(1) taxable years beginning after December 31, 1976, and before January 1, 1983, and

(2) taxable years beginning after December 31, 1983, and before January 1, 1986.

(As amended Pub. L. 98-369, div. A, title X, § 1062(a)(1), (b), July 18, 1984, 98 Stat. 1047.)

Amendments

1984—Subsec. (c). Pub. L. 98-369, § 1062(b), substituted "$35,000" for "$25,000".

Subsec. (d). Pub. L. 98-369, § 1062(a)(1), amended subsec. (d) generally, substituting provisions that this section shall apply to taxable years beginning after December 31, 1976, and before January 1, 1983 and to taxable years beginning after December 31, 1983, and before January 1, 1986 for provisions which had required the Secretary to prescribe such regulations as might be necessary to carry out this section within 180 days after October 4, 1976.

Effective Date of 1984 Amendment

Section 1062(c) of Pub. L. 98-369 provided that: "The amendment made by subsection (b) [amending subsec. (c) of this section] shall apply to taxable years beginning after December 31, 1983."

Effective Date

Section 2122(c) of Pub. L. 94-455, as amended by Pub. L. 96-167, § 9(c), Dec. 29, 1979, 93 Stat. 1278; Pub. L. 98-369, div. A, title X, § 1062(a)(2), July 18, 1984, 98 Stat. 1047, provided that: "The amendments made by this section [enacting this section and amending sections 263(a)(1), 1245(a)(2) and 1250(b)(3) of this title] shall apply to taxable years beginning after December 31, 1976."

§ 195. Start-up expenditures

(a) Capitalization of expenditures

Except as otherwise provided in this section, no deduction shall be allowed for start-up expenditures.

(b) Election to amortize

(1) In general

Start-up expenditures may, at the election of the taxpayer, be treated as deferred expenses. Such deferred expenses shall be allowed as a deduction prorated equally over such period of not less than 60 months as may be selected by the taxpayer (beginning with the month in which the active trade or business begins).

(2) Dispositions before close of amortization period

In any case in which a trade or business is completely disposed of by the taxpayer before the end of the period to which paragraph (1) applies, any deferred expenses attributable to such trade or business which were not allowed as a deduction by reason of this section may be deducted to the extent allowable under section 165.

(c) Definitions

For purposes of this section—

(1) Start-up expenditures

The term "start-up expenditure" means any amount—

(A) paid or incurred in connection with—

(i) investigating the creation or acquisition of an active trade or business, or

(ii) creating an active trade or business, or

(iii) any activity engaged in for profit and for the production of income before the day on which the active trade or business begins, in anticipation of such activity becoming an active trade or business, and

(B) which, if paid or incurred in connection with the operation of an existing active trade or business (in the same field as the trade or business referred to in subparagraph (A)), would be allowable as a deduction for the taxable year in which paid or incurred.

The term "start-up expenditure" does not include any amount with respect to which a deduction is allowable under section 163(a), 164, or 174.

(2) Beginning of trade or business

(A) In general

Except as provided in subparagraph (B), the determination of when an active trade or business begins shall be made in accordance with such regulations as the Secretary may prescribe.

(B) Acquired trade or business

An acquired active trade or business shall be treated as beginning when the taxpayer acquires it.

(d) Election

(1) Time for making election

An election under subsection (b) shall be made not later than the time prescribed by law for filing the return for the taxable year in which the trade or business begins (including extensions thereof).

(2) Scope of election

The period selected under subsection (b) shall be adhered to in computing taxable income for the taxable year for which the election is made and all subsequent taxable years.

(As amended Pub. L. 98–369, div. A, title I, § 94(a), July 18, 1984, 98 Stat. 614.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 amended subsec. generally, substituting provisions dealing with capitalization of expenditures for provisions dealing with election to amortize.

Subsec. (b). Pub. L. 98–369 amended subsec. generally, substituting provisions dealing with election to amortize for provisions dealing with start-up expenditures.

Subsec. (c). Pub. L. 98–369 amended subsec. generally, substituting provisions setting forth definitions for provisions dealing with election.

Subsec. (d). Pub. L. 98–369 amended subsec. generally, substituting provisions dealing with election for provisions dealing with business beginning.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 94(c) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after June 30, 1984."

§ 196. Deduction for certain unused business credits

(a) Allowance of deduction

If any portion of the qualified business credits determined for any taxable year has not, after the application of section 38(c), been allowed to the taxpayer as a credit under section 38 for any taxable year, an amount equal to the credit not so allowed shall be allowed to the taxpayer as a deduction for the first taxable year following the last taxable year for which such credit could, under section 39, have been allowed as a credit.

(b) Taxpayer's dying or ceasing to exist

If a taxpayer dies or ceases to exist before the first taxable year following the last taxable year for which the qualified business credits could, under section 39, have been allowed as a credit, the amount described in subsection (a) (or the proper portion thereof) shall, under regulations prescribed by the Secretary, be allowed to the taxpayer as a deduction for the taxable year in which such death or cessation occurs.

(c) Qualified business credits

For purposes of this section, the term "qualified business credits" means—

(1) the investment credit determined under section 46(a) (but only to the extent attributable to property the basis of which is reduced by section 48(q)),

(2) the targeted jobs credit determined under section 51(a), and

(3) the alcohol fuels credit determined under section 40(a).

(d) Special rule for investment tax credit

In the case of the investment credit determined under section 46(a) (other than a credit to which section 48(q)(3) applies), subsection (a) shall be applied by substituting "an amount equal to 50 percent of" for "an amount equal to".

(As amended Pub. L. 98–369, div. A, title IV, § 474(r)(8), July 18, 1984, 98 Stat. 840.)

AMENDMENTS

1984—Pub. L. 98–369 amended section generally, substituting provisions relating to deduction for certain unused business credits for provisions relating to deduction for certain unused investment credits.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38 of this title.

PART VII—ADDITIONAL ITEMIZED DEDUCTIONS FOR INDIVIDUALS

§ 212. Expenses for production of income

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41, 62, 137, 163, 164, 183, 263, 265, 274, 404, 404A, 419, 691, 1275, 6421 of this title.

§ 213. Medical, dental, etc., expenses

[See main edition for text of (a)]

(b) Limitation with respect to medicine and drugs

An amount paid during the taxable year for medicine or a drug shall be taken into account under subsection (a) only if such medicine or drug is a prescribed drug or is insulin.

(c) Special rule for decedents

(1) Treatment of expenses paid after death

For purposes of subsection (a), expenses for the medical care of the taxpayer which are paid out of his estate during the 1-year period beginning with the day after the date of his death shall be treated as paid by the taxpayer at the time incurred.

(2) Limitation

Paragraph (1) shall not apply if the amount paid is allowable under section 2053 as a deduction in computing the taxable estate of the decedent, but this paragraph shall not apply if (within the time and in the manner and form prescribed by the Secretary) there is filed—

(A) a statement that such amount has not been allowed as a deduction under section 2053, and

(B) a waiver of the right to have such amount allowed at any time as a deduction under section 2053.

(d) Definitions

For purposes of this section—

(1) The term "medical care" means amounts paid—

(A) for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body,

(B) for transportation primarily for and essential to medical care referred to in subparagraph (A), or

(C) for insurance (including amounts paid as premiums under part B of title XVIII of the Social Security Act, relating to supplementary medical insurance for the aged) covering medical care referred to in subparagraphs (A) and (B).

(2) Amounts paid for certain lodging away from home treated as paid for medical care

Amounts paid for lodging (not lavish or extravagant under the circumstances) while away from home primarily for and essential to medical care referred to in paragraph (1)(A) shall be treated as amounts paid for medical care if—

(A) the medical care referred to in paragraph (1)(A) is provided by a physician in a licensed hospital (or in a medical care facility which is related to, or the equivalent of, a licensed hospital), and

(B) there is no significant element of personal pleasure, recreation, or vacation in the travel away from home.

The amount taken into account under the preceding sentence shall not exceed $50 for each night for each individual.

(3) Prescribed drug

The term "prescribed drug" means a drug or biological which requires a prescription of a physician for its use by an individual.

(4) Physician

The term "physician" has the meaning given to such term by section 1861(r) of the Social Security Act (42 U.S.C. 1395x(r)).

(5) Special rule in the case of child of divorced parents, etc.

Any child to whom section 152(e) applies shall be treated as a dependent of both parents for purposes of this section.

(6) In the case of an insurance contract under which amounts are payable for other than medical care referred to in subparagraphs (A) and (B) of paragraph (1)—

(A) no amount shall be treated as paid for insurance to which paragraph (1)(C) applies unless the charge for such insurance is either separately stated in the contract, or furnished to the policyholder by the insurance company in a separate statement,

(B) the amount taken into account as the amount paid for such insurance shall not exceed such charge, and

(C) no amount shall be treated as paid for such insurance if the amount specified in the contract (or furnished to the policyholder by the insurance company in a separate statement) as the charge for such insurance is unreasonably large in relation to the total charges under the contract.

(7) Subject to the limitations of paragraph (6), premiums paid during the taxable year by a taxpayer before he attains the age of 65 for insurance covering medical care (within the meaning of subparagraphs (A) and (B) of paragraph (1)) for the taxpayer, his spouse, or a dependent after the taxpayer attains the age of 65 shall be treated as expenses paid during the taxable year for insurance which constitutes medical care if premiums for such insurance are payable (on a level payment basis) under the contract for a period of 10 years or more or until the year in which the taxpayer attains the age of 65 (but in no case for a period of less than 5 years).

(8) The determination of whether an individual is married at any time during the taxable year shall be made in accordance with the provisions of section 6013(d) (relating to determination of status as husband and wife).

(e) Exclusion of amounts allowed for care of certain dependents

Any expense allowed as a credit under section 21 shall not be treated as an expense paid for medical care.

(Aug. 16, 1954, ch. 736, 68A Stat. 69; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 16, 17(a), (b), 72 Stat. 1613, 1614; May 14, 1960, Pub. L. 86-470, § 3(a), 74 Stat. 133; Oct. 23, 1962, Pub. L. 87-863, § 1(a), (b), 76 Stat. 1141; Feb. 26, 1964, Pub. L. 88-272, title II, § 211(a), 78 Stat. 49; July 30, 1965, Pub. L. 89-97, title I, § 106(a)-(d)(1), 79 Stat. 336, 337; Oct. 4, 1976, Pub. L. 94-455, title V, § 504(c)(1), title XIX, § 1906(b)(13)(A), 90 Stat. 1565, 1834; Sept. 3, 1982, Pub. L. 97-248, title II, § 202(a)-(b)(3)(B), 96 Stat. 421; July 18, 1984, Pub. L. 98-369, div. A, title IV, §§ 423(b)(1), (3), 474(r)(9), 482(a), (b)(1), title VII, § 711(b), 98 Stat. 800, 841, 847, 848, 943.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(1)(C), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part B of title XVIII of the Social Security Act is classified generally to part B (§ 1395j et seq.) of subchapter XVIII of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Tables.

AMENDMENTS

1984—Subsec. (d)(2). Pub. L. 98-369, § 482(a), added par. (2). Former par. (2) redesignated (3).

Subsec. (d)(3). Pub. L. 98-369, § 482(a), redesignated par. (2) as (3). Former par. (3) redesignated (4).

Subsec. (d)(4). Pub. L. 98-369, § 482(a), redesignated par. (3) as (4). Former par. (4), as added by Pub. L. 98-369, § 423(b)(1), redesignated (5).

Pub. L. 98-369, § 423(b)(1), added par. (4). Former par. (4) redesignated (5).

Subsec. (d)(5). Pub. L. 98-369, § 482(a), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 98-369, § 423(b)(1), redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 98-369, § 711(b), substituted "paragraph (4)" for "paragraph (2)".

Subsec. (d)(6). Pub. L. 98-369, § 482(a), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Pub. L. 98-369, § 423(b)(1), (3), redesignated former par. (5) as (6) and substituted therein "limitations of paragraph (5)" for "limitations of paragraph (4)". Former par. (6) redesignated (7).

Subsec. (d)(7). Pub. L. 98-369, § 482(a), (b)(1), redesignated par. (6) as (7) and substituted therein "paragraph (6)" for "paragraph (5)". Former par. (7) redesignated (8).

Pub. L. 98-369, § 423(b)(1), redesignated former par. (6) as (7).

Subsec. (d)(8). Pub. L. 98-369, § 482(a), redesignated par. (7) as (8).

Subsec. (e). Pub. L. 98-369, § 474(r)(9), substituted "section 21" for "section 44A".

1982—Subsec. (a). Pub. L. 97-248, § 202(a), substituted provisions that there shall be allowed as a deduction the expenses paid during the taxable year, not compensated for by insurance or otherwise, for medical care of the taxpayer, his spouse, or a dependent (as defined in section 152), to the extent that such expenses exceed 5 percent of adjusted gross income, for provision allowing as deductions the amount by which the amount of the expenses paid during the taxable year (reduced by any amount deductible under paragraph (2)) for medical care of the taxpayer, his spouse, and dependents (as defined in section 152) exceeded 3 percent of the adjusted gross income, and an amount (not in excess of $150) equal to one-half of the expenses paid during the taxable year for insurance which constituted medical care for the taxpayer, his spouse, and dependents.

Subsec. (b). Pub. L. 97-248, § 202(b)(1), amended subsec. (b) generally, substituting provision that an amount paid during the taxable year for medicine or a drug shall be taken into account under subsec. (a) only if such medicine or drug is a prescribed drug or is insulin for former provision that amounts paid during the taxable year for medicine and drugs which (but for this subsection) would have been taken into account in computing the deduction under subsec. (a) would be taken into account only to the extent that the aggregate of such amounts exceeded 1 percent of the adjusted gross income.

Subsec. (c). Pub. L. 97-248, § 202(b)(3)(B), redesignated subsec. (d) as (c). Former subsec. (c) was repealed by Pub. L. 89-97.

Subsec. (d). Pub. L. 97-248, § 202(b)(2), (3)(A), (B), redesignated subsec. (e) as (d), and, in subsec. (d), as so redesignated, added pars. (2) and (3), and redesignated former pars. (2), (3) and (4) as (4), (5) and (6), respectively. Former subsec. (d) redesignated (c).

Subsecs. (e), (f). Pub. L. 97-248, § 202(b)(3)(B), redesignated subsecs. (e) and (f) as (d) and (e), respectively.

Effective Date of 1984 Amendment

Amendment by section 423(b) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 423(d) of Pub. L. 98-369, set out as a note under section 2 of this title.

Amendment by section 474(r)(9) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 482(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 152 and 213 of this title] shall apply to taxable years beginning after December 31, 1983."

Amendment by section 711(b) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Section Referred to in Other Sections

This section is referred to in sections 55, 104, 105, 152, 162, 419A, 2503 of this title.

§ 215. Alimony, etc., payments

(a) General rule

In the case of an individual, there shall be allowed as a deduction an amount equal to the alimony or separate maintenance payments paid during such individual's taxable year.

(b) Alimony or separate maintenance payments defined

For purposes of this section, the term "alimony or separate maintenance payment" means any alimony or separate maintenance payment (as defined in section 71(b)) which is includible in the gross income of the recipient under section 71.

(c) Requirement of identification number

The Secretary may prescribe regulations under which—

(1) any individual receiving alimony or separate maintenance payments is required to furnish such individual's taxpayer identification number to the individual making such payments, and

(2) the individual making such payments is required to include such taxpayer identification number on such individual's return for the taxable year in which such payments are made.

(d) Coordination with section 682

No deduction shall be allowed under this section with respect to any payment if, by reason of section 682 (relating to income of alimony trusts), the amount thereof is not includible in such individual's gross income.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 422(b), 98 Stat. 797.)

Amendments

1984—Pub. L. 98-369 amended section generally, substituting present provisions for provisions which had declared in: subsec. (a) a general rule as to allowance of deduction for amounts includible under section 71 in the gross income of the wife, payment of which was made within husband's taxable year, and prohibited any deduction with respect to any payment where by reason of section 71(d) or 682 the amount thereof was not includible in husband's gross income; and subsec. (b) cross reference to definitions of husband and wife in section 7701(a)(17).

Effective Date of 1984 Amendment

Amendment of subsecs. (a), (b), and (d) by Pub. L. 98-369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification; and subsec. (c) applicable to payments made after Dec. 31, 1984, see section 422(e) of Pub. L. 98-369, set out as a note under section 71 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 62, 71, 6676 of this title.

§ 216. Deduction of taxes, interest, and business depreciation by cooperative housing corporation tenant-stockholder

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23, 103A, 121, 128, 189, 911, 1034 of this title; title 12 sections 1451, 1717.

§ 219. Retirement savings

[*See main edition for text of* (*a*)]

(b) Maximum amount of deduction

[*See main edition for text of* (*1*)]

(2) Special rules for employer contributions under simplified employee pensions

(A) Limitation

If there is an employer contribution on behalf of the employee to a simplified employee pension, an employee shall be allowed as a deduction under subsection (a) (in addition to the amount allowable under paragraph (1)) an amount equal to the lesser of—

[*See main edition for text of* (*i*)]

(ii) the amount contributed by such employer to the simplified employee pension and included in gross income (but not in excess of the limitation in effect under section 415(c)(1)(A)).

[*See main edition for text of* (*B*) *and* (*C*), (*3*)]

[(4) **Repealed. Pub. L. 98–369, div. A, title V, § 529(b), July 18, 1984, 98 Stat. 877**]

[*See main edition for text of* (*c*)]

(d) Other limitations and restrictions

[*See main edition for text of* (*1*)]

(2) Recontributed amounts

No deduction shall be allowed under this section with respect to a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), or 408(d)(3).

[*See main edition for text of* (*3*)]

(4) Denial of deduction for amount contributed to inherited annuities or accounts

No deduction shall be allowed under this section with respect to any amount paid to an inherited individual retirement account or individual retirement annuity (within the meaning of section 408(d)(3)(C)(ii)).

(e) Definition of retirement savings contributions, etc.

For purposes of this section—

(1) Qualified retirement contribution

The term "qualified retirement contribution" means—

(A) any qualified voluntary employee contribution paid in cash by the individual for the taxable year, and

(B) any amount paid in cash for the taxable year by or on behalf of such individual for his benefit to an individual retirement plan.

[*See main edition for text of* (*2*)]

(3) Qualified employer plan

The term "qualified employer plan" means—

(A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a),

(B) an annuity plan described in section 403(a), and

(C) a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b).

[*See main edition for text of* (*4*) *and* (*5*)]

(f) Other definitions and special rules

(1) Compensation

For purposes of this section, the term "compensation" includes earned income (as defined in section 401(c)(2)) reduced by any amount allowable as a deduction to the individual in computing adjusted gross income under paragraph (7) of section 62. The term "compensation" does not include any amount received as a pension or annuity and does not include any amount received as deferred compensation. The term "compensation" shall include any amount includible in the individual's gross income under section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2).

[*See main edition for text of* (*2*)]

(3) Time when contributions deemed made

(A) Individual retirement plans

For purposes of this section, a taxpayer shall be deemed to have made a contribution to an individual retirement plan on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (not including extensions thereof).

[*See main edition for text of* (*B*), (*4*) *to* (*6*); (*g*)]

(Added Pub. L. 93–406, title II, § 2002(a)(1), Sept. 2, 1974, 88 Stat. 958, and amended Pub. L. 94–455, title XV, §§ 1501(b)(4), 1503(a), title XIX, §§ 1901(a)(32), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1736, 1738, 1769, 1834; Pub. L. 95–600, title I, §§ 152(c), 156(c)(3), 157(a)(1), (b)(1), title VII, § 703(c)(1), Nov. 6, 1978, 92 Stat. 2798, 2803, 2939; Pub. L. 96–222, title I, § 101(a)(10)(D), (14)(B), Apr. 1, 1980, 94 Stat. 202, 204; Pub. L. 97–34, title III, §§ 311(a), 312(c)(1), 313(b)(2), Aug. 13, 1981, 95 Stat. 274, 284, 286; Pub. L. 97–248, title II, § 243(b)(2), Sept. 3, 1982, 96 Stat. 523; Pub. L. 97–448, title I, § 103(c)(1), (2), (3)(A), (4), (5), (11), (12)(A), Jan. 12, 1983, 96 Stat. 2375–2377; Pub. L. 98–369, div. A, title I, § 147(c), title IV, §§ 422(d)(1), 491(d)(6)–(8), title V, § 529(a), (b), title VII, § 713(d)(2), July 18, 1984, 98 Stat. 687, 798, 849, 877, 957.)

Amendments

1984—Subsec. (b)(2)(A)(ii). Pub. L. 98–369, § 713(d)(2), substituted "not in excess of the limitation in effect under section 415(c)(1)(A)" for "not in excess of $15,000".

Subsec. (b)(4). Pub. L. 98–369, § 529(b), struck out par. (4) which related to a deduction for qualified retirement savings of certain divorced individuals.

Subsec. (b)(4)(B). Pub. L. 98–369, § 422(d)(1), substituted "gross income under section 71 (relating to alimony and separate maintenance payments) by reason of a payment under a decree of divorce or separate maintenance or a written agreement incident to such a decree" for "gross income under paragraph (1) of section 71(a) (relating to decree of divorce or separate maintenance)".

Subsec. (d)(2). Pub. L. 98–369, § 491(d)(6), substituted "or 408(d)(3)" for "405(d)(3), 408(d)(3), or 409(b)(3)(C)".

Subsec. (e)(1). Pub. L. 98–369, § 491(d)(7), struck out concluding provision that for the purposes of the preceding sentence, the term "individual retirement plan" includes retirement bonds described in section 409 only if the bond was not redeemed within 12 months of its issuance.

Subsec. (e)(3). Pub. L. 98–369, § 491(d)(8), struck out subpar. (C) which included a qualified bond purchase plan described in section 405(a) within the term "qualified employer plan", and redesignated subpar. (D) as (C).

Subsec. (f)(1). Pub. L. 98–369, § 529(a), added provision that the term "compensation" shall include any amount includible in the individual's gross income under section 71 with respect to a divorce or separation instrument described in subparagraph (A) of section 71(b)(2).

Subsec. (f)(3)(A). Pub. L. 98–369, § 147(c), substituted "not including" for "including".

1982—Subsec. (d)(4). Pub. L. 97–248 added par. (4).

Effective Date of 1984 Amendment

Section 147(d) of Pub. L. 98–369 provided that:

"(1) In general.—Except as provided in paragraph (2), the amendments made by this section [amending sections 219 and 408 of this title] shall apply to contributions made after December 31, 1984.

"(2) Subsection (b).—The amendment made by subsection (b) [amending section 6693 of this title] shall apply to failures occurring after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 422(d)(1) of Pub. L. 98–369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98–369, set out as a note under section 71 of this title.

Amendment by section 491(d)(6) to (8) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 55 of this title.

Section 529(c) of Pub. L. 98–369 provided that: "The amendments made by this section [amending subsecs. (b) and (f) of this section] shall apply to taxable years beginning after December 31, 1984."

Amendment by section 713(d)(2) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Effective Date of 1982 Amendment

Amendment by Pub. L. 97–248 applicable to with respect to individuals dying after Dec. 31, 1983, see section 243(c) of Pub. L. 97–248, as amended, set out as a note under section 408 of this title.

Section Referred to in Other Sections

This section is referred to in sections 62, 72, 86, 408, 415, 3121, 3306, 3401, 4973, 6047, 6652 of this title; title 29 section 1309; title 42 section 409.

§ 221. Deduction for two-earner married couples

Section Referred to in Other Sections

This section is referred to in sections 62, 85, 86 of this title.

PART VIII—SPECIAL DEDUCTIONS FOR CORPORATIONS

Sec.	
246A.	Dividends received deduction reduced where portfolio stock is debt financed.

Amendments

1984—Pub. L. 98–369, div. A, title I, § 51(b), July 18, 1984, 98 Stat. 564, added item 246A.

Part Referred to in Other Sections

This part is referred to in sections 527, 528, 535, 545, 556, 593, 702, 822, 832, 852, 857, 891, 901, 1374, 1375, 1393 of this title.

§ 243. Dividends received by corporations

[See main edition for text of (a)]

(b) Qualifying dividends

[See main edition for text of (1) and (2)]

(3) Effect of election

If an election by an affiliated group is effective with respect to a taxable year of the common parent corporation, then under regulations prescribed by the Secretary—

[See main edition for text of (A) and (B)]

(C) the members of such affiliated group shall be limited to one—

(i) minimum accumulated earnings credit under section 535(c)(2) or (3),

(ii) $400,000 limitation for certain exploration expenditures under section 617(h)(1), and

(iii) surtax exemption, and one amount under section 6154(c)(2) and section 6655(e)(2), for purposes of estimated tax payment requirements under section 6154 and the addition to the tax under section 6655 for failure to pay estimated tax.

[See main edition for text of (4) and (5)]

(6) Special rules for insurance companies

If an election under this subsection is effective for the taxable year of an insurance company subject to taxation under section 801 or 821—

[See main edition for text of (A) and (B); (c) and (d)]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title II, § 211(b)(3), 98 Stat. 754.)

Amendments

1984—Subsec. (b)(3)(C). Pub. L. 98-369, § 211(b)(3)(A), added "and" at the end of cl. (ii), struck out cl. (iii), which provided for a $25,000 limitation on small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and redesignated cl. (iv) as (iii).

Subsec. (b)(6). Pub. L. 98-369, § 211(b)(3)(B), substituted "section 801" for "section 802".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Section Referred to in Other Sections

This section is referred to in sections 172, 244, 245, 246, 246A, 263, 277, 301, 512, 596, 805, 810, 815, 854, 857, 861, 1059, 1244, 1504, 1564 of this title; title 46 App. section 1177.

§ 244. Dividends received on certain preferred stock

Section Referred to in Other Sections

This section is referred to in sections 172, 243, 246, 246A, 247, 263, 277, 301, 512, 596, 805, 810, 815, 1059, 1244 of this title.

§ 245. Dividends received from certain foreign corporations

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Certain dividends received from FSC

(1) In general

In the case of a domestic corporation, there shall be allowed as a deduction an amount equal to 100 percent of any dividend received by such corporation from another corporation which is distributed out of earnings and profits attributable to foreign trade income for a period during which such other corporation was a FSC. The deduction allowable under the preceding sentence with respect to any dividend shall be in lieu of any deduction allowable under subsection (a) or (b) with respect to such dividend.

(2) Exception for certain dividends

Paragraph (1) shall not apply to any dividend which is distributed out of earnings and profits attributable to foreign trade income which—

(A) is section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)), or

(B) would not, but for section 923(a)(4), be treated as exempt foreign trade income.

(3) Definitions

For purposes of this subsection, the terms "foreign trade income" and "exempt foreign trade income" have the meaning given such terms by section 923.

(d) Property distributions

For purposes of this section, the amount of any distribution of property other than money shall be the amount determined by applying section 301(b)(1)(B).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VIII, § 801(b)(1), (2)(B), 98 Stat. 994, 995.)

Amendments

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c), redesignated former subsec. (c) as (d), and substituted therein "this section" for "subsections (a) and (b)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

Section Referred to in Other Sections

This section is referred to in sections 78, 172, 243, 246, 246A, 263, 277, 301, 512, 596, 805, 810, 815, 861, 1059, 1244 of this title.

§ 246. Rules applying to deductions for dividends received

(a) Deduction not allowed for dividends from certain corporations

(1) In general

The deductions allowed by sections 243, 244, and 245 shall not apply to any dividend from a corporation which, for the taxable year of the corporation in which the distribution is made, or for the next preceding taxable year of the corporation, is a corporation exempt from tax under section 501 (relating to certain charitable, etc., organizations) or section 521 (relating to farmers' cooperative associations).

(2) Subsection not to apply to certain dividends of Federal Home Loan Banks

(A) Dividends out of current earnings and profits

In the case of any dividend paid by any FHLB out of earnings and profits of the FHLB for the taxable year in which such dividend was paid, paragraph (1) shall not apply to that portion of such dividend which bears the same ratio to the total dividend as—

(i) the dividends received by the FHLB from the FHLMC during such taxable year, bears to

(ii) the total earnings and profits of the FHLB for such taxable year.

(B) Dividends out of accumulated earnings and profits

For purposes of subparagraph (A), in the case of any dividend which is paid out of any accumulated earnings and profits of any FHLB, paragraph (1) shall not apply to that portion of the dividend which bears the same ratio to the total dividend as—

(i) the amount of dividends received by such FHLB from the FHLMC which are out of earnings and profits of the FHLMC—

(I) for taxable years ending after December 31, 1984, and

(II) which were not taken into account under subparagraph (A), bears to

(ii) the total accumulated earnings and profits of the FHLB as of the time such dividend is paid.

For purposes of clause (ii), the accumulated earnings and profits of the FHLB as of January 1, 1985, shall be treated as equal to its retained earnings as of such date.

(C) Definitions

For purposes of this paragraph—

(i) FHLB

The term "FHLB" means any Federal Home Loan Bank.

(ii) FHLMC

The term "FHLMC" means the Federal Home Loan Mortgage Corporation.

(iii) Taxable year of FHLB

The taxable year of an FHLB shall, except as provided in regulations prescribed by the Secretary, be treated as the calendar year.

(b) Limitation on aggregate amount of deductions

(1) General rule

Except as provided in paragraph (2), the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and subsection (a) or (b) of section 245 shall not exceed 85 percent of the taxable income computed without regard to the deductions allowed by sections 172, 243(a)(1), 244(a), subsection (a) or (b) of section 245, and 247, without regard to any adjustment under section 1059, and without regard to any capital loss carryback to the taxable year under section 1212(a)(1).

[See main edition for text of (2)]

(c) Exclusion of certain dividends

(1) In general

No deduction shall be allowed under section 243, 244, or 245, in respect of any dividend on any share of stock—

(A) which is sold or otherwise disposed of in any case in which the taxpayer has held such share for 45 days or less, or

(B) to the extent that the taxpayer is under an obligation (whether pursuant to a short sale or otherwise) to make related payments with respect to positions in substantially similar or related property.

(2) 90-day rule in the case of certain preference dividends

In the case of any stock having preference in dividends, the holding period specified in paragraph (1)(A) shall be 90 days in lieu of 45 days if the taxpayer receives dividends with respect to such stock which are attributable to a period or periods aggregating in excess of 366 days.

(3) Determination of holding periods

For purposes of this subsection, in determining the period for which the taxpayer has held any share of stock—

(A) the day of disposition, but not the day of acquisition, shall be taken into account,

(B) there shall not be taken into account any day which is more than 45 days (or 90 days in the case of stock to which paragraph (2) applies) after the date on which such share becomes ex-dividend, and

(C) paragraph (4) of section 1223 shall not apply.

(4) Holding period reduced for periods where risk of loss diminished

The holding periods determined under paragraph (3) shall be appropriately reduced (in the manner provided in regulations prescribed by the Secretary) for any period (during such periods) in which—

(A) the taxpayer has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially identical stock or securities,

(B) the taxpayer is the grantor of an option to buy substantially identical stock or securities, or

(C) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

The preceding sentence shall not apply in the case of any qualified covered call (as defined in section 1092(c)(4) but without regard to the requirement that gain or loss with respect to the option not be ordinary income or loss).

[See main edition for text of (d) to (f)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 53(b), (d)(2), 177(b), title VIII, § 801(b)(2)(A), 98 Stat. 567, 568, 709, 995.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 177(b), amended subsec. (a) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (b)(1). Pub. L. 98-369, § 801(b)(2)(A), substituted "subsection (a) or (b) of section 245" for "245" in two places.

Pub. L. 98-369, § 53(d)(2), substituted "without regard to any adjustment under section 1059, and without regard" for "and without regard".

Subsec. (c)(1)(A). Pub. L. 98-369, § 53(b)(1), substituted "45" for "15".

Subsec. (c)(1)(B). Pub. L. 98-369, § 53(b)(3), substituted "to make related payments with respect to positions in substantially similar or related property" for "to make corresponding payments with respect to substantially identical stock or securities".

Subsec. (c)(2). Pub. L. 98-369, § 53(b)(1), substituted "45" for "15".

Subsec. (c)(3). Pub. L. 98-369, § 53(b)(4), struck out last sentence which directed that the holding periods determined under the preceding provisions of this paragraph be appropriately reduced (in the manner provided in regulations prescribed by the Secretary) for any period (during such holding periods) in which the taxpayer had an option to sell, was under a contractual obligation to sell, or had made (and not closed) a short sale of, substantially identical stock or securities.

Subsec. (c)(3)(B). Pub. L. 98-369, § 53(b)(1), substituted "45" for "15".

Subsec. (c)(4). Pub. L. 98-369, § 53(b)(2), added par. (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsec. (b)(1) of this section by section 53(d)(2) of Pub. L. 98-369 applicable to distributions after Mar. 1, 1984, in taxable years ending after such date, and amendment of subsec. (c) of this section by section 53(b) of Pub. L. 98-369, applicable to stock acquired after July 18, 1984, in taxable years

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ending after such date, see section 53(e)(1), (2) of Pub. L. 98-369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 177(b) of Pub. L. 98-369, effective Jan. 1, 1985, see section 177(d) of Pub. L. 98-369, set out as a note under section 172 of this title.

Amendment by section 801(b)(2)(A) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 172, 805, 810, 822, 852, 854, 857, 1059, 1092 of this title.

§ 246A. Dividends received deduction reduced where portfolio stock is debt financed

(a) General rule

In the case of any dividend on debt-financed portfolio stock, there shall be substituted for the percentage which (but for this subsection) would be used in determining the amount of the deduction allowable under section 243, 244, or 245 a percentage equal to the product of—

(1) 85 percent, and

(2) 100 percent minus the average indebtedness percentage.

(b) Section not to apply to dividends for which 100 percent dividends received deduction allowable

Subsection (a) shall not apply to—

(1) qualifying dividends (as defined in section 243(b) without regard to section 243(c)(4)), and

(2) dividends received by a small business investment company operating under the Small Business Investment Act of 1958.

(c) Debt financed portfolio stock

For purposes of this section—

(1) In general

The term "debt financed portfolio stock" means any portfolio stock if at some time during the base period there is portfolio indebtedness with respect to such stock.

(2) Portfolio stock

The term "portfolio stock" means any stock of a corporation unless—

(A) as of the beginning of the ex-dividend date, the taxpayer owns stock of such corporation—

(i) possessing at least 50 percent of the total voting power of the stock of such corporation, and

(ii) having a value equal to at least 50 percent of the total value of the stock of such corporation, or

(B) as of the beginning of the ex-dividend date—

(i) the taxpayer owns stock of such corporation which would meet the requirements of subparagraph (A) if "20 percent" were substituted for "50 percent" each place it appears in such subparagraph, and

(ii) stock meeting the requirements of subparagraph (A) is owned by 5 or fewer corporate shareholders.

(3) Special rule for stock in a bank or bank holding company

(A) In general

If, as of the beginning of the ex-dividend date, the taxpayer owns stock of any bank or bank holding company having a value equal to at least 80 percent of the total value of the stock of such bank or bank holding company, for purposes of paragraph (2)(A)(i), the taxpayer shall be treated as owning any stock of such bank or bank holding company which the taxpayer has an option to acquire.

(B) Definitions

For purposes of subparagraph (A)—

(i) Bank

The term "bank" has the meaning given such term by section 581.

(ii) Bank holding company

The term "bank holding company" means a bank holding company (within the meaning of section 2(a) of the Bank Holding Company Act of 1956).

(4) Treatment of certain preferred stock

For purposes of determining whether the requirements of subparagraph (A) or (B) of paragraph (2) or of subparagraph (A) of paragraph (3) are met, stock described in section 1504(a)(4) shall not be taken into account.

(d) Average indebtedness percentage

For purposes of this section—

(1) In general

Except as provided in paragraph (2), the term "average indebtedness percentage" means the percentage obtained by dividing—

(A) the average amount (determined under regulations prescribed by the Secretary) of the portfolio indebtedness with respect to the stock during the base period, by

(B) the average amount (determined under regulations prescribed by the Secretary) of the adjusted basis of the stock during the base period.

(2) Special rule where stock not held throughout base period

In the case of any stock which was not held by the taxpayer throughout the base period, paragraph (1) shall be applied as if the base period consisted only of that portion of the base period during which the stock was held by the taxpayer.

(3) Portfolio indebtedness

(A) In general

The term "portfolio indebtedness" means any indebtedness directly attributable to investment in the portfolio stock.

(B) Certain amounts received from short sale treated as indebtedness

For purposes of subparagraph (A), any amount received from a short sale shall be treated as indebtedness for the period beginning on the day on which such amount is received and ending on the day the short sale is closed.

(4) Base period

The term "base period" means, with respect to any dividend, the shorter of—

(A) the period beginning on the ex-dividend date for the most recent previous dividend on the stock and ending on the day before the ex-dividend date for the dividend involved, or

(B) the 1-year period ending on the day before the ex-dividend date for the dividend involved.

(e) Reduction in dividends received deduction not to exceed allocable interest

Under regulations prescribed by the Secretary, any reduction under this section in the amount allowable as a deduction under section 243, 244, or 245 with respect to any dividend shall not exceed the amount of any interest deduction (including any deductible short sale expense) allocable to such dividend.

(f) Regulations

The regulations prescribed for purposes of this section under section 7701(f) shall include regulations providing for the disallowance of interest deductions or other appropriate treatment (in lieu of reducing the dividend received deduction) where the obligor of the indebtedness is a person other than the person receiving the dividend.

(Added Pub. L. 98-369, div. A, title I, § 51(a), July 18, 1984, 98 Stat. 562.)

References in Text

The Small Business Investment Act of 1958, referred to in subsec. (b)(2), is Pub. L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 661 of Title 15 and Tables.

Section 2(a) of the Bank Holding Company Act of 1956, referred to in subsec. (c)(3)(B)(ii), is classified to section 1841(a) of Title 12, Banks and Banking.

Effective Date

Section 51(c) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting this section] shall apply with respect to stock the holding period for which begins after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Section Referred to in Other Sections

This section is referred to in section 854 of this title.

§ 248. Organizational expenditures

Section Referred to in Other Sections

This section is referred to in sections 170, 312, 535, 545, 556, 822, 852, 857, 1247, 1363, 1374, 1393 of this title.

§ 249. Limitation on deduction of bond premium on repurchase

[See main edition for text of (a)]

(b) Special rules

For purposes of subsection (a)—

(1) Adjusted issue price

The adjusted issue price is the issue price (as defined in sections 1273(b) and 1274) increased by any amount of discount deducted before repurchase, or, in the case of bonds or other evidences of indebtedness issued after February 28, 1913, decreased by any amount of premium included in gross income before repurchase by the issuing corporation.

[See main edition for text of (2)]

(As amended Pub. L. 98-369, div. A, title I, § 42(a)(5), July 18, 1984, 98 Stat. 557.)

Amendments

1984—Subsec. (b)(1). Pub. L. 98-369 substituted "sections 1273(b) and 1274" for "section 1232(b)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

PART IX—ITEMS NOT DEDUCTIBLE

Sec.	
269B.	Stapled entities.
280B.	Demolition of structures.
280F.	Limitation on investment tax credit and depreciation for luxury automobiles; limitation where certain property used for personal purposes.
280G.	Golden parachute payments.

Amendments

1984—Pub. L. 98-369, div. A, title I, §§ 67(d)(1), 136(b), 179(c), title X, § 1063(b)(2), July 18, 1984, 98 Stat. 587, 670, 718, 1047, added items 269B, 280F, and 280G, and struck out "certain historic" before "structures" in item 280B.

§ 263. Capital expenditures

[See main edition for text of (a) to (f)]

(g) Certain interest and carrying costs in the case of straddles

[See main edition for text of (1)]

(2) Interest and carrying charges defined

For purposes of paragraph (1), the term "interest and carrying charges" means the excess of—

(A) the sum of—

(i) interest on indebtedness incurred or continued to purchase or carry the personal property, and

(ii) all other amounts (including charges to insure, store, or transport the personal property) paid or incurred to carry the personal property, over

(B) the sum of—

(i) the amount of interest (including original issue discount) includible in gross income for the taxable year with respect to the property described in subparagraph (A),

(ii) any amount treated as ordinary income under section 1271(a)(3)(A), 1278, or 1281(a) with respect to such property for the taxable year, and

(iii) the excess of any dividends includible in gross income with respect to such property for the taxable year over the amount of any deduction allowable with respect to such dividends under section 243, 244, or 245.

For purposes of subparagraph (A), the term "interest" includes any amount paid or incurred in connection with personal property used in a short sale.

[*See main edition for text of (3)*]

(4) Application with other provisions

(A) Subsection (c)

In the case of any short sale, this subsection shall be applied after subsection (h).

(B) Section 1277 or 1282

In the case of any obligation to which section 1277 or 1282 applies, this subsection shall be applied after section 1277 or 1282.

(h) Payments in lieu of dividends in connection with short sales

(1) In general

If—

(A) a taxpayer makes any payment with respect to any stock used by such taxpayer in a short sale and such payment is in lieu of a dividend payment on such stock, and

(B) the closing of such short sale occurs on or before the 45th day after the date of such short sale,

then no deduction shall be allowed for such payment. The basis of the stock used to close the short sale shall be increased by the amount not allowed as a deduction by reason of the preceding sentence.

(2) Longer period in case of extraordinary dividends

If the payment described in paragraph (1)(A) is in respect of an extraordinary dividend, paragraph (1)(B) shall be applied by substituting "the day 1 year after the date of such short sale" for "the 45th day after the date of such short sale".

(3) Extraordinary dividend

For purposes of this subsection, the term "extraordinary dividend" has the meaning given to such term by section 1059(c); except that such section shall be applied by treating the amount realized by the taxpayer in the short sale as his adjusted basis in the stock.

(4) Special rule where risk of loss diminished

The running of any period of time applicable under paragraph (1)(B) (as modified by paragraph (2)) shall be suspended during any period in which—

(A) the taxpayer holds, has an option to buy, or is under a contractual obligation to buy, substantially identical stock or securities, or

(B) under regulations prescribed by the Secretary, a taxpayer has diminished his risk of loss by holding 1 or more other positions with respect to substantially similar or related property.

(5) Deduction allowable to extent of ordinary income from amounts paid by lending broker for use of collateral

(A) In general

Paragraph (1) shall apply only to the extent that the payments or distributions with respect to any short sale exceed the amount which—

(i) is treated as ordinary income by the taxpayer, and

(ii) is received by the taxpayer as compensation for the use of any collateral with respect to any stock used in such short sale.

(B) Exception not to apply to extraordinary dividends

Subparagraph (A) shall not apply if one or more payments or distributions is in respect of an extraordinary dividend.

(6) Application of this subsection with subsection (g)

In the case of any short sale, this subsection shall be applied before subsection (g).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 56(a), 102(e)(7), (8), 98 Stat. 573, 624, 625.)

AMENDMENTS

1984—Subsec. (g)(2). Pub. L. 98-369, § 102(e)(7), amended par. (2) generally, striking out "charges for temporary use of the personal property in a short sale, or" after "(including" in subpar. (A)(ii), substituting "any amount treated as ordinary income under section 1271(a)(3)(A), 1278, or 1281(a) with respect to such property for the taxable year, and" for "any amount treated as ordinary income under section 1232(a)(3)(A) with respect to such property for the taxable year" in subpar. (B)(ii), and adding subpar. (B)(iii).

Subsec. (g)(4). Pub. L. 98-369, § 102(e)(8), added par. (4).

Subsec. (h). Pub. L. 98-369, § 56(a), added subsec. (h).

EFFECTIVE DATE OF 1984 AMENDMENT

Enactment of subsec. (h) of this section by section 56(a) of Pub. L. 98-369 applicable to short sales after July 18, 1984, in taxable years ending after that date, see section 56(d) of Pub. L. 98-369, set out as a note under section 163 of this title.

Amendment by section 102(e)(7), (8) of Pub. L. 98-369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98-369, set out as a note under section 1256 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment of subsec. (a)(1)(F) by section 2122(b)(2) of Pub. L. 94-455, as amended by Pub. L. 96-167, § 9(c), Dec. 29, 1979, 93 Stat. 1278, applicable to taxable years beginning after Dec. 31, 1976, see section 2122(c) of Pub. L. 94-455, as amended, set out as an Effective Date note under section 190 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23, 57, 58, 173, 193, 291, 312, 707, 1092, 1256, 4988 of this title.

§ 265. Expenses and interest relating to tax-exempt income

No deduction shall be allowed for—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Special rules for application of paragraph (2) in the case of short sales

For purposes of paragraph (2)—

(A) In general

The term "interest" includes any amount paid or incurred—

(i) by any person making a short sale in connection with personal property used in such short sale, or

(ii) by any other person for the use of any collateral with respect to such short sale.

(B) Exception where no return on cash collateral

If—

(i) the taxpayer provides cash as collateral for any short sale, and

(ii) the taxpayer receives no material earnings on such cash during the period of the sale,

subparagraph (A)(i) shall not apply to such short sale.

(Aug. 16, 1954, ch. 736, 68A Stat. 78; Feb. 26, 1964, Pub. L. 88-272, title II, § 216(a), 78 Stat. 56; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§ 1901(a)(37), 1906(b)(13)(A), title XXI, § 2137(e), 90 Stat. 1770, 1834, 1931; Apr. 2, 1980, Pub. L. 96-223, title IV, § 404(b)(2), 94 Stat. 306; Aug. 13, 1981, Pub. L. 97-34, title III, §§ 301(b)(2), 302(c)(2), (d)(1), 95 Stat. 270, 272, 274; July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 16(a), 56(c), 98 Stat. 505, 574.)

Amendments

1984—Par. (2). Pub. L. 98-369, § 16(a), repealed amendments made by Pub. L. 97-34, § 302(c). See 1981 Amendment note below.

Par. (5). Pub. L. 98-369, § 56(c), added par. (5).

1981—Par. (2). Pub. L. 97-34, § 302(c)(2), (d)(1), provided that, applicable to taxable years beginning after Dec. 31, 1984, par. (2) is amended by striking out "or to purchase or carry any certificate to the extent the interest on such certificate is excludable under section 128" and inserting in lieu thereof "or to purchase or carry obligations or shares, or to make other deposits or investments, the interest on which is described in section 128(c)(1) to the extent such interest is excludable from gross income under section 128". Section 16(a) of Pub. L. 98-369, repealed section 302(c) of Pub. L. 97-34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by such section 302(c), had not been enacted.

Effective Date of 1984 Amendment

Amendment by section 16 of Pub. L. 98-369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98-369, set out as a note under section 48 of this title.

Enactment of par. (5) by section 56(c) of Pub. L. 98-369 applicable to short sales after July 18, 1984, in taxable years ending after that date, see section 56(d) of Pub. L. 98-369, set out as a note under section 163 of this title.

Section Referred to in Other Sections

This section is referred to in sections 163, 643, 852, 861, 1277, 4940, 4942, 6362 of this title.

§ 267. Losses, expenses, and interest with respect to transactions between related taxpayers

(a) In general

(1) Deduction for losses disallowed

No deduction shall be allowed in respect of any loss from the sale or exchange of property (other than a loss in case of a distribution in corporate liquidation), directly or indirectly, between persons specified in any of the paragraphs of subsection (b).

(2) Matching of deduction and payee income item in the case of expenses and interest

If—

(A) by reason of the method of accounting of the person to whom the payment is to be made, the amount thereof is not (unless paid) includible in the gross income of such person, and

(B) at the close of the taxable year of the taxpayer for which (but for this paragraph) the amount would be deductible under this chapter, both the taxpayer and the person to whom the payment is to be made are persons specified in any of the paragraphs of subsection (b),

then any deduction allowable under this chapter in respect of such amount shall be allowable as of the day as of which such amount is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph).

(b) Relationships

The persons referred to in subsection (a) are:

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Two corporations which are members of the same controlled group (as defined in subsection (f));

[*See main edition for text of* (*4*) *to* (*9*)]

(10) A corporation and a partnership if the same persons own—

(A) more than 50 percent in value of the outstanding stock of the corporation, and

[*See main edition for text of* (*B*), (*11*)]

(12) An S corporation and a C corporation, if the same persons owns [3] more than 50 percent in value of the outstanding stock of each corporation.

[*See main edition for text of* (*c*) *and* (*d*)]

(e) Special rules for pass-thru entities

(1) In general

In the case of any amount paid or incurred by, to, or on behalf of, a pass-thru entity, for purposes of applying subsection (a)(2)—

(A) such entity,

(B) in the case of—

(i) a partnership, any person who owns (directly or indirectly) any capital interest or profits interest of such partnership, or

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[3] So in original. Probably should be "own".

(ii) an S corporation, any person who owns (directly or indirectly) any of the stock of such corporation,

(C) any person who owns (directly or indirectly) any capital interest or profits interest of a partnership in which such entity owns (directly or indirectly) any capital interest or profits interest, and

(D) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to a person described in subparagraph (B) or (C),

shall be treated as persons specified in a paragraph of subsection (b). Subparagraph (C) shall apply to a transaction only if such transaction is related either to the operations of the partnership described in such subparagraph or to an interest in such partnership.

(2) Pass-thru entity

For purposes of this section, the term "pass-thru entity" means—

(A) a partnership, and

(B) an S corporation.

(3) Constructive ownership in the case of partnerships

For purposes of determining ownership of a capital interest or profits interest of a partnership, the principles of subsection (c) shall apply, except that—

(A) paragraph (3) of subsection (c) shall not apply, and

(B) interests owned (directly or indirectly) by or for a C corporation shall be considered as owned by or for any shareholder only if such shareholder owns (directly or indirectly) 5 percent or more in value of the stock of such corporation.

(4) Subsection (a)(2) not to apply to certain guaranteed payments of partnerships

In the case of any amount paid or incurred by a partnership, subsection (a)(2) shall not apply to the extent that section 707(c) applies to such amount.

(5) Exception for certain expenses and interest of partnerships owning low-income housing

(A) In general

This subsection shall not apply with respect to qualified expenses and interest paid or incurred by a partnership owning low-income housing to—

(i) any qualified 5-percent or less partner of such partnership, or

(ii) any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to any qualified 5-percent or less partner of such partnership.

(B) Qualified 5-percent or less partner

For purposes of this paragraph, the term "qualified 5-percent or less partner" means any partner who has (directly or indirectly) an interest of 5 percent or less in the aggregate capital and profits interests of the partnership but only if—

(i) such partner owned the low-income housing at all times during the 2-year period ending on the date such housing was transferred to the partnership, or

(ii) such partnership acquired the low-income housing pursuant to a purchase, assignment, or other transfer from the Department of Housing and Urban Development or any State or local housing authority.

For purposes of the preceding sentence, a partner shall be treated as holding any interest in the partnership which is held (directly or indirectly) by any person related (within the meaning of subsection (b) of this section or section 707(b)(1)) to such partner.

(C) Qualified expenses and interest

For purpose of this paragraph, the term "qualified expenses and interest" means any expense or interest incurred by the partnership with respect to low-income housing held by the partnership but—

(i) only if the amount of such expense or interest (as the case may be) is unconditionally required to be paid by the partnership not later than 10 years after the date such amount was incurred, and

(ii) in the case of such interest, only if such interest is incurred at an annual rate not in excess of 12 percent.

(D) Low-income housing

For purposes of this paragraph, the term "low-income housing" means—

(i) any interest in low-income housing (as defined in paragraph (5) of section 189(e)), and

(ii) any interest in a partnership owning low-income housing (as so defined).

(f) Controlled group defined; special rules applicable to controlled groups

(1) Controlled group defined

For purposes of this section, the term "controlled group" has the meaning given to such term by section 1563(a), except that—

(A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in section 1563(a), and

(B) the determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of section 1563.

(2) Deferral (rather than denial) of loss from sale or exchange between members

In the case of any loss from the sale or exchange of property which is between members of the same controlled group and to which subsection (a)(1) applies (determined without regard to this paragraph but with regard to paragraph (3))—

(A) subsections (a)(1) and (d) shall not apply to such loss, but

(B) such loss shall be deferred until the property is transferred outside such controlled group and there would be recognition of loss under consolidated return principles or until such other time as may be prescribed in regulations.

(3) Loss deferral rules not to apply in certain cases

(A) Transfer to DISC

For purposes of applying subsection (a)(1), the term "controlled group" shall not include a DISC.

(B) Certain sales of inventory

Except to the extent provided in regulations prescribed by the Secretary, subsection (a)(1) shall not apply to the sale or exchange of property between members of the same controlled group if—

(i) such property in the hands of the transferor is property described in section 1221(1),

(ii) such sale or exchange is in the ordinary course of the transferor's trade or business,

(iii) such property in the hands of the transferee is property described in section 1221(1), and

(iv) the transferee or the transferor is a foreign corporation.

(C) Certain foreign currency losses

To the extent provided in regulations, subsection (a)(1) shall not apply to any loss sustained by a member of a controlled group on the repayment of a loan made to another member of such group if such loan is payable in a foreign currency or is denominated in such a currency and such loss is attributable to a reduction in value of such foreign currency.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 174(a), (b)(1)-(4), title VII, § 721(s), 98 Stat. 704-707, 970.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 174(a), amended subsec. (a) generally, substituting "In general" for "Deduction disallowed" in heading, "Deduction for losses disallowed" for "Losses" in par. (1) heading, and provisions dealing with matching of deduction and payee income item in the case of expenses and interest for provisions dealing with unpaid expenses and interest in par. (2).

Subsec. (b)(3). Pub. L. 98-369, § 174(b)(2)(A), substituted "Two corporations which are members of the same controlled group (as defined in subsection (f))" for "Two corporations more than 50 percent in value of the outstanding stock of each of which is owned, directly or indirectly, by or for the same individual, if either one of such corporations, with respect to the taxable year of the corporation preceding the date of the sale or exchange was, under the law applicable to such taxable year, a personal holding company or a foreign personal holding company".

Subsec. (b)(10). Pub. L. 98-369, § 174(b)(3), substituted "A corporation" for "An S corporation" in introductory provisions and "the corporation" for "the S corporation" in subpar. (A).

Subsec. (b)(12). Pub. L. 98-369, § 174(b)(4), substituted "the same persons" for "the same individual".

Subsec. (e). Pub. L. 98-369, § 174(b)(1), added subsec. (e).

Pub. L. 98-369, § 174(a)(2), struck out subsec. (e) which provided that for purposes of subsection (a)(2) where the last day of the 2½ month period falls on Saturday, Sunday, or a legal holiday, such last day be treated as falling on the next succeeding day which is not a Saturday, Sunday, or a legal holiday, and the determination of what constitutes a legal holiday be made under section 7503 with respect to the payor's return of tax under this chapter for the preceding taxable year.

Subsec. (f). Pub. L. 98-369, § 174(b)(2)(B), added subsec. (f).

Pub. L. 98-369, § 174(b)(1), struck out subsec. (f) which related to special rules for unpaid expenses and interest of S corporations and treatment under such provisions of certain shareholders, etc., as related persons.

Pub. L. 98-369, § 721(s), in closing provision of par. (1) substituted "then any deduction allowable under such sections in respect of such amount shall be allowable as of the day as of which such payment is includible in the gross income of the person to whom the payment is made (or, if later, as of the day on which it would be so allowable but for this paragraph)" for "then no deduction shall be allowed in respect of expenses otherwise deductible under section 162 or 212, or of interest otherwise deductible under section 163, before the day as of which the amount thereof is includible in the gross income of the person to whom the payment is made".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 174(c) of Pub. L. 98-369 provided that:

"(1) SUBSECTIONS (a) AND (b)(1).—The amendments made by subsections (a) [amending subsec. (a) and repealing subsec. (e) of this section] and (b)(1) [enacting subsec. (e) and repealing subsec. (f) of this section] shall apply to amounts allowable as deductions under chapter 1 of the Internal Revenue Code of 1954 for taxable years beginning after December 31, 1983. For purposes of the preceding sentence, the allowability of a deduction shall be determined without regard to any disallowance or postponement of deductions under section 267 of such Code.

"(2) SUBSECTION (b) (OTHER THAN PARAGRAPH (1)).—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsection (b) (other than paragraph (1) thereof) [enacting subsec. (f) of this section and amending subsec. (b) of this section and sections 170, 368, 514, and 1235 of this title] shall apply to transactions after December 31, 1983, in taxable years ending after such date.

"(B) EXCEPTION FOR TRANSFERS TO FOREIGN CORPORATIONS ON OR BEFORE MARCH 1, 1984.—The amendments made by subsection (b)(2) [enacting subsec. (f) and amending subsec. (b) of this section] shall not apply to property transferred to a foreign corporation on or before March 1, 1984.

"(3) EXCEPTION FOR EXISTING INDEBTEDNESS, ETC.—

"(A) IN GENERAL.—The amendments made by this section [amending sections 170, 267, 368, 514, and 1235 of this title] shall not apply to any amount paid or incurred—

"(i) on indebtedness incurred on or before September 29, 1983, or

"(ii) pursuant to a contract which was binding on September 29, 1983, and at all times thereafter before the amount is paid or incurred.

"(B) TREATMENT OF RENEGOTIATIONS, EXTENSIONS, ETC.—If any indebtedness (or contract described in subparagraph (A)) is renegotiated, extended, renewed, or revised after September 29, 1983, subparagraph (A) shall not apply to any amount paid or incurred on such indebtedness (or pursuant to such contract) after the date of such renegotiation, extension, renewal, or revision."

Amendment by section 721(s) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 51, 55, 72, 103, 108, 163, 168, 170, 178, 179, 274, 280A, 280F, 311, 341, 447, 464, 483, 503, 514, 613A, 631, 707, 864, 904, 936, 1042, 1235, 1237, 1378, 4946, 4951, 4975, 6166 of this title; title 29 sections 1108, 1384.

§ 269. Acquisitions made to evade or avoid income tax

[*See main edition for text of* (*a*)]

(b) Certain liquidations after qualified stock purchases

(1) In general

If—

(A) there is a qualified stock purchase by a corporation of another corporation,

(B) an election is not made under section 338 with respect to such purchase,

(C) the acquired corporation is liquidated pursuant to a plan of liquidation adopted not more than 2 years after the acquisition date, and

(D) the principal purpose for such liquidation is the evasion or avoidance of Federal income tax by securing the benefit of a deduction, credit, or other allowance which the acquiring corporation would not otherwise enjoy,

then the Secretary may disallow such deduction, credit, or other allowance.

(2) Meaning of terms

For purposes of paragraph (1), the terms "qualified stock purchase" and "acquisition date" have the same respective meanings as when used in section 338.

(c) Power of Secretary to allow deduction, etc., in part

In any case to which subsection (a) or (b) applies the Secretary is authorized—

(1) to allow as a deduction, credit, or allowance any part of any amount disallowed by such subsection, if he determines that such allowance will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(2) to distribute, apportion, or allocate gross income, and distribute, apportion, or allocate the deductions, credits, or allowances the benefit of which was sought to be secured, between or among the corporations, or properties, or parts thereof, involved, and to allow such deductions, credits, or allowances so distributed, apportioned, or allocated, but to give effect to such allowance only to such extent as he determines will not result in the evasion or avoidance of Federal income tax for which the acquisition was made; or

(3) to exercise his powers in part under paragraph (1) and in part under paragraph (2).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 712(k)(8)(A), (B), 98 Stat. 952.)

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98-369 added subsec. (b), redesignated former subsec. (b) as (c) and, in subsec. (c) as so redesignated, inserted reference to subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 712(k)(8)(C) of Pub. L. 98-369 provided that: "The amendments made by this paragraph [amending this section] shall apply to liquidations after October 20, 1983, in taxable years ending after such date."

§ 269A. Personal service corporations formed or availed of to avoid or evade income tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 465 of this title.

§ 269B. Stapled entities

(a) General rule

Except as otherwise provided by regulations, for purposes of this title—

(1) if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation shall be treated as a domestic corporation.

(2) in applying section 1563, stock in a second corporation which constitutes a stapled interest with respect to stock of a first corporation shall be treated as owned by such first corporation, and

(3) in applying subchapter M for purposes of determining whether any stapled entity is a regulated investment company or a real estate investment trust, all entities which are stapled entities with respect to each other shall be treated as 1 entity.

(b) Secretary to prescribe regulations

The Secretary shall prescribe such regulations as may be necessary to prevent avoidance or evasion of Federal income tax through the use of stapled entities. Such regulations may include (but shall not be limited to) regulations providing the extent to which 1 of such entities shall be treated as owning the other entity (to the extent of the stapled interest).

(c) Definitions

For purposes of this section—

(1) Entity

The term "entity" means any corporation, partnership, trust, association, estate, or other form of carrying on a business or activity.

(2) Stapled entities

The term "stapled entities" means any group of 2 or more entities if more than 50 percent in value of the beneficial ownership in each of such entities consists of stapled interests.

(3) Stapled interests

Two or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of 1 of such interests the other such interests are also transferred or required to be transferred.

(d) Special rule for treaties

Nothing in section 894 or 7852(d) or in any other provision of law shall be construed as permitting an exemption, by reason of any treaty obligation of the United States heretofore or hereafter entered into, from the provisions of this section.

(Added Pub. L. 98-369, div. A, title I, § 136(a), July 18, 1984, 98 Stat. 669.)

Effective Date

Section 136(c) of Pub. L. 98-369 provided that:

"(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section] shall take effect on the date of the enactment of this Act [July 18, 1984].

"(2) Interests stapled as of June 30, 1983.—Except as otherwise provided in this subsection, in the case of any interests which on June 30, 1983, were stapled interests (as defined in section 269B(c)(3) of the Internal Revenue Code of 1954 (as added by this section)), the amendments made by this section shall take effect on January 1, 1985 (January 1, 1987, in the case of stapled interests in a foreign corporation).

"(3) Certain stapled entities which include real estate investment trust.—Paragraph (3) of section 269B(a) of such Code shall not apply in determining the application of the provisions of part II of subchapter M of chapter 1 of such Code to any real estate investment trust which is part of a group of stapled entities if—

"(A) all members of such group were stapled entities as of June 30, 1983, and

"(B) as of June 30, 1983, such group included one or more real estate investment trusts.

"(4) Certain stapled entities which include Puerto Rican corporations.—

"(A) Paragraph (1) of section 269B(a) of such Code shall not apply to a domestic corporation and a qualified Puerto Rican corporation which, on June 30, 1983, were stapled entities.

"(B) For purposes of subparagraph (A), the term 'qualified Puerto Rican corporation' means any corporation organized in Puerto Rico—

"(i) which is described in section 957(c) of such Code or would be so described if any dividends it received from any other corporation described in such section 957(c) were treated as gross income of the type described in such section 957(c), and

"(ii) does not, at any time during the taxable year, own (within the meaning of section 958 of such Code but before applying paragraph (2) of section 269B(a) of such Code) any stock of any corporation which is not described in such section 957(c).

"(5) Treaty rule not to apply to stapled entities entitled to treaty benefits as of June 30, 1983.—In the case of any entity which was a stapled entity as of June 30, 1983, subsection (d) of section 269B of such Code shall not apply to any treaty benefit to which such entity was entitled as of June 30, 1983.

"(6) Elections to treat stapled foreign entities as subsidiaries.—

"(A) In general.—In the case of any foreign corporation and domestic corporation which as of June 30, 1983, were stapled entities, such domestic corporation may elect (in lieu of applying paragraph (1) of section 269B(a) of such Code) to be treated as owning all interests in the foreign corporation which constitute stapled interests with respect to stock of the domestic corporation.

"(B) Election.—Any election under subparagraph (A) shall be made not later than 180 days after the date of the enactment of this Act and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe.

"(C) Election irrevocable.—Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary of the Treasury or his delegate.

"(7) Other stapled entities which include real estate investment trust.—

"(A) In general.—Paragraph (3) of section 269B(a) of such Code shall not apply in determining the application of the provisions of part II of subchapter M of chapter 1 of such Code to any qualified real estate investment trust which is a part of a group of stapled entities—

"(i) which was created pursuant to a written board of directors resolution adopted on April 5, 1984, and

"(ii) all members of such group were stapled entities as of June 16, 1985.

"(B) Qualified real estate investment trust.—The term 'qualified real estate investment trust' means any real estate trust—

"(i) at least 75 percent of the gross income of which is derived from interest on obligations secured by mortgages on real property (as defined in section 856 of such Code),

"(ii) with respect to which the interest on the obligations described in clause (i) made or acquired by such trust (other than to persons who are independent contractors, as defined in section 856(d)(3) of such Code) is at an arm's length rate or a rate not more than 1 percentage point greater than the associated borrowing cost of the trust, and

"(iii) with respect to which any real property held by the trust is not used in the trade or business of any other member of the group of stapled entities."

§ 274. Disallowance of certain entertainment, etc., expenses

[*See main edition for text of* (a) *to* (c)]

(d) Substantiation required

No deduction or credit shall be allowed—

(1) under section 162 or 212 for any traveling expense (including meals and lodging while away from home),

(2) for any item with respect to an activity which is of a type generally considered to constitute entertainment, amusement, or recreation, or with respect to a facility used in connection with such an activity,

(3) for any expense for gifts, or

(4) with respect to any listed property (as defined in section 280F(d)(4)),

unless the taxpayer substantiates by adequate contemporaneous records (A) the amount of such expense or other item, (B) the time and place of the travel, entertainment, amusement, recreation, or use of the facility or property, or the date and description of the gift, (C) the business purpose of the expense or other item, and (D) the business relationship to the taxpayer of persons entertained, using the facility or property, or receiving the gift. The Secretary may by regulations provide that some or all of the requirements of the preceding sentence shall not apply in the case of an expense which does not exceed an amount prescribed pursuant to such regulations.

[*See main edition for text of* (e) *to* (g)]

(h) Attendance at conventions, etc.

[*See main edition for text of* (1) *to* (5)]

(6) Treatment of conventions in certain Caribbean countries

(A) In general

For purposes of this subsection, the term "North American area" includes, with respect to any convention, seminar, or similar meeting, any beneficiary country if (as of the time such meeting begins)—

(i) there is in effect a bilateral or multilateral agreement described in subparagraph (C) between such country and the

United States providing for the exchange of information between the United States and such country, and

(ii) there is not in effect a finding by the Secretary that the tax laws of such country discriminate against conventions held in the United States.

(B) Beneficiary country

For purposes of this paragraph, the term "beneficiary country" has the meaning given to such term by section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act; except that such term shall include Bermuda.

(C) Authority to conclude exchange of information agreements

(i) In general

The Secretary is authorized to negotiate and conclude an agreement for the exchange of information with any beneficiary country. Except as provided in clause (ii), an exchange of information agreement shall provide for the exchange of such information (not limited to information concerning nationals or residents of the United States or the beneficiary country) as may be necessary or appropriate to carry out and enforce the tax laws of the United States and the beneficiary country (whether criminal or civil proceedings), including information which may otherwise be subject to nondisclosure provisions of the local law of the beneficiary country such as provisions respecting bank secrecy and bearer shares. The exchange of information agreement shall be terminable by either country on reasonable notice and shall provide that information received by either country will be disclosed only to persons or authorities (including courts and administrative bodies) involved in the administration or oversight of, or in the determination of appeals in respect of, taxes of the United States or the beneficiary country and will be used by such persons or authorities only for such purposes.

(ii) Nondisclosure of qualified confidential information sought for civil tax purposes

An exchange of information agreement need not provide for the exchange of qualified confidential information which is sought only for civil tax purposes if—

(I) the Secretary of the Treasury, after making all reasonable efforts to negotiate an agreement which includes the exchange of such information, determines that such an agreement cannot be negotiated but that the agreement which was negotiated will significantly assist in the administration and enforcement of the tax laws of the United States, and

(II) the President determines that the agreement as negotiated is in the national security interest of the United States.

(iii) Qualified confidential information defined

For purposes of this subparagraph, the term "qualified confidential information" means information which is subject to the nondisclosure provisions of any local law of the beneficiary country regarding bank secrecy or ownership of bearer shares.

(iv) Civil tax purposes

For purposes of this subparagraph, the determination of whether information is sought only for civil tax purposes shall be made by the requesting party.

(D) Coordination with other provisions

Any exchange of information agreement negotiated under subparagraph (C) shall be treated as an income tax convention for purposes of section 6103(k)(4). The Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligation of the United States under an agreement referred to in subparagraph (C).

(E) Determinations published in the Federal Register

The following shall be published in the Federal Register—

(i) any determination by the President under subparagraph (C)(ii) (including the reasons for such determination),

(ii) any determination by the Secretary under subparagraph (C)(ii) (including the reasons for such determination), and

(iii) any finding by the Secretary under subparagraph (A)(ii) (and any termination thereof).

[*See main edition for text of* (i)]

(As amended Pub. L. 98-67, title I, § 102(a), title II, § 222(a), Aug. 5, 1983, 97 Stat. 369, 395; Pub. L. 98-369, div. A, title I, § 179(b)(1), title VIII, § 801(c), July 18, 1984, 98 Stat. 718, 995.)

REFERENCES IN TEXT

Section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, referred to in subsec. (h)(6)(B), is classified to section 2702(a)(1)(A) of Title 19, Customs Duties.

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369, § 179(b)(1)(A), substituted "No deduction or credit" for "No deduction" in introductory provisions.

Pub. L. 98-369, § 179(b)(1)(C), (D), in provisions following par. (4), substituted "adequate contemporaneous records" for "adequate records or by sufficient evidence corroborating his own statement" and "the facility or property" for "the facility" in two places.

Subsec. (d)(4). Pub. L. 98-369, § 179(b)(1)(B), added par. (4).

Subsec. (h)(6)(D). Pub. L. 98-369, § 801(c), substituted in heading "with other provisions" for "with section 6103" and in text inserted provision that the Secretary may exercise his authority under subchapter A of chapter 78 to carry out any obligations of the United States under an agreement referred to in subpar. (C).

1983—Subsec. (e)(3). Pub. L. 98-67, § 102(a), repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

Subsec. (h)(6). Pub. L. 98-67, § 227(a), added par. (6).

Effective Date of 1984 Amendment

Amendment by section 179(b)(1) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 179(d)(2) of Pub. L. 98-369, set out as an Effective Date note under section 280F of this title.

Amendment by section 801(c) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

Effective Date of 1983 Amendments

Section 222(b) of Pub. L. 98-67 provided that: "The amendment made by subsection (a) [enacting subsec. (h)(6) of this section] shall apply to conventions, seminars, or other meetings which begin after June 30, 1983."

Section Referred to in Other Sections

This section is referred to in sections 276, 927, 6653, 6695 of this title.

§ 275. Certain taxes

(a) General rule

No deduction shall be allowed for the following taxes:

[*See main edition for text of (1) to (3)*]

(4) Income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States if—

(A) the taxpayer chooses to take to any extent the benefits of section 901, or

(B) such taxes are paid or accrued with respect to foreign trade income (within the meaning of section 923(b)) of a FSC.

[*See main edition for text of (5)*]

(6) Taxes imposed by chapters 41, 42, 43, 44, and 46.

[*See main edition for text of (b)*]

(As amended Pub. L. 98-67, title I, § 102(a) Aug. 5, 1983, 97 Stat. 369; Pub. L. 98-369, div. A, title I, § 67(b)(2), title VIII, § 801(d)(5), July 18, 1984, 98 Stat. 587, 996.)

Amendment of Subsection (a)

Pub. L. 98-21, title I, § 124(c)(5), (d)(2), Apr. 20, 1983, 97 Stat. 91, provided that, applicable to taxable years beginning after Dec. 31, 1989, subsection (a) of this section is amended by adding at the end thereof the following new sentence: "Paragraph (1) shall not apply to any taxes to the extent such taxes are allowable as a deduction under section 164(f)."

Amendments

1984—Subsec. (a)(4). Pub. L. 98-369, § 801(d)(5), inserted provision disallowing a deduction for income, war profits, and excess profits taxes if such taxes are paid or accrued with respect to foreign trade income, within the meaning of section 923(b), of a FSC.

Subsec. (a)(6). Pub. L. 98-369, § 67(b)(2), substituted "44, and 46" for "and 44".

1983—Subsec. (a)(1). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

Effective Date of 1984 Amendment

Amendment by section 67(b)(2) of Pub. L. 98-369 applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98-369, set out as an Effective Date note under section 280G of this title.

Amendment by section 801(d)(5) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

Section Referred to in Other Sections

This section is referred to in sections 535, 545, 556, 901, 903, 908, 4971 of this title.

§ 280. Certain expenditures incurred in production of films, books, records, or similar property

Section Referred to in Other Sections

This section is referred to in section 48 of this title.

§ 280A. Disallowance of certain expenses in connection with business use of home, rental of vacation homes, etc.

Section Referred to in Other Sections

This section is referred to in section 280F of this title.

§ 280B. Demolition of structures

In the case of the demolition of any structure—

(1) no deduction otherwise allowable under this chapter shall be allowed to the owner or lessee of such structure for—

(A) any amount expended for such demolition, or

(B) any loss sustained on account of such demolition; and

(2) amounts described in paragraph (1) shall be treated as properly chargeable to capital account with respect to the land on which the demolished structure was located.

(As amended Pub. L. 98-369, div. A, title X, § 1063(a), (b)(1), July 18, 1984, 98 Stat. 1047.)

Amendments

1984—Pub. L. 98-369 struck out "certain historic" before "structures" in catchline, struck out heading "(a) General rule", substituted "In the case of the demolition of any structure" for "In the case of the demolition of a certified historic structure (as defined in 48(g)(3)(A))" in text, and struck out subsecs. (b) and (c) which contained provisions relating to a special rule for registered historic districts and to the application of this section, respectively.

Effective Date of 1984 Amendment

Section 1063(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983."

§ 280C. Certain expenses for which credits are allowable

(a) Rule for section targeted jobs credit

No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit determined for the taxable year under section 51(a). In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 52(a)) or a trade or business which is treated as being under common control with other trades or businesses (within the meaning of section 52(b)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subsections (a) and (b) of section 52.

(b) Credit for qualified clinical testing expenses for certain drugs

(1) In general

No deduction shall be allowed for that portion of the qualified clinical testing expenses (as defined in section 29(b)) otherwise allowable as a deduction for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 29 (determined without regard to subsection (d)(2) thereof).

(2) Similar rule where taxpayer capitalizes rather than deducts expenses

If—

(A) the amount of the credit allowable for the taxable year under section 29 (determined without regard to subsection (d)(2) thereof), exceeds

(B) the amount allowable as a deduction for the taxable year for qualified clinical testing expenses (determined without regard to paragraph (1)),

the amount chargeable to capital account for the taxable year for such expenses shall be reduced by the amount of such excess.

(3) Controlled groups

In the case of a corporation which is a member of a controlled group of corporations (within the meaning of section 30(f)(5)) or a trade or business which is treated as being under common control with other trades or business (within the meaning of section 30(f)(1)(B)), this subsection shall be applied under rules prescribed by the Secretary similar to the rules applicable under subparagraphs (A) and (B) of section 30(f)(1).

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(10), July 18, 1984, 98 Stat. 841.)

Amendments

1984—Subsec. (a). Pub. L. 98-369, § 474(r)(10)(A), (B), redesignated subsec. (b) as (a), in heading substituted "targeted jobs credit" for "section 44B credit", and in text substituted "No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit determined for the taxable year under secion 51(a)" for "No deduction shall be allowed for that portion of the wage or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under section 44B (relating to credit for employment of certain new employees) determined without regard to the provisions of section 53 (relating to limitation based on amount of tax)". Former subsec. (a), which had provided that no deduction would be allowed for that portion of the work incentive program expenses paid or incurred for the taxable year which was equal to the amount of the credit allowable for the taxable year under section 40 (relating to credit for expenses of work incentive programs) determined without regard to the provisions of section 50A(a)(2) (relating to limitation based on amount of tax), and that in the case of a corporation which was a member of a controlled group of corporations (within the meaning of section 50B(g)(1) or a trade or business which was treated as being under common control with other trades or businesses within the meaning of section 50B(g)(2), this subsection would be applied under rules precribed by the Secretary similar to the rules applicable under paragrpahs (1) and (2) of section 50B(g), was struck out

Subsec. (b). Pub. L. 98-369, § 474(r)(10)(A), redesignated subsec. (c) as (b). Former subsec. (b) redesignated (a).

Subsec. (b)(1), (2)(A). Pub. L. 98-369, § 474(r)(10)(C), substituted "29" for "44H".

Subsec. (b)(3). Pub. L. 98-369, § 474(r)(10)(D), substituted "section 30(f)(5)" for "section 44F(f)(5)", "section 30(f)(1)(B)" for "section 44F(f)(1)(B)", and "section 30(f)(1)" for "section 44F(f)(1)".

Subsec. (c). Pub. L. 93-369, § 474(r)(10)(A), redesignated subsec. (c) as (b).

Effective Date of 1984 Amendment

Amendment by section 474(r)(10) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Effective Date of 1978 Amendment

Section 322(e) of Pub. L. 95-600, as amended by Pub. L. 96-178, § 6(a), (b), Jan. 2, 1980, 93 Stat. 1297; Pub. L. 96-222, title I, § 103(a)(7)(A), (B), Apr. 1, 1980, 94 Stat. 211, provided that:

"(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section [amending sections 50A, 50B, and 280C of this title] shall apply to work incentive program expenses paid or incurred after December 31, 1978, in taxable years ending after such date; except that so much of the amendment made by subsection (a) as affects section 50A(a)(2) of the Internal Revenue Code of 1954 shall apply to taxable years beginning after December 31, 1978. For purposes of applying section 50A(a)(2) of the Internal Revenue Code of 1954 with respect to a taxable year beginning before January 1, 1979, the rules of sections 50A(a)(4), 50A(a)(5), and 50B(e)(3) of such Code (as in effect on the day before the date of the enactment of this Act [Nov. 6, 1978] shall apply.

"(2) Special rules for certain eligible employees.—

"(A) Eligible employees hired before September 27, 1978.—In the case of any eligible employee (as defined in section 50B(h)) hired before September 27, 1978, no credit shall be allowed under section 40 with respect to second-year work incentive program expenses (as defined in section 50B(a)) attributable to service performed by such employee.

"(B) Eligible employees hired after September 26, 1978.—In the case of any eligible employee (as defined in section 50B(h)) hired after September 26, 1978, for purposes of applying the amendments made by this section, such individual shall be treated for purposes of the credit allowed by section 40 as having first begun work for the taxpayer not earlier than January 1, 1979, and any wages paid or incurred after December 31, 1978, with respect to such individual shall be considered to be attributable to services rendered after that date."

[Section 6(d) of Pub. L. 96-178 provided that: "Any amendment made by this section to the Revenue Act of 1978 [amending section 322(e)(1) and (2) of Pub. L. 95-600, set out above] shall take effect as if it had been included in the provision of the Revenue Act of 1978 [Pub. L. 95-600] to which such amendment relates."]

§ 280F. Limitation on investment tax credit and depreciation for luxury automobiles; limitation where certain property used for personal purposes

(a) Limitation on amount of investment tax credit and depreciation for luxury automobiles

(1) Investment tax credit

The amount of the credit determined under section 46(a) for any passenger automobile shall not exceed $1,000.

(2) Depreciation

(A) Limitation

The amount of the recovery deduction for any taxable year for any passenger automobile shall not exceed—

(i) $4,000 for the first taxable year in the recovery period, and

(ii) $6,000 for each succeeding taxable year in the recovery period.

(B) Disallowed deductions allowed for years after recovery period

(i) In general

Except as provided in clause (ii), the unrecovered basis of any passenger automobile shall be treated as an expense for the 1st taxable year after the recovery period. Any excess of the unrecovered basis over the limitation of clause (ii) shall be treated as an expense in the succeeding taxable year.

(ii) $6,000 limitation

The amount treated as an expense under clause (i) for any taxable year shall not exceed $6,000.

(iii) Property must be depreciable

No amount shall be allowable as a deduction by reason of this subparagraph with respect to any property for any taxable year unless a depreciation deduction would be allowable with respect to such property for such taxable year.

(iv) Amount treated as recovery deduction

For purposes of this subtitle, any amount allowable as a deduction by reason of this subparagraph shall be treated as a recovery deduction allowable under section 168.

(3) Coordination with reductions in amount allowable by reason of personal use, etc.

This subsection shall be applied before—

(A) the application of subsection (b), and

(B) the application of any other reduction in the amount of the credit determined under section 46(a) or any recovery deduction allowable under section 168 by reason of any use not qualifying the property for such credit or recovery deduction.

(4) Special rule where election of reduced credit in lieu of the basis adjustment

In the case of any election under section 48(q)(4) with respect to any passenger automobile, the limitation of paragraph (1) applicable to such passenger automobile shall be ⅔ of the amount which would be so applicable but for this paragraph.

(b) Limitation where business use of listed property not greater than 50 percent

(1) Investment tax credit

For purposes of this subtitle, any listed property shall not be treated as section 38 property for any taxable year unless such property is predominantly used in a qualified business use for such taxable year.

(2) Depreciation

If any listed property is not predominantly used in a qualified business use for any taxable year, the deduction allowed under section 168 with respect to such property for such taxable year and any subsequent taxable year shall be determined under the straight line method over the earnings and profits life for such property.

(3) Recapture

(A) Where business use percentage does not exceed 50 percent

If—

(i) property is predominantly used in a qualified business use in a taxable year in which it is placed in service, and

(ii) such property is not predominantly used in a qualified business use for any subsequent taxable year,

then any excess depreciation shall be included in gross income for the taxable year referred to in clause (ii), and the recovery deduction for the taxable year referred to in clause (ii) and any subsequent taxable years shall be determined under the straight line method over the earnings and profits life.

(B) Excess depreciation

For purposes of subparagraph (A), the term "excess depreciation" means the excess (if any) of—

(i) the amount of the recovery deductions allowable with respect to the property for taxable years before the 1st taxable year in which the property was not predominantly used in a qualified business use, over

(ii) the amount which would have been so allowable if the property had not been predominantly used in a qualified business use for the taxable year in which it was placed in service.

(4) Definitions

For purposes of this subsection—

(A) Property predominantly used in qualified business use

Property shall be treated as predominantly used in a qualified business use for any taxable year if the business use percentage for such taxable year exceeds 50 percent.

(B) Straight line method over earnings and profits life

The amount determined under the straight line method over the earnings and profits life with respect to any property shall be the amount which would be determined with respect to such property under the principles of section 312(k)(3). If the recovery period applicable to any property under section 168 is longer than the recovery period applicable to such property under section 312(k)(3), such longer recovery period shall be used for purposes of the preceding sentence.

(c) Treatment of leases

(1) Lessor's credits and deductions not affected

This section shall not apply to any listed property leased or held for leasing by any person regularly engaged in the business of leasing such property.

(2) Lessee's deductions reduced

For purposes of determining the amount allowable as a deduction under this chapter for rentals or other payments under a lease for a period of 30 days or more of listed property, only the allowable percentage of such payments shall be taken into account.

(3) Allowable percentage

For purposes of paragraph (2), the allowable percentage shall be determined under tables prescribed by the Secretary. Such tables shall be prescribed so that the reduction in the deduction under paragraph (2) is substantially equivalent to the applicable restrictions contained in subsections (a) and (b).

(4) Lease term

In determining the term of any lease for purposes of paragraph (2), the rules of section 168(j)(6)(B) shall apply.

(5) Lessee recapture

Under regulations prescribed by the Secretary, rules similar to the rules of subsection (b)(3) shall apply to any lessee to which paragraph (2) applies.

(d) Definitions and special rules

For purposes of this section—

(1) Coordination with section 179

Any deduction allowable under section 179 with respect to any listed property shall be subject to the limitations of subsections (a) and (b) in the same manner as if it were a recovery deduction allowable under section 168.

(2) Subsequent depreciation deductions reduced for deductions allocable to personal use

Solely for purposes of determining the amount of the recovery deduction for subsequent taxable years, if less than 100 percent of the use of any listed property during any taxable year is not use described in section 168(c)(1) (defining recovery property), all of the use of such property during such taxable year shall be treated as use so described.

(3) Deductions of employee

(A) In general

Any employee use of listed property shall not be treated as use in a trade or business for purposes of determining the amount of any credit allowable under section 38 to the employee or the amount of any recovery deduction allowable to the employee unless such use is for the convenience of the employer and required as a condition of employment.

(B) Employee use

For purposes of subparagraph (A), the term "employee use" means any use in connection with the performance of services as an employee.

(4) Listed property

(A) In general

Except as provided in subparagraph (B), the term "listed property" means—

(i) any passenger automobile,

(ii) any other property used as a means of transportation,

(iii) any property of a type generally used for purposes of entertainment, recreation, or amusement,

(iv) any computer or peripheral equipment (as defined in section 168(j)(5)(D)), and

(v) any other property of a type specified by the Secretary by regulations.

(B) Exception for certain computers

The term "listed property" shall not include any computer or peripheral equipment (as so defined) used exclusively at a regular business establishment. For purposes of the preceding sentence, any portion of a dwelling unit shall be treated as a regular business establishment if (and only if) the requirements of section 280A(c)(1) are met with respect to such portion.

(5) Passenger automobile

(A) In general

Except as provided in subparagraph (B), the term "passenger automobile" means any 4-wheeled vehicle—

(i) which is manufactured primarily for use on public streets, roads, and highways, and

(ii) which is rated at 6,000 pounds gross vehicle weight or less.

(B) Exception for certain vehicles

The term "passenger automobile" shall not include—

(i) any ambulance, hearse, or combination ambulance-hearse used by the taxpayer directly in a trade or business,

(ii) any vehicle used by the taxpayer directly in the trade or business of transporting persons or property for compensation or hire, and

(iii) under regulations, any truck or van.

(6) Business use percentage

(A) In general

The term "business use percentage" means the percentage of the use of any listed property during any taxable year which is a qualified business use.

(B) Qualified business use

Except as provided in subparagraph (C), the term "qualified business use" means any use in a trade or business of the taxpayer.

(C) Exception for certain use by 5-percent owners and related persons

(i) In general

The term "qualified business use" shall not include—

(I) leasing property to any 5-percent owner or related person,

(II) use of property provided as compensation for the performance of services by a 5-percent owner or related person, or

(III) use of property provided as compensation for the performance of services by any person not described in subclause (II) unless an amount is included in the gross income of such person with respect to such use, and, where required, there was withholding under chapter 24.

(ii) Special rule for aircraft

Clause (i) shall not apply with respect to any aircraft if at least 25 percent of the total use of the aircraft during the taxable year consists of qualified business use not described in clause (i).

(D) Definitions

For purposes of this paragraph—

(i) 5-percent owner

The term "5-percent owner" means any person who is a 5-percent owner with respect to the taxpayer (as defined in section 416(i)(1)(B)(i)).

(ii) Related person

The term "related person" means any person related to the taxpayer (within the meaning of section 267(b)).

(7) Automobile price inflation adjustment

(A) In general

In the case of any passenger automobile, subsection (a) shall be applied by increasing each dollar amount contained in such subsection by the automobile price inflation adjustment for the calendar year in which such automobile is placed in service. Any increase under the preceding sentence shall be rounded to the nearest multiple of $100 (or if the increase is a multiple of $50, such increase shall be increased to the next higher multiple of $100).

(B) Automobile price inflation adjustment

For purposes of this paragraph—

(i) In general

The automobile price inflation adjustment for any calendar year is the percentage (if any) by which—

(I) the CPI automobile component for October of the preceding calendar year, exceeds

(II) the CPI automobile component for October of 1983.

In the case of calendar year 1984, the automobile price inflation adjustment shall be zero.

(ii) CPI automobile component

The term "CPI automobile component" means the automobile component of the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(8) Unrecovered basis

For purposes of subsection (a)(2), the term "unrecovered basis" means the excess (if any) of—

(A) the unadjusted basis (as defined in section 168(d)(1)(A)) of the passenger automobile, over

(B) the amount of the recovery deductions which would have been allowable for taxable years in the recovery period determined after the application of subsection (a) and as if all use during the recovery period were use described in section 168(c)(1).

(9) All taxpayers holding interests in passenger automobile treated as 1 taxpayer

All taxpayers holding interests in any passenger automobile shall be treated as 1 taxpayer for purposes of applying subsection (a) to such automobile, and the limitations of subsection (a) shall be allocated among such taxpayers in proportion to their interests in such automobile.

(10) Special rule for property acquired in nonrecognition transactions

For purposes of subsection (a)(2), notwithstanding any regulations prescribed under section 168(f)(7), any property acquired in a nonrecognition transaction shall be treated as a single property originally placed in service in the taxable year in which it was placed in service after being so acquired.

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations with respect to items properly included in, or excluded from, the adjusted basis of any listed property.

(Added Pub. L. 98-369, div. A, title I, § 179(a), July 18, 1984, 98 Stat. 713.)

EFFECTIVE DATE OF 1984 AMENDMENT

Section 179(d) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—

"(A) Except as provided in subparagraph (B), the amendments made by subsections (a) and (c) [enacting this section] shall apply to—

"(i) property placed in service after June 18, 1984, in taxable years ending after such date, and

"(ii) property leased after June 18, 1984, in taxable years ending after such date.

"(B) The amendments made by subsections (a) and (c) shall not apply to any property—

"(i) acquired by the taxpayer pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter (or under construction on such date) but only if the property is placed in service before January 1, 1985 (January 1, 1987, in the case of 15-year real property), or

"(ii) of which the taxpayer is the lessee but only if the lease is pursuant to a binding contract in effect on June 18, 1984, and at all times thereafter and only if the taxpayer first uses such property under the lease before January 1, 1985 (January 1, 1987, in the case of 15-year real property).

For purposes of the preceding sentence, the term '15-year real property' includes 18-year real property.

"(2) COMPLIANCE PROVISIONS.—The amendments made by subsection (b) [amending sections 274, 6653, and 6695 of this title] shall apply to taxable years beginning after December 31, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 274 of this title.

§ 280G. Golden parachute payments

(a) General rule

No deduction shall be allowed under this chapter for any excess parachute payment.

(b) Excess parachute payment

For purposes of this section—

(1) In general

The term "excess parachute payment" means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment.

(2) Parachute payment defined

(A) In general

The term "parachute payment" means any payment in the nature of compensation to (or for the benefit of) a disqualified individual if—

(i) such payment is contingent on a change—

(I) in the ownership or effective control of the corporation, or

(II) in the ownership of a substantial portion of the assets of the corporation, and

(ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent on such change equals or exceeds an amount equal to 3 times the base amount.

(B) Agreements

The term "parachute payment" shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is pursuant to an agreement which violates any securities laws or regulations.

(C) Treatment of certain agreements entered into within 1 year before change of ownership

For purposes of subparagraph (A)(i), any payment pursuant to—

(i) an agreement entered into within 1 year before the change described in subparagraph (A)(i), or

(ii) an amendment made within such 1-year period of a previous agreement,

shall be presumed to be contingent on such change unless the contrary is established by clear and convincing evidence.

(3) Base amount

(A) In general

The term "base amount" means the individual's annualized includible compensation for the base period.

(B) Allocation

The portion of the base amount allocated to any parachute payment shall be an amount which bears the same ratio to the base amount as—

(i) the present value of such payment, bears to

(ii) the aggregate present value of all such payments.

(4) Excess parachute payments reduced to extent taxpayer establishes reasonable compensation

In the case of any parachute payment described in paragraph (2)(A), the amount of any excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered. For purposes of the preceding sentence, reasonable compensation shall be first offset against the base amount.

(c) Disqualified individuals

For purposes of this section, the term "disqualified individual" means any individual who is—

(1) an employee, independent contractor, or other person specified in regulations by the Secretary who performs personal services for any corporation, and

(2) is an officer, shareholder, or highly-compensated individual.

For purposes of this section, a personal service corporation (or similar entity) shall be treated as an individual.

(d) Other definitions and special rules

For purposes of this section—

(1) Annualized includible compensation for base period

The term "annualized includible compensation for the base period" means the average annual compensation which—

(A) was payable by the corporation with respect to which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs, and

(B) was includible in the gross income of the disqualified individual for taxable years in the base period.

(2) Base period

The term "base period" means the period consisting of the most recent 5 taxable years ending before the date on which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs (or such portion of such period during which the disqualified individual was an employee of the corporation).

(3) Property transfers

Any transfer of property—

(A) shall be treated as a payment, and

(B) shall be taken into account as its fair market value.

(4) Present value

Present value shall be determined in accordance with section 1274(b)(2).

(e) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section (including regulations for the application of this section in the case of related corporations and in the case of personal service corporations).

(Added Pub. L. 98-369, div. A, title I, § 67(a), July 18, 1984, 98 Stat. 585.)

EFFECTIVE DATE

Section 67(e) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting sections 280G and 4999 of this title and amending sections 275 and 3121 of this title] shall apply to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date.

"(2) SPECIAL RULE FOR CONTRACT AMENDMENTS.—Any contract entered into before June 15, 1984, which is amended after June 14, 1984, in any significant relevant aspect shall be treated as a contract entered into after June 14, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3121, 4999 of this title.

PART XI—SPECIAL RULES RELATING TO CORPORATE PREFERENCE ITEMS

§ 291. Special rules relating to corporate preference items

(a) 15-Percent reduction in certain preference items, etc.

For purposes of this subtitle, in the case of a corporation—

(1) Section 1250 capital gain treatment

In the case of section 1250 property which is disposed of during the taxable year, 20 percent of the excess (if any) of—

[*See main edition for text of* (*A*)]

(B) the amount treated as ordinary income under section 1250 (determined without regard to this paragraph),

shall be treated as gain which is ordinary income under section 1250 and shall be recognized notwithstanding any other provision of this title. Under regulations prescribed by the Secretary, the provisions of this paragraph shall not apply to the disposition of any property to the extent section 1250(a) does not apply to such disposition by reason of section 1250(d).

[*See main edition for text of* (*2*)]

(3) Certain financial institution preference items

The amount allowable as a deduction under this chapter (determined without regard to this section) with respect to any financial institution preference item shall be reduced by 20 percent.

(4) Certain deferred FSC income

If a corporation is a shareholder of the FSC, in the case of taxable years beginning after December 31, 1984, section 923(a) shall be applied with respect to such corporation by substituting—

(A) "30 percent" for "32 percent" in paragraph (2), and

(B) "15/23" for "16/23" in paragraph (3).

(5) Amortization of pollution control facilities

If an election is made under section 169 with respect to any certified pollution control facility, the amortizable basis of such facility for purposes of such section shall be reduced by 20 percent.

(b) Special rules for treatment of intangible drilling costs and mineral exploration and development costs

For purposes of this subtitle, in the case of a corporation—

(1) In general

The amount allowable as a deduction for any taxable year (determined without regard to this section)—

[*See main edition for text of* (*A*) *and* (*B*)]

shall be reduced by 20 percent.

(2) Special rule for amounts not allowable as deductions under paragraph (1)

[*See main edition for text of* (*A*)]

(B) Mineral exploration and development costs

In the case of any amount not allowable as a deduction under section 616(a) or 617 for any taxable year by reason of paragraph (1)—

[*See main edition for text of* (*i*)]

(ii) in the case of a deposit located in the United States, such costs shall be treated, for purposes of determining the amount of the credit allowable under section 38 for the taxable year in which paid or incurred, as qualified investment (within the meaning of subsections (c) and (d) of section 46) with respect to property placed in service during such year.

[*See main edition for text of* (*3*) *to* (*5*)]

(6) Coordination with cost depletion

The portion of the adjusted basis of any property which is attributable to amounts to which paragraph (1) applied shall not be taken into account for purposes of determining depletion under section 611.

[*See main edition for text of* (*c*) *and* (*d*)]

(e) Definitions

For purposes of this section—

(1) Financial institution preference item

The term "financial institution preference item" includes the following:

[*See main edition for text of* (*A*)]

(B) Interest on debt to carry tax-exempt obligations acquired after December 31, 1982

[*See main edition for text of* (*i*) *and* (*ii*)]

(iii) Interest

For purposes of this subparagraph, the term "interest" includes amounts (whether or not designated as interest) paid in respect of deposits, investment certificates, or withdrawable or repurchasable shares.

[*See main edition for text of* (*2*)]

(As amended Pub. L. 98-369, div. A, title I, § 68(a), (b), title VII, § 712(a)(1)(A), (2)-(4), July 18, 1984, 98 Stat. 588, 946.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 68(a), substituted "20 percent" for "15 percent" in provisions preceding subpar. (A).

Pub. L. 98-369, § 712(a)(1)(A)(ii), inserted "under section 1250" in provisions following subpar. (B).

Subsec. (a)(1)(B). Pub. L. 98-369, § 712(a)(1)(A)(i) inserted "(determined without regard to this paragraph)".

Subsec. (a)(3). Pub. L. 98-369, § 68(a), substituted "20 percent" for "15 percent".

Subsec. (a)(4). Pub. L. 98-369, § 68(b), amended par. (4) generally. Prior to amendment, par. (4) read:

"(4) CERTAIN DEFERRED DISC INCOME

"If a corporation is a shareholder of a DISC, in the case of taxable years beginning after December 31, 1982, section 995(b)(1)(F)(i) shall be applied with respect to such corporation by substituting '57.5 percent' for 'one-half'."

Subsec. (a)(5). Pub. L. 98-369, § 68(a), substituted "20 percent" for "15 percent".

Subsec. (b)(1). Pub. L. 98-369, § 68(a), substituted "20 percent" for "15 percent" in provisions following subpar. (B).

Subsec. (b)(2)(B)(ii). Pub. L. 98-369, § 712(a)(2), inserted "in the case of a deposit located in the United States,".

Subsec. (b)(6). Pub. L. 98-369, § 712(a)(3), substituted "attributable to amounts to which paragraph (1) applied" for "attributable to intangible drilling and development costs or mining exploration and development costs".

Subsec. (e)(1)(B)(iii). Pub. L. 98-369, § 712(a)(4), added cl. (iii).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 68(e) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [amending sections 57, 291, and 995 of this title] shall apply to taxable years beginning after December 31, 1984.

"(2) 1250 GAIN.—The amendments made by this section to section 291(a)(1) of the Internal Revenue Code of 1954 shall apply to sales or other dispositions after December 31, 1984, in taxable years ending after such date.

"(3) POLLUTION CONTROL FACILITIES.—The amendments made by this section to section 291(a)(5) of such Code shall apply to property placed in service after December 31, 1984, in taxable years ending after such date.

"(4) DRILLING AND MINING COSTS.—The amendments made by this section to section 291(b) of such Code shall apply to expenditures after December 31, 1984, in taxable years ending after such date."

Amendment by section 712 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 168, 263, 1250, 1277, 1363 of this title.

Subchapter C—Corporate Distributions and Adjustments

Part	
VII.	Miscellaneous corporate provisions.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, § 75(d), July 18, 1984, 98 Stat. 595, added item for part VII.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 26, 465, 466, 535, 997, 1011, 1012, 1081, 1362, 1371, 1375 of this title.

PART I—DISTRIBUTIONS BY CORPORATIONS

SUBPART A—EFFECTS ON RECIPIENTS

§ 301. Distributions of property

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Special rule for holding period of appreciated property distributed to corporation

For purposes of this subtitle—

(1) Where gain recognized under section 311(d)

If—

(A) property is distributed to a corporation, and

(B) gain is recognized on such distribution under paragraph (1) of section 311(d),

then such corporation's holding period in the distributed property shall begin on the date of such distribution.

(2) Where gain not recognized under section 311(d)

If—

(A) property is distributed to a corporation,

(B) gain is not recognized on such distribution under paragraph (1) of section 311(d), and

(C) the basis of such property in the hands of such corporation is determined under subsection (d)(2)(B),

then (except for purposes of section 1248) such corporation shall not be treated as holding the distributed property during any period before the date on which such corporation's holding period in the stock began.

(f) Special rule for certain distributions received by 20 percent corporate shareholder

(1) In general

Except to the extent otherwise provided in regulations, solely for purposes of determining the taxable income of any 20 percent corporate shareholder (and its adjusted basis in the stock of the distributing corporation), section 312 shall be applied with respect to the distributing corporation as if it did not contain subsection (n) thereof.

(2) 20 percent corporate shareholder

For purposes of this subsection, the term "20 percent corporate shareholder" means, with respect to any distribution, any corporation which owns (directly or through the application of section 318)—

(A) stock in the corporation making the distribution possessing at least 20 percent of the total combined voting power of all classes of stock entitled to vote, or

(B) at least 20 percent of the total value of all stock of the distributing corporation (except nonvoting stock which is limited and preferred as to dividends),

but only if, but for this subsection, the distributee corporation would be entitled to a deduction under section 243, 244, or 245 with respect to such distribution.

(3) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(g) Special rules

(1) For distributions in redemption of stock, see section 302.

(2) For distributions in complete liquidation, see part II (sec. 331 and following).

(3) For distributions in corporate organizations and reorganizations, see part III (sec. 351 and following).

(4) For partial exclusion from gross income of dividends received by individuals, see section 116.

(As amended July 18, 1984, Pub. L. 98–369, div. A, title I, §§ 54(b), 61(d), title VII, § 712(i)(1), 98 Stat. 569, 582, 948.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98–369, § 54(b), added subsec. (e). Former subsec. (e) redesignated (f).

Subsec. (e)(2). Pub. L. 98–369, § 712(i)(1), substituted "complete liquidation" for "partial or complete liquidation" in subsec. (e)(2), which became subsec. (g)(2).

Subsec. (f). Pub. L. 98–369, § 61(d), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 98–369, § 54(b), redesignated former subsec. (e) as (f).

Subsec. (g). Pub. L. 98–369, §§ 54(b), 61(d), redesignated former subsec. (e) successively as subsec. (f) and as subsec. (g).

Subsec. (g)(2). Pub. L. 98–369, § 712(i)(1), substituted "complete liquidation" for "partial or complete liquidation" in subsec. (e)(2), which became subsec. (g)(2).

EFFECTIVE DATE OF 1984 AMENDMENT

Enactment of subsec. (e) of this section by section 54(b) of Pub. L. 98–369 applicable to distributions after July 18, 1984, in taxable years ending after July 18, 1984, see section 54(d)(2) of Pub. L. 98–369, set out as a note under section 311 of this title.

Section 61(e)(4) of Pub. L. 98–369 provided that: "The amendment made by subsection (d) [enacting subsec. (f) of this section] shall apply to distributions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Amendment by section 712(i)(1) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 245, 279, 302, 305, 306, 316, 317, 331, 338, 341, 356, 852, 877, 897, 1023, 1059, 1223, 1368, 1394, 2107, 2501 of this title.

§ 302. Distributions in redemption of stock

[See main edition for text of (a) to (e)]

(f) Cross references

For special rules relating to redemption—

[See main edition for text of (1) and (2)]

(3) Liquidations.—Of stock in complete liquidation, see section 331.

(As amended July 18, 1984, Pub. L. 98–369, div. A, title VII, § 712(i)(1), 98 Stat. 948.)

AMENDMENTS

1984—Subsec. (f)(3). Pub. L. 98–369 substituted "complete liquidation" for "partial or complete liquidation".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 301, 304, 306, 311, 312, 318, 338, 341, 562, 1246, 1248, 1368, 1445 of this title.

§ 304. Redemption through use of related corporations

[See main edition for text of (a)]

(b) Special rules for application of subsection (a)

[See main edition for text of (1)]

(2) Amount constituting dividend

In the case of any acquisition of stock to which subsection (a) applies, the determination of the amount which is a dividend (and the source thereof) shall be made as if the property were distributed—

(A) by the acquiring corporation to the extent of its earnings and profits, and

(B) then by the issuing corporation to the extent of its earnings and profits.

(3) Coordination with section 351

(A) Property treated as received in redemption

Except as otherwise provided in this paragraph, subsection (a) (and not section 351 and not so much of sections 357 and 358 as relates to section 351) shall apply to any property received in a distribution described in subsection (a).

(B) Certain assumptions of liability, etc.

(i) In general

In the case of an acquisition described in section 351, subsection (a) shall not apply to any liability—

[See main edition for text of (I) and (II)]

if such liability was incurred by the transferor to acquire the stock. For purposes of the preceding sentence, the term "stock" means stock referred to in paragraph (1)(B) or (2)(A) of subsection (a).

[See main edition for text of (ii)]

(iii) Clause (i) does not apply to stock acquired from related person except where complete termination

Clause (i) shall apply only to stock acquired by the transferor from a person—

(I) none of whose stock is attributable to the transferor under section 318(a) (other than paragraph (4) thereof), or

(II) who satisfies rules similar to the rules of section 302(c)(2) with respect to both the acquiring and the issuing corporations (determined as if such person were a distributee of each such corporation).

(C) Distributions incident to formation of bank holding companies

If—

[*See main edition for text of* (*i*) *to* (*iii*)]

then, subsection (a) shall not apply to any securities received by a qualified minority shareholder incident to the formation of such BHC. For purposes of this subparagraph, any assumption of (or acquisition of stock subject to) a liability under subparagraph (B) shall not be treated as a distribution of property.

[*See main edition for text of* (*D*)]

(c) Control

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Constructive ownership

(A) In general

Section 318(a) (relating to constructive ownership of stock) shall apply for purposes of determining control under this section.

(B) Modification of 50-percent limitations in section 318

For purposes of subparagraph (A)—

(i) paragraph (2)(C) of section 318(a) shall be applied by substituting "5 percent" for "50 percent", and

(ii) paragraph (3)(C) of section 318(a) shall be applied—

(I) by substituting "5 percent" for "50 percent", and

(II) in any case where such paragraph would not apply but for subclause (I), by considering a corporation as owning the stock (other than stock in such corporation) owned by or for any shareholder of such corporation in that proportion which the value of the stock which such shareholder owned in such corporation bears to the value of all stock in such corporation.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 712(*l*)(1)-(5)(A), 98 Stat. 953, 954.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-369, § 712(*l*)(1), consolidated former subpars. "(A) Where subsection (a)(1) applies" and "(B) Where subsection (a)(2) applies" in one paragraph, inserted provision respecting source of dividend, and incorporated in cls. (A) and (B) former subpar. (A) and (B) provisions which had required determination of amount which is a dividend to be made by reference to earnings and profits of the acquiring corporation and as if the property were distributed by the acquiring corporation to the issuing corporation and immediately thereafter distributed by the issuing corporation.

Subsec. (b)(3)(A). Pub. L. 98-369, § 712(*l*)(2), substituted "section 351 and not so much of sections 357 and 358 as relates to section 351" for "part III".

Subsec. (b)(3)(B)(i). Pub. L. 98-369, § 712(*l*)(3)(A)(i), substituted "In the case of an acquisition described in section 351, subsection (a)" for "Subsection (a)".

Subsec. (b)(3)(B)(iii). Pub. L. 98-369, § 712(*l*)(3)(B), added cl. (iii).

Subsec. (b)(3)(C). Pub. L. 98-369, § 712(*l*)(4), added following cl. (iii) "For purposes of this subparagraph, any assumption of (or acquisition of stock subject to) a liability under subparagraph (B) shall not be treated as a distribution of property."

Subsec. (c)(3). Pub. L. 98-369, § 712(*l*)(5)(A), designated existing first sentence as subpar. "(A) In general" and substituted subpar. (B) for former second sentence which read "For purposes of the preceding sentence, sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 712(*l*)(7) of Pub. L. 98-369 provided that:

"(A) IN GENERAL.—Except as otherwise provided in this paragraph, the amendments made by paragraphs (1) [amending subsec. (b)(2) of this section] and (3) [amending subsec. (b)(3)(B)(i) and enacting subsec. (b)(3)(B)(iii) of this section] shall apply to stock acquired after June 18, 1984, in taxable years ending after such date.

"(B) ELECTION BY TAXPAYER TO HAVE AMENDMENTS APPLY EARLIER.—Any taxpayer may elect, at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe, to have the amendments made by paragraphs (1) and (3) apply as if included in section 226 of the Tax Equity and Fiscal Responsibility Act of 1982 [section 226 of Pub. L. 97-248, which amended sections 304 and 306 of this title and enacted Effective Date of 1982 Amendment note set out below].

"(C) SPECIAL RULE FOR CERTAIN TRANSFERS TO FORM BANK HOLDING COMPANY.—Except as provided in subparagraph (D), the amendments made by paragraphs (1) and (3) shall not apply to transfers pursuant to an application to form a BHC (as defined in section 304(b)(3)(D)(ii) of the Internal Revenue Code of 1954) filed with the Federal Reserve Board before June 18, 1984, if—

"(i) such BHC was formed not later than the 90th day after the date of the last required approval of any regulatory authority to form such BHC, and

"(ii) such BHC did not elect (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) not to have the provisions of this subparagraph apply.

"(D) AMENDMENTS TO APPLY TO CERTAIN LIABILITIES INCURRED BEFORE OCTOBER 20, 1983.—The amendment made by paragraph (3)(A) [amending subsec. (b)(3)(B)(i) of this section] shall apply to the acquisition of any stock to the extent the liability assumed, or to which such stock is subject, was incurred by the transferor after October 20, 1983."

Amendment by section 712(*l*)(2), (4), (5)(A) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

§ 306. Dispositions of certain stock

[*See main edition for text of* (*a*)]

(b) Exceptions

Subsection (a) shall not apply—

(1) Termination of shareholder's interest, etc.

[*See main edition for text of* (*1*) *to* (*4*)]

(c) Section 306 stock defined

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Certain stock acquired in section 351 exchange

The term "section 306 stock" also includes any stock which is not common stock acquired in an exchange to which section 351 applied if receipt of money (in lieu of the stock) would have been treated as a dividend to any extent. Rules similar to the rules of section 304(b)(2) shall apply—

(A) for purposes of the preceding sentence, and

(B) for purposes of determining the application of this section to any subsequent disposition of stock which is section 306 stock by reason of an exchange described in the preceding sentence.

(4) Application of attribution rules for certain purposes

For purposes of paragraphs (1)(B)(ii) and (3), section 318(a) shall apply. For purposes of applying the preceding sentence to paragraph (3), the rules of section 304(c)(3)(B) shall apply.

[*See main edition for text of* (*d*) *to* (*h*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 712(i)(2), (*l*)(5)(B), (6), 98 Stat. 948, 954.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-369, § 712(i)(2), substituted "interest, etc." for "interest" in heading.

Subsec. (c)(3). Pub. L. 98-369, § 712(*l*)(6), incorporated existing second sentence in provision designated subpar. (A) and added subpar. (B).

Subsec. (c)(4). Pub. L. 98-369, § 712(*l*)(5)(B), substituted "the rules of section 304(c)(3)(B) shall apply" for "sections 318(a)(2)(C) and 318(a)(3)(C) shall be applied without regard to the 50 percent limitation contained therein".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

SUBPART B—EFFECTS ON CORPORATION

§ 311. Taxability of corporation on distribution

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Distributions of appreciated property

(1) In general

If—

(A) a corporation distributes property (other than an obligation of such corporation) to a shareholder in a distribution to which subpart A applies, and

(B) the fair market value of such property exceeds its adjusted basis (in the hands of the distributing corporation),

then gain shall be recognized to the distributing corporation in an amount equal to such excess as if the property distributed had been sold at the time of the distribution. This subsection shall be applied after the application of subsections (b) and (c).

(2) Exceptions and limitations

Paragraph (1) shall not apply to—

(A) a distribution which is made with respect to qualified stock if—

(i) section 302(b)(4) applies to such distribution, or

(ii) such distribution is a qualified dividend;

(B) a distribution of stock or an obligation of a corporation if the requirements of paragraph (2) of subsection (e) are met with respect to the distribution;

(C) a distribution to the extent that section 303(a) (relating to distributions in redemption of stock to pay death taxes) applies to such distribution;

(D) a distribution to a private foundation in redemption of stock which is described in section 537(b)(2)(A) and (B); and

(E) a distribution by a corporation to which part I of subchapter M (relating to regulated investment companies) applies, if such distribution is in redemption of its stock upon the demand of the shareholder.

(e) Definitions and special rules for subsection (d)(2)

For purposes of subsection (d)(2) and this subsection—

(1) Qualified stock

[*See main edition for text of* (*A*) *and* (*B*)]

(C) Rules for passthru entities

In the case of an S corporation, partnership, trust, or estate—

(i) the determination of whether subparagraph (A) is satisfied shall be made at the shareholder, partner, or beneficiary level (rather than at the entity level), and

(ii) the distribution shall be treated as made directly to the shareholders, partners, or beneficiaries in proportion to their respective interests in the entity.

[*See main edition for text of* (*2*)]

(3) Qualified dividend

The term "qualified dividend" means any distribution of property to a shareholder other than a corporation if—

(A) such distribution is a dividend,

(B) such property was used by the distributing corporation in the active conduct of a qualified business (as defined in paragraph (2)), and

(C) such property is not property described in paragraph (1) or (4) of section 1221.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 54(a), title VII, § 712(j), 98 Stat. 568, 948.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369, § 54(a)(3), substituted "Distributions of appreciated property" for "Appreciated property used to redeem stock" in heading.

Subsec. (d)(1). Pub. L. 98-369, § 54(a)(1), substituted "This subsection shall be applied after the applications of subsections (b) and (c)" for "Subsections (b) and (c) shall not apply to any distribution to which this subsection applies" in provisions following subpar. (B).

Subsec. (d)(1)(A). Pub. L. 98-369, § 54(a)(1), struck out "of part or all of his stock in such corporation" before "and".

Subsec. (d)(2)(A). Pub. L. 98-369, § 54(a)(2)(A), substituted provisions relating to a distribution which is made with respect to qualified stock if section 302(b)(4) applies to such distribution or such distribution is a qualified distribution for provisions which had related to a distribution to a corporate shareholder if the basis of the property distributed was determined under section 301(d)(2).

Subsec. (d)(2)(B) to (F). Pub. L. 98-369, § 54(a)(2)(A), (B), redesignated subpars. (C) to (F) as (B) to (E), respectively, and struck out former subpar. (B) which had related to distributions to which section 302(b)(4) applied and which were made with respect to qualified stock.

Subsec. (e)(1)(C). Pub. L. 98-369, § 712(j), added subpar. (C).

Subsec. (e)(3). Pub. L. 98-369, § 54(a)(2)(C), added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 54(d) of Pub. L. 98-369 provided that:

"(1) SUBSECTION (a).—Except as otherwise provided in this subsection, the amendments made by subsection (a) [amending subsecs. (d) and (e) of this section] shall apply to distributions declared on or after June 14, 1984, in taxable years ending after such date.

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending section 301 of this title] shall apply to distributions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(3) EXCEPTION FOR DISTRIBUTIONS BEFORE JANUARY 1, 1985, TO 80-PERCENT CORPORATE SHAREHOLDERS.—

"(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to any distribution before January 1, 1985, to an 80-percent corporate shareholder if the basis of the property distributed is determined under section 301(d)(2) of the Internal Revenue Code of 1954.

"(B) 80-PERCENT CORPORATE SHAREHOLDER.—The term '80-percent corporate shareholder' means, with respect to any distribution, any corporation which owns—

"(i) stock in the corporation making the distribution possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote, and

"(ii) at least 80 percent of the total number of shares of all other classes of stock of the distributing corporation (except nonvoting stock which is limited and preferred as to dividends).

"(C) SPECIAL RULE FOR AFFILIATED GROUP FILING CONSOLIDATED RETURN.—For purposes of this paragraph and paragraph (4), all members of the same affiliated group (as defined in section 1504 of the Internal Revenue Code of 1954) which file a consolidated return for the taxable year which includes the date of the distribution shall be treated as 1 corporation.

"(4) EXCEPTION FOR CERTAIN DISTRIBUTIONS WHERE TENDER OFFER COMMENCED ON MAY 23, 1984.—

"(A) IN GENERAL.—The amendments made by subsection (a) shall not apply to any distribution made before September 1, 1986, if—

"(i) such distribution consists of qualified stock held (directly or indirectly) on June 15, 1984, by the distributing corporation,

"(ii) control of the distributing corporation (as defined in section 368(c) of the Internal Revenue Code of 1954) is acquired other than in a tax-free transaction after January 1, 1984, but before January 1, 1985,

"(iii) a tender offer for the shares of the distributing corporation was commenced on May 23, 1984, and was amended on May 24, 1984, and

"(iv) the distributing corporation and the distributee corporation are members of the same affiliated group (as defined in section 1504 of such Code) which filed a consolidated return for the taxable year which includes the date of the distribution.

If the common parent of any affiliated group filing a consolidated return meets the requirements of clauses (ii) and (iii), each other member of such group shall be treated as meeting such requirements.

"(B) QUALIFIED STOCK.—For purposes of subparagraph (A), the term 'qualified stock' means any stock in a corporation which on June 15, 1984, was a member of the same affiliated group as the distributing corporation and which filed a consolidated return with the distributing corporation for the taxable year which included June 15, 1984.

"(5) EXCEPTION FOR CERTAIN DISTRIBUTIONS.—

"(A) IN GENERAL.—The amendments made by this section [amending subsecs. (d) and (e) of this section and sections 301 and 1223 of this title] shall not apply to distributions before February 1, 1986, if—

"(i) the distribution consists of property held on March 7, 1984 (or property acquired thereafter in the ordinary course of a trade or business) by—

"(I) the controlled corporation, or

"(II) any subsidiary controlled corporation,

"(ii) a group of 1 or more shareholders (acting in concert)—

"(I) acquired, during the 1-year period ending on February 1, 1984, at least 10 percent of the outstanding stock of the controlled corporation,

"(II) held at least 10 percent of the outstanding stock of the common parent on February 1, 1984, and

"(III) submitted a proposal for distributions of interests in a royalty trust from the common parent or the controlled corporation, and

"(iii) the common parent acquired control of the controlled corporation during the 1-year period ending on February 1, 1984.

"(B) DEFINITIONS.—For purposes of this paragraph—

"(i) The term 'common parent' has the meaning given such term by section 1504(a) of the Internal Revenue Code of 1954.

"(ii) The term 'controlled corporation' means a corporation with respect to which 50 percent or more of the outstanding stock of its common parent is tendered for pursuant to a tender offer outstanding on March 7, 1984.

"(iii) The term 'subsidiary controlled corporation' means any corporation with respect to which the controlled corporation has control (within the meaning of section 368(c) of such Code) on March 7, 1984.

"(6) EXCEPTION FOR CERTAIN DISTRIBUTION OF PARTNERSHIP INTERESTS.—The amendments made by this section shall not apply to any distribution before February 1, 1986, of an interest in a partnership the interests of which were being traded on a national securities exchange on March 7, 1984, if—

"(A) such interest was owned by the distributing corporation (or any member of an affiliated group within the meaning of section 1504(a) of such Code of which the distributing corporation was a member) on March 7, 1984,

"(B) the distributing corporation (or any such affiliated member) owned more than 80 percent of the interests in such partnership on March 7, 1984, and

"(C) more than 10 percent of the interests in such partnership was offered for sale to the public during the 1-year period ending on March 7, 1984."

Amendment by section 712(j) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 301, 312, 336, 386, 995, 1248 of this title.

§ 312. Effect on earnings and profits

(a) General rule

Except as otherwise provided in this section, on the distribution of property by a corporation with respect to its stock, the earnings and profits of the corporation (to the extent thereof) shall be decreased by the sum of—

(1) the amount of money,

(2) the principal amount of the obligations of such corporation (or, in the case of obligations having original issue discount, the aggregate issue price of such obligations), and

[*See main edition for text of* (*3*); (*b*) *to* (*d*)]

[(e) Repealed. Pub. L. 98–369, div. A, title I, § 61(a)(2)(B), July 18, 1984, 98 Stat. 581]

[*See main edition for text of* (*f*) *and* (*g*)]

(h) Allocation in certain corporate separations and reorganizations

(1) Section 355

In the case of a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, proper allocation with respect to the earnings and profits of the distributing corporation and the controlled corporation (or corporations) shall be made under regulations prescribed by the Secretary.

(2) Section 368(a)(1)(c) or (d)

In the case of a reorganization described in subparagraph (C) or (D) of section 368(a)(1), proper allocation with respect to the earnings and profits of the acquired corporation shall, under regulations prescribed by the Secretary, be made between the acquiring corporation and the acquired corporation (or any corporation which had control of the acquired corporation before the reorganization).

[*See main edition for text of* (*i*)]

(j) Earnings and profits of foreign investment companies

[*See main edition for text of* (*1*) *and* (*2*)]

[(3) Repealed. Pub. L. 98–369, div. A, title I, § 61(a)(2)(A), July 18, 1984, 98 Stat. 581]

(k) Effect of depreciation on earnings and profits

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Exception for recovery and section 179 property

(A) Recovery property

Except as provided in subparagraphs (B) and (C), in the case of recovery property (within the meaning of section 168), the adjustment to earnings and profits for depreciation for any taxable year shall be the amount determined under the straight-line method (using a half year convention in the case of property other than the 18-year real property and low-income housing and without regard to salvage value) and using a recovery period determined in accordance with the following table:

In the case of:	The applicable recovery period is:
3-year property	5 years.
5-year property	12 years.
10-year property	25 years.
18-year real property and low-income housing	40 years.
15-year public utility property	35 years.

For purposes of this subparagraph, no adjustment shall be allowed in the year of disposition (except with respect to 18-year real property and low-income housing), and rules similar to the rules under the next to the last sentence of section 168(b)(2)(A) and section 168(b)(2)(B) shall apply.

[*See main edition for text of* (*B*) *and* (*C*), (*4*) *and* (*5*); (*l*) *and* (*m*)]

(n) Adjustments to earnings and profits to more accurately reflect economic gain and loss

For purposes of computing the earnings and profits of a corporation, the following adjustments shall be made:

(1) Construction period carrying charges

(A) In general

In the case of any amount paid or incurred for construction period carrying charges—

(i) no deduction shall be allowed with respect to such amount, and

(ii) the basis of the property with respect to which such charges are allocable shall be increased by such amount.

(B) Construction period carrying charges defined

For purposes of this paragraph, the term "construction period carrying charges" means all—

(i) interest paid or accrued on indebtedness incurred or continued to acquire, construct, or carry property,

(ii) property taxes, and

(iii) similar carrying charges,

to the extent such interest, taxes, or charges are attributable to the construction period for such property and would be allowable as a deduction in determining taxable income under this chapter for the taxable year in which paid or incurred (determined without regard to section 189).

(C) Construction period

The term "construction period" has the meaning given such term by section 189(e)(2) (determined without regard to any real property limitation).

(2) Intangible drilling costs and mineral exploration and development costs

(A) Intangible drilling costs

Any amount allowable as a deduction under section 263(c) in determining taxable income (other than costs incurred in connection with a nonproductive well)—

(i) shall be capitalized, and

(ii) shall be allowed as a deduction ratably over the 60-month period beginning with the month in which the production from the well begins.

(B) Mineral exploration and development costs

Any amount allowable as a deduction under section 616(a) or 617 in determining taxable income—

(i) shall be capitalized, and

(ii) shall be allowed as a deduction ratably over the 120-month period beginning with the later of—

(I) the month in which production from the deposit begins, or

(II) the month in which such amount was paid or incurred.

(3) Certain amortization provisions not to apply

Sections 173, 177, and 248 shall not apply.

(4) Certain untaxed appreciation of distributed property

In the case of any distribution of property by a corporation described in section 311(d), earnings and profits shall be increased by the amount of any gain which would be includible in gross income for any taxable year if section 311(d)(2) did not apply.

(5) LIFO inventory adjustments

Earnings and profits shall be increased or decreased by the amount of any increase or decrease in the LIFO recapture amount (determined under section 336(b)(3)) as of the close of each taxable year; except that any decrease below the LIFO recapture amount as of the close of the taxable year preceding the first taxable year to which this paragraph applies to the taxpayer shall be taken into account only to the extent provided in regulations prescribed by the Secretary.

(6) Installment sales

In the case of any installment sale, earnings and profits shall be computed as if the corporation did not use the installment method.

(7) Completed contract method of accounting

In the case of a taxpayer who uses the completed contract method of accounting, earnings and profits shall be computed as if such taxpayer used the percentage of completion method of accounting.

(8) Redemptions

If a corporation distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of such corporation accumulated after February 28, 1913, attributable to the stock so redeemed.

(9) Special rule for certain foreign corporations

In the case of a foreign corporation described in subsection (k)(4), paragraphs (5), (6), and (7) shall apply only in the case of taxable years beginning after December 31, 1985.

(*o*) Definition of original issue discount and issue price for purposes of subsection (a)(2)

For purposes of subsection (a)(2), the terms "original issue discount" and "issue price" have the same respective meanings as when used in subpart A of part V of subchapter P of this chapter.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 61(a)-(c)(1), 63(b), 111(e)(5), 98 Stat. 580, 581, 583, 633.)

Amendments

1984—Subsec. (a)(2). Pub. L. 98-369, § 61(c)(1)(A), added "(or, in the case of obligations having original issue discount, the aggregate issue price of such obligations)".

Subsec. (*e*). Pub. L. 98-369, § 61(a)(2)(B), struck out subsec. (*e*) which provided: "In the case of amounts distributed in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to capital account shall not be treated as a distribution of earnings and profits."

Subsec. (h). Pub. L. 98-369, § 63(b), amended subsec. (h) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (j)(3). Pub. L. 98-369, § 61(a)(2), struck out par. (3) which provided: "If a foreign investment company (as defined in section 1246) distributes amounts in a redemption to which section 302(a) or 303 applies, the part of such distribution which is properly chargeable to earnings and profits shall be an amount which is not in excess of the ratable share of the earnings and profits of the company accumulated after February 28, 1913, attributable to the stock so redeemed."

Subsec. (k)(3)(A). Pub. L. 98-369, § 111(e)(5), substituted "18-year real property and low-income housing" for "15-year real property" in three places.

Pub. L. 98-369, § 61(b), substituted "40 years" for "35 years" in the table item relating to 15-year real property. Directory language that the table be amended by substituting "40 years" for "35 years" in the item relating to 15-year real property and 20-year real property, was executed by making the substitution in the item relating to 15-year real property. The table contained no item relating to 20-year real property.

Subsec. (n). Pub. L. 98-369, § 61(a)(1), added subsec. (n).

Subsec. (*o*). Pub. L. 98-369, § 61(c)(1)(B), added subsec. (*o*).

Effective Date of 1984 Amendment

Section 61(e)(1)-(3) of Pub. L. 98-369 provided that:

"(1) Adjustments to earnings and profits.—

"(A) Paragraphs (1), (2), and (3) of section 312(n).—The provisions of paragraphs (1), (2), and (3) of section 312(n) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall apply to amounts paid or incurred in taxable years beginning after September 30, 1984.

"(B) Paragraph (4) of section 312(n).—The provisions of paragraph (4) of section 312(n) of such Code (as so added) shall apply to distributions after September 30, 1984; except that such provisions shall not apply to any distribution to which the amendments made by section 54(a) of this Act [amending section 311(d), (e) of this title] do not apply.

"(C) LIFO inventory.—The provisions of paragraph (5) of section 312(n) of such Code (as so added) shall apply to taxable years beginning after September 30, 1984.

"(D) Installment sales.—The provisions of paragraph (6) of section 312(n) of such Code (as so added) shall apply to sales after September 30, 1984, in taxable years ending after such date.

"(E) Completed contract method.—The provisions of paragraph (7) of section 312(n) of such Code (as so added) shall apply to contracts entered into after September 30, 1984, in taxable years ending after such date.

"(2) Subsection (b).—The amendments made by subsection (b) [amending subsec. (k)(3)(A) of this section] shall apply to property placed in service in taxable years beginning after September 30, 1984.

"(3) Subsection (c).—The amendments made by subsection (c) [amending subsec. (a)(2) of this section and adding subsec. (*o*) of this section and subsec. (a)(4) of section 1275 of this title] shall apply with respect to distributions declared after March 15, 1984, in taxable years ending after such date."

Section 63(c) of Pub. L. 98-369 provided that: "The amendment made by this section [amending sections 312 and 368 of this title] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 111(e)(5) of Pub. L. 98-369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98-369, set out as a note under section 168 of this title.

Section Referred to in Other Sections

This section is referred to in sections 280F, 301, 964, 1246, 1248 of this title.

SUBPART C—DEFINITIONS; CONSTRUCTIVE OWNERSHIP OF STOCK

§ 316. Dividend defined

Section Referred to in Other Sections

This section is referred to in sections 245, 301, 331, 562, 565, 959, 6042 of this title; title 46 App. section 1177.

§ 318. Constructive ownership of stock

(a) General rule

For purposes of those provisions of this subchapter to which the rules contained in this section are expressly made applicable—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Operating rules

[*See main edition for text of* (*A*) *to* (*D*)]

(E) S corporation treated as partnership

For purposes of this subsection—

(i) an S corporation shall be treated as a partnership, and

(ii) any shareholder of the S corporation shall be treated as a partner of such partnership.

The preceding sentence shall not apply for purposes of determining whether stock in the S corporation is constructively owned by any person.

(b) Cross references

For provisions to which the rules contained in subsection (a) apply, see—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) section 338(h)(3) (defining purchase);

[*See main edition for text of* (*5*) *to* (*8*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, §§ 712(k)(5)(E), 721(j), 98 Stat. 950, 969.)

Amendments

1984—Subsec. (a)(5)(E). Pub. L. 98-369, § 721(j), added subpar. (E).

Subsec. (b)(4). Pub. L. 98-369, § 712(k)(5)(E), substituted "section 338(h)(3) (defining purchase)" for "section 338(h)(3)(B) (relating to purchase of stock from subsidiaries, etc.)".

Effective Date of 1984 Amendment

Amendment by section 712(k)(5)(E) of Pub. L. 98-369 not applicable to any qualified stock purchase where the acquisition date is before Sept. 1, 1982, see section 712(k)(9)(A) of Pub. L. 98-369, set out as a note under section 338 of this title.

Amendment by section 712(k)(5)(E) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 721(j) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

Section Referred to in Other Sections

This section is referred to in sections 103, 105, 129, 269A, 301, 302, 304, 305, 306, 311, 338, 356, 367, 382, 408, 414, 416, 453, 465, 545, 809, 856, 871, 881, 897, 904, 958, 1042, 1239, 1246, 1372, 2036, 6038 of this title.

PART II—CORPORATE LIQUIDATIONS

Part Referred to in Other Sections

This part is referred to in sections 301, 306, 904, 1445 of this title.

SUBPART A—EFFECTS ON RECIPIENTS

§ 332. Complete liquidations of subsidiaries

Section Referred to in Other Sections

This section is referred to in sections 58, 168, 334, 336, 337, 341, 367, 368, 381, 453B, 1101, 1245, 1250, 6038B of this title.

§ 333. Election as to recognition of gain in certain liquidations

Authorization for Existing Personal Service Corporations To Liquidate Under Section 333 During 1983 or 1984

Pub. L. 97-248, title II, § 247, Sept. 3, 1982, 96 Stat. 525, as amended by Pub. L. 98-369, div. A, title VII, § 713(h), July 18, 1984, 98 Stat. 960, provided that:

"(a) In General.—In the case of a complete liquidation of a personal service corporation (within the meaning of section 535(c)(2)(B) of the Internal Revenue Code of 1954) which is in existence on September 3, 1982, during 1983 or 1984, the following rules shall apply with respect to any shareholder other than a corporation:

[*See main edition for text of* (*1*) *to* (*5*); (*b*)]

Section Referred to in Other Sections

This section is referred to in sections 334, 337, 338 of this title.

§ 334. Basis of property received in liquidations

Section Referred to in Other Sections

This section is referred to in sections 168, 336, 453B, 617, 897, 1276 of this title.

SUBPART B—EFFECTS ON CORPORATION

§ 336. Distributions of property in liquidation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 312, 337, 338, 367, 386, 897, 995, 6038B of this title.

§ 337. Gain or loss on sales or exchanges in connection with certain liquidations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 338, 341, 346, 386, 453, 453B, 897, 995, 1248 of this title.

§ 338. Certain stock purchases treated as asset acquisitions

(a) General rule

For purposes of this subtitle, if a purchasing corporation makes an election under this section (or is treated under subsection (e) as having made such an election), then, in the case of any qualified stock purchase, the target corporation—

(1) shall be treated as having sold all of its assets at the close of the acquisition date at fair market value in a single transaction to which section 337 applies, and

[*See main edition for text of* (2)]

(b) Basis of assets after deemed purchase

(1) In general

For purposes of subsection (a), the assets of the target corporation shall be treated as purchased for an amount equal to the sum of—

(A) the grossed-up basis of the purchasing corporation's recently purchased stock, and

(B) the basis of the purchasing corporation's nonrecently purchased stock.

(2) Adjustment for liabilities and other relevant items

The amount described in paragraph (1) shall be adjusted under regulations prescribed by the Secretary for liabilities of the target corporation and other relevant items.

(3) Election to step-up the basis of certain target stock

(A) In general

Under regulations prescribed by the Secretary, the basis of the purchasing corporation's nonrecently purchased stock shall be the basis amount determined under subparagraph (B) of this paragraph if the purchasing corporation makes an election to recognize gain as if such stock were sold on the acquisition date for an amount equal to the basis amount determined under subparagraph (B).

(B) Determination of basis amount

For purposes of subparagraph (A), the basis amount determined under this subparagraph shall be an amount equal to the grossed-up basis determined under subparagraph (A) of paragraph (1) multiplied by a fraction—

(i) the numerator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(ii) the denominator of which is 100 percent minus the percentage referred to in clause (i).

(4) Grossed-up basis

For purposes of paragraph (1), the grossed-up basis shall be an amount equal to the basis of the corporation's recently purchased stock, multiplied by a fraction—

(A) the numerator of which is 100 percent, minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock, and

(B) the denominator of which is the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's recently purchased stock.

(5) Allocation among assets

The amount determined under paragraphs (1) and (2) shall be allocated among the assets of the target corporation under regulations prescribed by the Secretary.

(6) Definitions of recently purchased stock and nonrecently purchased stock

For purposes of this subsection—

(A) Recently purchased stock

The term "recently purchased stock" means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which was purchased by such corporation during the 12-month acquisition period.

(B) Nonrecently purchased stock

The term "nonrecently purchased stock" means any stock in the target corporation which is held by the purchasing corporation on the acquisition date and which is not recently purchased stock.

(c) Special rules

(1) Coordination with section 337 where purchasing corporation holds less than 100 percent of stock

If during the 1-year period beginning on the acquisition date the maximum percentage (by value) of stock in the target corporation held by the purchasing corporation is less than 100 percent, then in applying section 337 for purposes of subsection (a)(1), the nonrecognition of gain or loss shall be limited to an amount determined by applying such maximum percentage to such gain or loss. The preceding sentence shall not apply if the target corporation is liquidated during such 1-year period and section 333 does not apply to such liquidation.

[*See main edition for text of* (2); (d)]

(e) Deemed election where purchasing corporation acquires asset of target corporation

[*See main edition for text of* (1)]

(2) Exceptions

Paragraph (1) shall not apply with respect to any acquisition by the purchasing corporation if—

[*See main edition for text of (A)*]

(B) the basis of the property acquired is determined wholly by reference to the adjusted basis of such property in the hands of the person from whom acquired,

(C) such acquisition was before September 1, 1982, or

(D) such acquisition is described in regulations prescribed by the Secretary and meets such conditions as such regulations may provide.

[*See main edition for text of (3); (f)*]

(g) Election

(1) When made

Except as otherwise provided in regulations, an election under this section shall be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

[*See main edition for text of (2) and (3)*]

(h) Definitions and special rules

For purposes of this section—

(1) 12-month acquisition period

The term "12-month acquisition period" means the 12-month period beginning with the date of the first acquisition by purchase of stock included in a qualified stock purchase (or, if any of such stock was acquired in an acquisition which is a purchase by reason of subparagraph (C) of paragraph (3), the date on which the acquiring corporation is first considered under section 318(a) (other than paragraph (4) thereof) as owning stock owned by the corporation from which such acquisition was made).

[*See main edition for text of (2)*]

(3) Purchase

(A) In general

The term "purchase" means any acquisition of stock, but only if—

[*See main edition for text of (i)*]

(ii) the stock is not acquired in an exchange to which section 351, 354, 355, or 356 applies and is not acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction, and

[*See main edition for text of (iii)*]

(B) Deemed purchase under subsection (a)

The term "purchase" includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary.

(C) Certain stock acquisitions from related corporations

(i) In general

Clause (iii) of subparagraph (A) shall not apply to an acquisition of stock from a related corporation if at least 50 percent in value of the stock of such related corporation was acquired by purchase (within the meaning of subparagraph[3] (A) and (B)).

(ii) Certain distributions

Clause (i) of subparagraph (A) shall not apply to an acquisition of stock described in clause (i) of this subparagraph if the corporation acquiring such stock—

(I) made a qualified stock purchase of stock of the related corporation, and

(II) made an election under this section (or is treated under subsection (e) as having made such an election) with respect to such qualified stock purchase.

(iii) Related corporation defined

For purposes of this subparagraph, a corporation is a related corporation if stock owned by such corporation is treated (under section 318(a) other than paragraph (4) thereof) as owned by the corporation acquiring the stock.

[*See main edition for text of (4) to (6)*]

(7) Additional percentage must be attributable to purchase, etc.

For purposes of subsection (c)(1), any increase in the maximum percentage of stock taken into account over the percentage of stock (by value) of the target corporation held by the purchasing corporation on the acquisition date shall be taken into account only to the extent such increase is attributable to—

(A) purchase, or

(B) a redemption of stock of the target corporation—

(i) to which section 302(a) applies, or

(ii) in the case of a shareholder who is not a corporation, to which section 301 applies.

(8) Acquisitions by affiliated group treated as made by 1 corporation

Except as provided in regulations prescribed by the Secretary, stock and asset acquisitions made by members of the same affiliated group shall be treated as made by 1 corporation.

(9) Target not treated as member of affiliated group

Except as otherwise provided in paragraph (10) or in regulations prescribed under this paragraph, the target corporation shall not be treated as a member of an affiliated group with respect to the sale described in subsection (a)(1).

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[3] So in original. Probably should be "subparagraphs".

(10) Elective recognition of gain or loss by target corporation, together with nonrecognition of gain or loss on stock sold by selling consolidated group

(A) In general

Under regulations prescribed by the Secretary, an election may be made under which if—

(i) the target corporation was, before the transaction, a member of the selling consolidated group, and

(ii) the target corporation recognizes gain or loss with respect to the transaction as if it sold all of its assets in a single transaction,

then the target corporation shall be treated as a member of the selling consolidated group with respect to such sale, and (to the extent provided in regulations) no gain or loss will be recognized on stock sold or exchanged in the transaction by members of the selling consolidated group.

(B) Selling consolidated group

For purposes of subparagraph (A), the term "selling consolidated group" means any group of corporations which (for the taxable period which includes the transaction)—

(i) includes the target corporation, and

(ii) files a consolidated return.

(11) Elective formula for determining fair market value

For purposes of subsection (a)(1), fair market value may be determined on the basis of a formula provided in regulations prescribed by the Secretary which takes into account liabilities and other relevant items.

(12) Section 337 to apply where target had adopted plan for complete liquidation

If—

(A) during the 12-month period ending on the acquisition date the target corporation adopted a plan of complete liquidation,

(B) such plan was not rescinded before the close of the acquisition date, and

(C) the purchasing corporation makes an election under this section (or is treated under subsection (e) as having made such an election) with respect to the target corporation,

then, subject to rules similar to the rules of subsection (c)(1), for purposes of section 337 (and other provisions which relate to section 337), the target corporation shall be treated as having distributed all of its assets as of the close of the acquisition date.

(13) Tax on deemed sale not taken into account for estimated tax purposes

For purposes of section 6655, tax attributable to the sale described in subsection (a)(1) shall not be taken into account.

(14) Coordination with section 341

For purposes of determining whether section 341 applies to a disposition within 1 year after the acquisition date of stock by a shareholder (other than the acquiring corporation) who held stock in the target corporation on the acquisition date, section 341 shall be applied without regard to this section.

(15) Combined deemed sale return

Under regulations prescribed by the Secretary, a combined deemed sale return may be filed by all target corporations acquired by a purchasing corporation on the same acquisition date if such target corporations were members of the same selling consolidated group (as defined in subparagraph (B) of paragraph (10)).

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(1) regulations to ensure that the purpose of this section to require consistency of treatment of stock and asset sales and purchases may not be circumvented through the use of any provision of law or regulations (including the consolidated return regulations) and

(2) regulations providing for the coordination of the provisions of this section with the provision of this title relating to foreign corporations and their shareholders.

(As amended Pub. L. 98-369, div. A, title VII, § 712(k)(1)-(5)(D), (6), (7), July 18, 1984, 98 Stat. 948-952.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 712(k)(1)(A), inserted "at fair market value" after "acquisition date".

Subsec. (b). Pub. L. 98-369, § 712(k)(1)(B), substituted "Basis of assets after deemed purchase" for "Price at which deemed sale made" in heading.

Subsec. (b)(1). Pub. L. 98-369, § 712(k)(1)(B), amended par. (1) generally, substituting "as purchased for an amount equal to the sum of" for "as sold (and purchased) at an amount equal to" in introductory text, "purchasing corporation's recently purchased stock, and" for "purchasing corporation's stock in the target corporation on the acquisition date" in subpar. (A), and "the basis of the purchasing corporation's nonrecently purchased stock" in subpar. (B) in lieu of provision relating to adjustment for liabilities and other relevant items, now covered in par. (2).

Subsec. (b)(2). Pub. L. 98-369, § 712(k)(1)(B), amended par. (2) generally, incorporating former par. (1)(B) provision, inserting heading "Adjustment for liabilities and other relevant items" and substituting "adjusted under regulations" for "properly adjusted under regulations". Former par. (2) redesignated (4).

Subsec. (b)(3). Pub. L. 98-369, § 712(k)(1)(B), added par. (3). Former par. (3) redesignated (5).

Subsec. (b)(4). Pub. L. 98-369, § 712(k)(1)(B), redesignated former par. (2) as (4), substituted in introductory text "corporation's recently purchased stock," for "purchasing corporation's stock in the target corporation on the acquisition date", inserted in subpar. (A) "minus the percentage of stock (by value) in the target corporation attributable to the purchasing corporation's nonrecently purchased stock", and substituted in subpar. (B) "in the target corporation attributable to the purchasing corporation's recently purchased stock" for "of the target corporation held by the purchasing corporation on the acquisition date".

Subsec. (b)(5). Pub. L. 98-369, § 712(k)(1)(B), redesignated former par. (3) as (5) and inserted reference to par. (2).

Subsec. (b)(6). Pub. L. 98-369, § 712(k)(1)(B), added par. (6).

Subsec. (c)(1). Pub. L. 98-369, § 712(k)(2), inserted in last sentence "and section 333 does not apply to such liquidation".

Subsec. (e)(2). Pub. L. 98-369, § 712(k)(3), substituted "wholly" for "(in whole or in part)" in subpar. (B), struck out subpar. (D) providing for nonapplication of par. (1) to any acquisition by the purchasing corporation if, to the extent provided in regulations, the property acquired is located outside the United States, redesignated subpar. (E) as (D), and, in subpar. (D) as redesignated, added "and meets such conditions as such regulations may provide".

Subsec. (g)(1). Pub. L. 98-369, § 712(k)(4), substituted "the 15th day of the 9th month beginning after the month in which the acquisition date occurs" for "75 days after the acquisition date".

Subsec. (h)(1). Pub. L. 98-369, § 712(k)(5)(C), included within 12-month acquisition period the period beginning with the date on which the acquiring corporation is first considered as owning stock owned by corporation from which acquisition was made.

Subsec. (h)(3)(A)(ii). Pub. L. 98-369, § 712(k)(5)(D), included references to sections 354, 355, and 356 and in defining "purchase" provided that the stock not be acquired in any other transaction described in regulations in which the transferor does not recognize the entire amount of the gain or loss realized on the transaction.

Subsec. (h)(3)(B). Pub. L. 98-369, § 712(k)(5)(A), substituted in heading "under subsection (a)" for "of stock of subsidiaries" and in text "The term 'purchase' includes any deemed purchase under subsection (a)(2). The acquisition date for a corporation which is deemed purchased under subsection (a)(2) shall be determined under regulations prescribed by the Secretary" for "If stock in a corporation is acquired by purchase (within the meaning of subparagraph (A)) and, as a result of such acquisition, the corporation making such purchase is treated (by reason of section 318(a)) as owning stock in a 3rd corporation, the corporation making such purchase shall be treated as having purchased such stock in such 3rd corporation. The corporation making such purchase shall be treated as purchasing stock in the 3rd corporation by reason of the preceding sentence on the first day on which the purchasing corporation is considered under section 318(a) as owning such stock".

Subsec. (h)(3)(C). Pub. L. 98-369, § 712(k)(5)(B), added subpar. (C).

Subsec. (h)(7). Pub. L. 98-369, § 712(k)(6)(A), added par. (7) and struck out former par. (7) which had provided that acquisitions by purchasing corporation include acquisitions by corporations affiliated with purchasing corporation. See subsec. (h)(8).

Subsec. (h)(8). Pub. L. 98-369, § 712(k)(6)(A), added par. (8) incorporating former par. (7) provision stating that "Except as otherwise provided in regulations, an acquisition of stock or assets by any member of an affiliated group which includes a purchasing corporation shall be treated as made by the purchasing corporation." Former par. (8) redesignated (9).

Subsec. (h)(9). Pub. L. 98-369, § 712(k)(6)(A), (B), redesignated former par. (8) as (9) and substituted therein "paragraph (10)" for "paragraph (9)". Former par. (9) redesignated (10).

Subsec. (h)(10). Pub. L. 98-369, § 712(k)(6)(A), redesignated former par. (9) as (10).

Subsec. (h)(11) to (15). Pub. L. 98-369, § 712(k)(6)(C), added pars. (11) to (15).

Subsec. (i). Pub. L. 98-369, § 712(k)(7), provided in introductory text that the regulations be appropriate to carry out the purposes of this section; designated existing provisions as par. (1) and substituted therein "treatment of stock and asset sales and purchases" for "treatment of stock and asset purchases with respect to a target corporation and its target affiliates (whether by treating all of them as stock purchases or as asset purchases)" before "may not be circumvented", and added par. (2).

Effective Date of 1984 Amendment

Section 712(k)(9) of Pub. L. 98-369 provided that:

"(A) In general.—The amendments made by this subsection [amending sections 269, 318, and 338 of this title] shall not apply to any qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1954) where the acquisition date (as defined in section 338(h)(2) of such Code) is before September 1, 1982.

"(B) Extension of time for making election.—In the case of any qualified stock purchase described in subparagraph (A), the time for making an election under section 338 of such Code shall not expire before the close of the 60th day after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 712(k) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Special Rules for Deemed Purchases under Prior Law

Section 712(k)(10) of Pub. L. 98-369 provided that: "If, before October 20, 1983, a corporation was treated as making a qualified stock purchase (as defined in section 338(d)(3) of the Internal Revenue Code of 1954), but would not be so treated under the amendments made by paragraphs (5) and (6) [amending subsec. (h) of this section and section 318(b)(4) of this title] of this subsection, the amendments made by such paragraphs shall not apply to such purchase unless such corporation elects (at such time and in such manner as the Secretary of the Treasury or his delegate may by regulations prescribe) to have the amendments made by such paragraphs apply.

Exception for Stock Purchases in Contemplation of Target Corporation as Member of Affiliated Group

Section 306(a)(8)(A)(ii) of Pub. L. 97-448, as amended by Pub. L. 98-369, div. A, title VII, § 722(a)(3), July 18, 1984, 98 Stat. 973, provided that: "If—

"(I) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after September 1, 1982, and on or before the date of the enactment of this Act [Jan. 12, 1983], and

"(II) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1954, the target corporation would be treated as a member of the affiliated group which includes the selling corporation,

then the amendment made by clause (i) [amending subsec. (h) of this section] shall not apply to such qualified stock purchase."

Section Referred to in Other Sections

This section is referred to in sections 168, 269, 318, 617, 1362 of this title.

SUBPART C—COLLAPSIBLE CORPORATIONS

§ 341. Collapsible corporations

(a) Treatment of gain to shareholders

Gain from—

[See main edition for text of (1) to (3)]

to the extent that it would be considered (but for the provisions of this section) as gain from the sale or exchange of a capital asset held for more than 6 months shall, except as otherwise provided in this section, be considered as ordinary income.

(b) Definitions

(1) Collapsible corporation

For purposes of this section, the term "collapsible corporation" means a corporation formed or availed of principally for the manufacture, construction, or production of property, for the purchase of property which (in the hands of the corporation) is property described in paragraph (3), or for the holding of stock in a corporation so formed or availed of, with a view to—

(A) the sale or exchange of stock by its shareholders (whether in liquidation or otherwise), or a distribution to its shareholders, before the realization by the corporation manufacturing, constructing, producing, or purchasing the property of ⅔ of the taxable income to be derived from such property, and

[*See main edition for text of* (*B*), (*2*) *to* (*4*); (*c*)]

(d) Limitations on application of section

In the case of gain realized by a shareholder with respect to his stock in a collapsible corporation, this section shall not apply—

[*See main edition for text of* (*1*)]

(2) to the gain recognized during a taxable year, unless more than 70 percent of such gain is attributable to the property described in subsection (b)(1); and

[*See main edition for text of* (*3*)]

For purposes of paragraph (1), the ownership of stock shall be determined in accordance with the rules prescribed in paragraphs (1), (2), (3), (5), and (6) of section 544(a) (relating to personal holding companies); except that, in addition to the persons prescribed by paragraph (2) of that section, the family of an individual shall include the spouses of that individual's brothers and sisters (whether by the whole or half blood) and the spouses of that individual's lineal descendants. In determining whether property is described in subsection (b)(1) for purposes of applying paragraph (2), all property described in section 1221(1) shall, to the extent provided in regulations prescribed by the Secretary, be treated as one item of property.

(e) Exceptions to application of section

[*See main edition for text of* (*1*) *to* (*11*)]

(12) Nonapplication of section 1245(a) [1]

For purposes of this subsection, the determination of whether gain from the sale or exchange of property would under any provision of this chapter be considered as ordinary income, shall be made without regard to the application of sections 617(d)(1), 1245(a), 1250(a), 1252(a), 1254(a), and 1276(a).

(f) Certain sales of stock of consenting corporations

[*See main edition for text of* (*1*) *to* (*7*)]

(8) Special rule for foreign corporations

Except to the extent provided in regulations prescribed by the Secretary—

(A) any consent given by a foreign corporation under paragraph (1) shall not be effective, and

(B) paragraph (3) shall not apply if the transferee is a foreign corporation.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 43(c)(1), 65(a)-(c), 135(a), title IV, § 492(b)(2), title X, § 1001(b)(2), 98 Stat. 558, 584, 669, 854, 1011.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 1001(b)(2), substituted "6 months" for "1 year" in provision following par. (3).

Subsec. (b)(1)(A). Pub. L. 98-369, § 65(a), substituted "⅔" for "a substantial part".

Subsec. (d). Pub. L. 98-369, § 65(b), added following par. (3) "In determining whether property is described in subsection (b)(1) for purposes of applying paragraph (2), all property described in section 1221(1) shall, to the extent provided in regulations prescribed by the Secretary, be treated as one item of property."

Subsec. (d)(2). Pub. L. 98-369, § 65(c), substituted "described in subsection (b)(1)" for "so manufactured, constructed, produced, or purchased".

Subsec. (e)(12). Pub. L. 98-369, § 492(b)(2), struck out "1251(c)," after "1250(a),".

Pub. L. 98-369, § 43(c)(1), substituted "1254(a), and 1276(a)" for "and 1254(a)".

Subsec. (f)(8). Pub. L. 98-369, § 135(a), added par. (8).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsec. (e)(12) by section 437(c)(1) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Section 65(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsecs. (b) and (d) of this section] shall apply with respect to sales, exchanges, and distributions made after the date of the enactment of this Act [July 18, 1984]."

Section 135(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (f)(8) of this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 492(b)(2) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98-369, set out as a note under section 170 of this title.

Amendment by section 1001(b)(2) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 333, 337, 338, 453B, 467, 1255 of this title.

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[1] Paragraph amended without amendment to paragraph heading to reflect change.

PART III—CORPORATE ORGANIZATIONS AND REORGANIZATIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 301 of this title.

SUBPART A—CORPORATE ORGANIZATIONS

§ 351. Transfer to corporation controlled by transferor

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 168, 304, 306, 311, 338, 341, 346, 357, 358, 362, 367, 368, 382, 613A, 683, 721, 724, 735, 995, 1245, 1250, 6038B of this title.

SUBPART B—EFFECTS ON SHAREHOLDERS AND SECURITY HOLDERS

§ 354. Exchanges of stock and securities in certain reorganizations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 83, 108, 332, 338, 356, 358, 367, 368, 381, 382, 425, 1101, 1276, 1363, 6038B of this title.

§ 355. Distribution of stock and securities of a controlled corporation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 83, 108, 306, 312, 338, 346, 355, 356, 358, 367, 368, 425, 815, 877, 995, 1223, 1276, 1363, 2107, 2501, 6038B, 6166 of this title.

§ 356. Receipt of additional consideration

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 83, 108, 306, 312, 338, 354, 355, 358, 367, 368, 425, 453, 1101, 1223, 1276, 1363, 6038B, 6166 of this title.

§ 357. Assumption of liability

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304, 351, 358, 368, 371, 613A of this title.

§ 358. Basis to distributees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 304, 351, 372 of this title.

SUBPART C—EFFECTS ON CORPORATION

§ 361. Nonrecognition of gain or loss to corporations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 58, 168, 332, 341, 357, 358, 367, 381, 1245, 1250, 6038B of this title.

SUBPART D—SPECIAL RULE; DEFINITIONS

§ 367. Foreign corporations

(a) Transfers of property from the United States

(1) General rule

If, in connection with any exchange described in section 332, 351, 354, 355, 356, or 361, a United States person transfers property to a foreign corporation, such foreign corporation shall not, for purposes of determining the extent to which gain shall be recognized on such transfer, be considered to be a corporation.

(2) Exception for certain stock or securities

Except to the extent provided in regulations, paragraph (1) shall not apply to the transfer of stock or securities of a foreign corporation which is a party to the exchange or a party to the reorganization.

(3) Exception for transfers of certain property used in the active conduct of a trade or business

(A) In general

Except as provided in regulations prescribed by the Secretary, paragraph (1) shall not apply to any property transferred to a foreign corporation for use by such foreign corporation in the active conduct of a trade or business outside of the United States.

(B) Paragraph not to apply to certain property

Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to any—

(i) property described in paragraph (1) or (3) of section 1221 (relating to inventory and copyrights, etc.),

(ii) installment obligations, accounts receivable, or similar property,

(iii) foreign currency or other property denominated in foreign currency,

(iv) intangible property (within the meaning of section 936(h)(3)(B)), or

(v) property with respect to which the transferor is a lessor at the time of the transfer, except that this clause shall not apply if the transferee was the lessee.

(C) Transfer of foreign branch with previously deducted losses

Except as provided in regulations prescribed by the Secretary, subparagraph (A) shall not apply to gain realized on the transfer of the assets of a foreign branch of a United States person to a foreign corporation in an exchange described in paragraph (1) to the extent that—

(i) the sum of losses—

(I) which were incurred by the foreign branch before the transfer, and

(II) with respect to which a deduction was allowed to the taxpayer, exceeds

(ii) the sum of—

(I) any taxable income of such branch for a taxable year after the taxable year in which the loss was incurred and through the close of the taxable year of the transfer, and

(II) the amount which is recognized under section 904(f)(3) on account of the transfer.

Any gain recognized by reason of the preceding sentence shall be treated for purposes of this chapter as income from sources outside the United States having the same character as such losses had.

(4) Special rule for transfer of partnership interests

Except as provided in regulations prescribed by the Secretary, a transfer by a United States person of an interest in a partnership to a foreign corporation in an exchange described in paragraph (1) shall, for purposes of this subsection, be treated as a transfer to such corporation of such person's pro rata share of the assets of the partnership.

(5) Secretary may exempt certain transactions from application of this subsection

Paragraph (1) shall not apply to the transfer of any property which the Secretary, in order to carry out the purposes of this subsection, designates by regulation.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Special rules relating to transfers of intangibles

(1) In general

Except as provided in regulations prescribed by the Secretary, if a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B)) to a foreign corporation in an exchange described in section 351 or 361—

(A) subsection (a) shall not apply to the transfer of such property, and

(B) the provisions of this subsection shall apply to such transfer.

(2) Transfer of intangibles treated as transfer pursuant to sale of contingent payments

(A) In general

If paragraph (1) applies to any transfer, the United States person transferring such property shall be treated as—

(i) having sold such property in exchange for payments which are contingent upon the productivity, use, or disposition of such property, and

(ii) receiving amounts which reasonably reflect the amounts which would have been received—

(I) annually in the form of such payments over the useful life of such property, or

(II) in the case of a disposition following such transfer (whether direct or indirect), at the time of the disposition.

(B) Effect on earnings and profits

For purposes of this chapter, the earnings and profits of a foreign corporation to which the intangible property was transferred shall be reduced by the amount required to be included in the income of the transferor of the intangible property under subparagraph (A)(ii).

(C) Amounts received treated as United States source ordinary income

For purposes of this chapter, any amount included in gross income by reason of this subsection shall be treated as ordinary income from sources within the United States.

(e) Treatment of liquidations under section 336

In the case of any distribution described in section 336 by a domestic corporation which is made to a person who is not a United States person, to the extent provided in regulations, gain shall be recognized under principles similar to the principles of this section.

(f) Transitional rule

In the case of any exchange beginning before January 1, 1978—

(1) subsection (a) shall be applied without regard to whether or not there is a transfer of property described in subsection (a)(1), and

(2) subsection (b) shall not apply.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 131(a)-(c), 98 Stat. 662-664.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 131(a), amended subsec. (a) generally, revising the provisions of pars. (1) and (2), and adding pars. (3) to (5).

Subsec. (d). Pub. L. 98-369, § 131(b), amended subsec. (d) generally, substituting provision providing special rules relating to transfers of intangibles for provision providing special rules relating to transfers of intangibles by possession corporation.

Subsecs. (e), (f). Pub. L. 98-369, § 131(c), added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 131(g) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting section 6038B of this title, amending sections 367, 1492, 1494, 6501, and 7482 of this title, and repealing section 7477 of this title] shall apply to transfers or exchanges after December 31, 1984, in taxable years ending after such date.

"(2) SPECIAL RULE FOR CERTAIN TRANSFERS OF INTANGIBLES.—

"(A) IN GENERAL.—If, after June 6, 1984, and before January 1, 1985, a United States person transfers any intangible property (within the meaning of section 936(h)(3)(B) of the Internal Revenue Code of 1954) to a foreign corporation or in a transfer described in section 1491, such transfer shall be treated for purposes of sections 367(a), 1492(2), and 1494(b) of such Code as pursuant to a plan having as 1 of its principal purposes the avoidance of Federal income tax.

"(B) WAIVER.—Subject to such terms and conditions as the Secretary of the Treasury or his delegate may prescribe, the Secretary may waive the application of subparagraph (A) with respect to any transfer.

"(3) RULING REQUEST BEFORE MARCH 1, 1984.—The amendments made by this section (and the provisions of paragraph (2) of this subsection) shall not apply to any transfer or exchange of property described in a request filed before March 1, 1984, under section 367(a), 1492(2), or 1494(b) of the Internal Revenue Code of 1954 (as in effect before such amendments)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 814, 1492, 1494, 6501 of this title.

§ 368. Definitions relating to corporate reorganizations

(a) Reorganization

[*See main edition for text of* (*1*)]

(2) Special rules relating to paragraph (1)

[*See main edition for text of* (*A*) *to* (*E*)]

(F) Certain transactions involving 2 or more investment companies

[*See main edition for text of* (*i*) *to* (*vii*)] [(viii) Repealed. Pub. L. 98-369, div. A, title I, § 174(b)(5)(D), July 18, 1984, 98 Stat. 707]

(G) Distribution requirement for paragraph (1)(C)

(i) In general

A transaction shall fail to meet the requirements of paragraph (1)(C) unless the acquired corporation distributes the stock, securities, and other properties it receives, as well as its other properties, in pursuance of the plan of reorganization.

(ii) Exception

The Secretary may waive the application of clause (i) to any transaction subject to any conditions the Secretary may prescribe.

[*See main edition for text of* (3); (b)]

(c) Control defined

(1) In general

For purposes of part I (other than section 304), part II, this part, and part V, the term "control" means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

(2) Special rule for determining whether certain transactions are described in subsection (a)(1)(D)

In the case of any transaction with respect to which the requirements of subparagraphs (A) and (B) of section 354(b)(1) are met, for purposes of determining whether such transaction is described in subparagraph (D) of subsection (a)(1), the term "control" has the meaning given to such term by section 304(c).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 63(a), 64(a), 174(b)(5)(D), 98 Stat. 583, 584, 707.)

AMENDMENTS

1984—Subsec. (a)(2)(F)(viii). Pub. L. 98-369, § 174(b)(5)(D), struck out cl. (viii) which provided that in applying paragraph (3) of section 267(b) in respect of any transaction to which this subparagraph applies, the reference to a personal holding company in such paragraph (3) be treated as including a reference to an investment company and the determination of whether a corporation is an investment company be made as of the time immediately before the transaction instead of with respect to the taxable year referred to in such paragraph (3).

Subsec. (a)(2)(G). Pub. L. 98-369, § 63(a), added subpar. (G).

Subsec. (c). Pub. L. 98-369, § 64(a), designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Enactment of subsec. (a)(2)(G) of this section by section 63(a) of Pub. L. 98-369 applicable to transactions pursuant to plans adopted after July 18, 1984, see section 63(c) of Pub. L. 98-369, set out as a note under section 312 of this title.

Section 64(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (c) of this section] shall apply to transactions pursuant to plans adopted after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 174(b)(5)(D) of Pub. L. 98-369, applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98-369, set out as a note under section 267 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 108, 247, 249, 279, 306, 312, 337, 351, 354, 355, 357, 381, 382, 402, 512, 542, 995, 1101, 1103, 1244, 1275, 4912, 4920, 4978, 6166, 6901 of this title; title 12 section 1717.

PART IV—INSOLVENCY REORGANIZATIONS

§ 371. Reorganization in certain receivership and bankruptcy proceedings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 168, 247, 341, 357, 358, 372, 1245, 1250 of this title; title 11 section 346.

§ 374. Gain or loss not recognized in certain railroad reorganizations

REFERENCES IN TEXT

The Court of Claims, referred to in subsec. (e)(1)(A)(iii), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97-164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 168, 250, 341, 354, 357, 358, 370, 372, 617, 1245, 1250 of this title.

PART V—CARRYOVERS

Sec.
383. Special limitations on unused business credits, research credits, foreign taxes, and capital losses.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 474(r)(12)(C), July 18, 1984, 98 Stat. 842, substituted "unused business credits, research credits, foreign taxes, and capital losses" for "carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses" in item 383.

§ 381. Carryovers in certain corporate acquisitions

[*See main edition for text of* (a) *and* (b)]

(c) Items of the distributor or transferor corporation

The items referred to in subsection (a) are:

[*See main edition for text of* (1) *to* (22)]

(23) Deficiency dividend of regulated investment company or real estate investment trust

If the acquiring corporation pays a deficiency dividend (as defined in section 860(f)) with respect to the distributor or transferor corporation, such distributor or transferor corporation shall, with respect to such payments, be entitled to the deficiency dividend deduction provided in section 860.

(24) Method of computing recovery allowance for recovery property

The acquiring corporation shall be treated as the distributor or transferor corporation for purposes of computing the deduction allowable under section 168(a) on property acquired in a distribution or transfer with respect to so much of the basis in the hands of the acquiring corporation as does not exceed the adjusted basis in the hands of the distributor or transferor corporation.

(25) Credit under section 30

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 30, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 30 in respect of the distributor or transferor corporation.

(26) Credit under section 38

The acquiring corporation shall take into account (to the extent proper to carry out the purposes of this section and section 38, and under such regulations as may be prescribed by the Secretary) the items required to be taken into account for purposes of section 38 in respect of the distributor or transferor corporation.

[(27) Repealed. Pub. L. 98-369, div. A, title IV, § 474(r)(11)(A), July 18, 1984, 98 Stat. 841]

[(28) and (29) Redesignated (24) and (25)]

[(30) Repealed. Pub. L. 98-369, div. A, title IV, § 474(r)(11)(A), July 18, 1984, 98 Stat. 841]

(d) Operations loss carrybacks and carryovers of life insurance companies

For application of this part to operations loss carrybacks and carryovers of life insurance companies, see section 810.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title II, § 211(b)(4), title IV, § 474(r)(11), 98 Stat. 754, 841.)

AMENDMENTS

1984—Subsec. (c)(23). Pub. L. 98-369, § 474(r)(11)(B), redesignated par. (25) as (23). Former par. (23), relating to credit under section 38 for investment in certain depreciable property, was struck out.

Subsec. (c)(24). Pub. L. 98-369, § 474(r)(11)(B), redesignated par. (28) as (24). Former par. (24), relating to credit under section 40 for work incentive program expenses, was struck out.

Subsec. (c)(25). Pub. L. 98-369, § 474(r)(11)(B), (C), redesignated par. (29) as (25), and substituted therein "30" for "44F" wherever appearing in heading and text. Former par. (25) redesignated (23).

Subsec. (c)(26). Pub. L. 98-369, § 474(r)(11)(D), added par. (26). Former par. (26), relating to credit under section 44B for employment of certain new employees, was struck out.

Subsec. (c)(27). Pub. L. 98-369, § 474(r)(11)(A), struck out par. (27) which related to credit under section 44E for alcohol used as fuel.

Subsec. (c)(28), (29). Pub. L. 98-369, § 474(r)(11)(B), redesignated pars. (28) and (29) as (24) and (25), respectively.

Subsec. (c)(30). Pub. L. 98-366, § 474(r)(11)(A), struck out par. (30) which provided for a credit under section 44G.

Subsec. (d). Pub. L. 98-369, § 211(b)(4), substituted "section 810" for "section 812(f)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 211(b)(4) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(11) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 48, 166, 168, 172, 250, 382, 394, 463, 545, 807, 809, 810, 832, 904 of this title; title 46 App. section 1177.

§ 382. Special limitations on net operating loss carryovers

TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1985, AND REORGANIZATIONS PURSUANT TO PLANS OF REORGANIZATION ADOPTED ON OR AFTER JANUARY 1, 1986

Pub. L. 94-455, title VIII, § 806(e), (g)(2), (3), Oct. 4, 1976, 90 Stat. 1599, 1605, 1606, as amended by Pub. L. 95-600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95-615, § 8, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96-167, § 9(e), Dec. 29, 1979, 93 Stat. 1279; Pub. L. 97-119, title I, § 111, Dec. 29, 1981, 95 Stat. 1640; Pub. L. 98-369, div. A, title I, § 62, July 18, 1984, 98 Stat. 583, provided that, for purposes of applying subsection (a) of this section to taxable years beginning after Dec. 31, 1985, with specified exceptions, and that for purposes of applying subsection (b) of this section to reorganizations pursuant to plans of reorganization adopted on or after Jan. 1, 1986, this section will read as follows:

§ 382. Special limitations on net operating loss carryover

[*See main edition for text of* (a)]

(b) Reorganizations

(1) In general

If one corporation acquires the stock or assets of another corporation in a reorganization described in subparagraph (A), (B), (C), or (F) of section 368(a)(1) or subparagraph (D) or (G) of section 368(a)(1) (but only if the requirements of section 354(b)(1) are met), and if—

[*See main edition for text of* (A) *and* (B)]

then the net operating loss carryover (if any) of the loss corporation from the taxable year which includes the date of the acquisition, and the net operating loss carryovers (if any) of the loss corporation from prior taxable years to such taxable year and subsequent taxable years, shall be reduced by the percentage determined under paragraph (2).

[*See main edition for text of* (2) *to* (6); (c)]

EFFECTIVE DATE OF 1976 AMENDMENT

Section 806(g)(2), (3) of Pub. L. 94-455 as amended by Pub. L. 95-600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95-615, § 8, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96-167, § 9(e), Dec. 29, 1979, 93 Stat. 1279; Pub. L. 97-119, title I, § 111, Dec. 29, 1981, 95 Stat. 1640; Pub. L. 98-369, div. A, title I, § 62(a), July 18, 1984, 98 Stat. 583, provided that:

"(2) For purposes of applying sections 382(a) and 383 (as it relates to section 382(a)) of the Internal Revenue Code of 1954, as amended by subsections (e) and (f), the amendments made by subsections (e) and (f) [amending this section and sections 368(c) and 383 of this title] shall take effect for taxable years beginning after December 31, 1985, except that the beginning of the taxable years specified in clause (ii) of section 382(a)(1)(B) of such Code, as so amended, shall be considered to be the later of:

"(A) the beginning of such taxable years, or

"(B) January 1, 1986.

"(3) Sections 382(b) and 383 (as it relates to section 382(b)) of the Internal Revenue Code of 1954, as amended by subsections (e) and (f), shall apply (and such sections as in effect prior to such amendment shall not apply) to reorganizations pursuant to a plan of reorganization adopted by one or more of the parties thereto on or after January 1, 1986. For purposes of the preceding sentence, a corporation shall be considered to have adopted a plan of reorganization on the date on which a resolution of the board of directors is passed adopting the plan or recommending its adoption to the shareholders, or on the date on which the shareholders approve the plan of reorganization, whichever is earlier."

§ 383. Special limitations on unused business credits, research credits, foreign taxes, and capital losses

If—

(1) the ownership and business of a corporation are changed in the manner described in section 382(a)(1), or

(2) in the case of a reorganization specified in paragraph (2) of section 381(a), there is a change in ownership described in section 382(b)(1)(B),

then the limitations provided in section 382 in such cases with respect to the carryover of net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212.

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(12)(A), July 18, 1984, 98 Stat. 841.)

TAXABLE YEARS ENDING BEFORE JANUARY 1, 1986

Section 383, set out above, as it relates to section 382(a) of this title is applicable to taxable years ending before January 1, 1986.

REORGANIZATIONS PURSUANT TO PLANS ADOPTED ON OR AFTER JANUARY 1, 1986

Pub. L. 94-455, title VIII, § 806(g)(3), Oct. 4, 1976, 90 Stat., 1606, as amended by Pub. L. 95-600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95-615, § 8, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96-167, § 9(e), Dec. 29, 1979, 93 Stat. 1279; Pub. L. 97-119, title I, § 111, Dec. 29, 1981, 95 Stat. 1640; Pub. L. 98-369, div. A, title I, § 62(a)(3), July 18, 1984, 98 Stat. 583, provided that for purposes of applying this section as it relates to section 382(b) of this title, as amended by section 806(e) of Pub. L. 94-455, to reorganizations pursuant to plans of reorganization adopted by one or more of the parties thereto on or after Jan. 1, 1986, this section reads as set out below:

§ 383. Special limitations on unused business credits, research credits, foreign taxes, and capital losses

In the case of a change of ownership of a corporation in the manner described in section 382(a) or (b), the limitations provided in section 382 in such cases with respect to net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212.

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(12)(B), July 18, 1984, 98 Stat. 842.)

TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1985

Pub. L. 94-455, title VIII, § 806(g)(2), Oct. 4, 1976, 90 Stat. 1605, as amended by Pub. L. 95-600, title III, § 368(a), Nov. 6, 1978, 92 Stat. 2857; Pub. L. 95-615, § 8, Nov. 8, 1978, 92 Stat. 3098; Pub. L. 96-167, § 9(e), Dec. 29, 1979, 93 Stat. 1279; Pub. L. 97-119, title I, § 111, Dec. 29, 1981, 95 Stat. 1640; Pub. L. 98-369, div. A, title I, § 62(a)(1), (2), July 18, 1984, 98 Stat. 583, provided that for the purposes of applying this section as it relates to section 382(a) of this title, as amended by section 806(e) of Pub. L. 94-455, to taxable years beginning after Dec. 31, 1985, this section will read as set out below:

§ 383. Special limitations on unused business credits, research credits, foreign taxes, and capital losses

In the case of a change of ownership of a corporation in the manner described in section 382(a) or (b), the limitations provided in section 382 in such cases with respect to net operating losses shall apply in the same manner, as provided under regulations prescribed by the Secretary, with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212.

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(12)(B), July 18, 1984, 98 Stat. 842.)

AMENDMENTS

1984—Pub. L. 98-369, § 474(r)(12)(A)(ii), in catchline of section 383 set out first, substituted "Special limitations on unused business credits, research credits, foreign taxes, and capital losses" for "Special limitations on carryovers of unused investment credits, work incentive program credits, new employee credits, alcohol fuel credits, research credits, employee stock ownership credits, foreign taxes, and capital losses".

Pub. L. 98-369, § 474(r)(12)(B)(ii), in catchline of section 383 set out second, substituted "business credits, research credits" for "investment credits, work incentive program credits".

Pub. L. 98-369, § 474(r)(12)(B)(ii), in catchline of section 383 set out third, substituted "business credits" for "investment credits" and struck out references to work incentive program credits, new employee credits, alcohol fuel credits, and employee stock ownership credits.

Pub. L. 98-369, § 474(r)(12)(A)(i), in section 383 set out first, substituted "with respect to any unused business credit of the corporation which can otherwise be carried forward under section 39, to any unused credit of the corporation which could otherwise be carried forward under section 30(g)(2), to any excess foreign taxes of the corporation which could otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212" for "with respect to any unused investment credit of the corporation which can otherwise be carried forward under section 46(b), to any unused work incentive program credit of the corporation which can otherwise be carried forward under section 50A(b), to any unused new employee credit of the corporation which could otherwise be carried forward under section 53(b), to any unused credit of the corporation which could otherwise be carried forward under section 44E(e)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44F(g)(2), to any unused credit of the corporation which could otherwise be carried forward under section 44G(b)(2), to any excess foreign taxes of the corporation which can otherwise be carried forward under section 904(c), and to any net capital loss of the corporation which can otherwise be carried forward under section 1212".

Pub. L. 98-369, § 474(r)(12)(B)(i), in section 383 set out second, substituted "with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212" for "with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212".

Pub. L. 98-369, § 474(r)(12)(B)(i), in section 383 set out third, substituted "with respect to any unused business credit of the corporation under section 39, to any unused credit of the corporation under section 30(g)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212" for "with respect to any unused investment credit of the corporation under section 46(b), to any unused work incentive program credit of the corporation under section 50A(b), to any unused new employee credit of the corporation under section 53(b), to any unused credit of the corporation under section 44E(e)(2), to any unused credit of the corporation under section 44F(g)(2), to any unused credit of the corporation under section 44G(b)(2), to any excess foreign taxes of the corporation under section 904(c), and to any net capital loss of the corporation under section 1212".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(12)(A), (B) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1976 AMENDMENT

For purposes of applying this section (as it relates to section 382(a) of this title) as amended by section 806(e) and (f) of Pub. L. 94-455, the amendments made by section 806(e) and (f) of Pub. L. 94-455 effective for taxable years beginning after Dec. 31, 1985, with specified provisions for determining the beginning of the taxable years specified in section 382(a)(1)(B)(ii) of this title, and this section (as it relates to section 382(b) of this title) as amended by section 806(e) and (f) of Pub. L. 94-455 to apply (and such sections as in effect prior to such amendment not to apply) to reorganizations pursuant to a plan of reorganization adopted by one or more of the parties thereto on or after Jan. 1, 1986, see section 806(g)(2) and (3) of Pub. L. 94-455, as amended, set out as a note under section 382 of this title.

PART VII—MISCELLANEOUS CORPORATE PROVISIONS

Sec.
386. Transfers of partnership and trust interests by corporations.

PRIOR PROVISIONS

A prior part VII, formerly part VI, which related to effective dates of subchapter C and consisted of sections 391 to 395, was redesignated part VII by Pub. L. 91-172, title IV, § 415(a), Dec. 30, 1969, 83 Stat. 613, and repealed by Pub. L. 94-455, title XIX, § 1901(a)(55), Oct. 4, 1976, 90 Stat. 1731.

§ 386. Transfers of partnership and trust interests by corporations

(a) Corporate distributions

For purposes of determining the amount (and character) of gain recognized by a corporation on any distribution of an interest in a partnership, the distribution shall be treated in the same manner as if it included a property distribution consisting of the corporation's proportionate share of the recognition property of such partnership.

(b) Sales or exchange to which section 337 applies

For purposes of determining the amount (and character) of gain recognized on a sale or exchange described in section 337, any sale or exchange by a corporation of an interest in a partnership shall be treated as a sale or exchange of the corporation's proportionate share of the recognition property of such partnership.

(c) Recognition property

For purposes of this section, the term "recognition property" means any property with respect to which gain would be recognized to the corporation if such property—

(1) were distributed by the corporation in a distribution described in section 311 or 336, or

(2) were sold in a sale described in section 337,

whichever is appropriate. In determining whether property of a partnership is recognition property, such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner.

(d) Extension to trusts

Under regulations, rules similar to the rules of this section shall also apply in the case of the distribution or sale or exchange by a corporation of an interest in a trust.

(Added Pub. L. 98-369, div. A, title I, § 75(a), July 18, 1984, 98 Stat. 594.)

EFFECTIVE DATE

Section 75(e) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting this section and amending sections 761 and 7701 of this title] shall apply to distributions, sales, and exchanges made after March 31, 1984, in taxable years ending after such date."

Subchapter D—Deferred Compensation, Etc.

PART I—PENSION, PROFIT-SHARING, STOCK BONUS PLANS, ETC.

Subpart
D. Treatment of welfare benefit funds.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title V, § 511(d), July 18, 1984, 98 Stat. 862, added heading for subpart D.

SUBPART A—GENERAL RULE

Sec.
[405. Repealed.]
406. Employees of foreign affiliates covered by section 3121(*l*) agreements.
409. Qualification for tax credit employee stock ownership plans.[1]

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 491(d)(54), (e)(10), July 18, 1984, 98 Stat. 852, 853, struck out items 405 and 409, which read "Qualified bond purchase plans" and "Retirement bonds", respectively, and redesignated item 409A as 409.

1983—Pub. L. 98-21, title III, § 321(e)(2)(D)(ii), Apr. 20, 1983, 97 Stat. 120, substituted "Employees of foreign affiliates covered by section 3121(*l*) agreements" for "Certain employees of foreign subsidiaries" in item 406.

§ 401. Qualified pension, profit-sharing, and stock bonus plans

(a) Requirements for qualification

A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

[*See main edition for text of (1) to (8)*]

(9) Required distributions

(A) In general

A trust shall not constitute a qualified trust under this subsection unless the plan provides that the entire interest of each employee—

(i) will be distributed to such employee not later than the required beginning date, or

(ii) will be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of such employee or over the lives of such employee and a designated beneficiary (or over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and a designated beneficiary).

(B) Required distribution where employee dies before entire interest is distributed

(i) Where distributions have begun under subparagraph (A)(ii)

A trust shall not constitute a qualified trust under this section unless the plan provides that if—

(I) the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), and

(II) the employee dies before his entire interest has been distributed to him,

the remaining portion of such interest will be distributed at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death.

(ii) 5-year rule for other cases

A trust shall not constitute a qualified trust under this section unless the plan provides that, if an employee dies before the distribution of the employee's interest has begun in accordance with subparagraph (A)(ii), the entire interest of the employee will be distributed within 5 years after the death of such employee.

(iii) Exception to 5-year rule for certain amounts payable over life of beneficiary

If—

(I) any portion of the employee's interest is payable to (or for the benefit of) a designated beneficiary,

(II) such portion will be distributed (in accordance with regulations) over the life of such designated beneficiary (or over a period not extending beyond the life expectancy of such beneficiary), and

(III) such distributions begin not later than 1 year after the date of the employee's death or such later date as the Secretary may by regulations prescribe,

for purposes of clause (ii), the portion referred to in subclause (I) shall be treated as distributed on the date on which such distributions begin.

(iv) Special rule for surviving spouse of employee

If the designated beneficiary referred to in clause (iii)(I) is the surviving spouse of the employee—

(I) the date on which the distributions are required to begin under clause

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[1] So in original. Does not conform to section catchline.

(iii)(III) shall not be earlier than the date on which the employee would have attained age 70½, and

(II) if the surviving spouse dies before the distributions to such spouse begin, this subparagraph shall be applied as if the surviving spouse were the employee.

(C) Required beginning date

For purposes of this paragraph, the term "required beginning date" means April 1 of the calendar year following the later of—

(i) the calendar year in which the employee attains age 70½, or

(ii) the calendar year in which the employee retires.

Except as provided in section 409(d), clause (ii) shall not apply in the case of an employee who is a 5-percent owner (as defined in section 416) with respect to the plan year ending in the calendar year in which the employee attains 70½.

(D) Life expectancy

For purposes of this paragraph, the life expectancy of an employee and the employee's spouse (other than in the case of a life annuity) may be redetermined but not more frequently than annually.

(E) Designated beneficiary

For purposes of this paragraph, the term "designated beneficiary" means any individual designated as a beneficiary by the employee.

(F) Treatment of payments to children

Under regulations prescribed by the Secretary, for purposes of this paragraph, any amount paid to a child shall be treated as if it had been paid to the surviving spouse if such amount will become payable to the surviving spouse upon such child reaching majority (or other designated event permitted under regulations).

(10) Other requirements

(A) Plans benefiting owner-employees

In the case of any plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3)), a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of subsection (d) are also met.

(B) Top-heavy plans

(i) In general

In the case of any top-heavy plan, a trust forming part of such plan shall constitute a qualified trust under this section only if the requirements of section 416 are met.

(ii) Plans which may become top-heavy

Except to the extent provided in regulations, a trust forming part of a plan (whether or not a top-heavy plan) shall constitute a qualified trust under this section only if such plan contains provisions—

(I) which will take effect if such plan becomes a top-heavy plan, and

(II) which meet the requirements of section 416.

(iii) Exemption for governmental plans

This subparagraph shall not apply to any governmental plan.

(11) Requirement of joint and survivor annuity and preretirement survivor annuity

(A) In general

In the case of any plan to which this paragraph applies, except as provided in section 417, a trust forming part of such plan shall not constitute a qualified trust under this section unless—

(i) in the case of a vested participant who retires under the plan, the accrued benefit payable to such participant is provided in the form of a qualified joint and survivor annuity, and

(ii) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity is provided to the surviving spouse of such participant.

(B) Plans to which paragraph applies

This paragraph shall apply to—

(i) any defined benefit plan,

(ii) any defined contribution plan which is subject to the funding standards of section 412, and

(iii) any participant under any other defined contribution plan unless—

(I) such plan provides that the participant's nonforfeitable accrued benefit is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under section 417(a)(2)(A), to a designated beneficiary),

(II) such participant does not elect a payment of benefits in the form of a life annuity, and

(III) with respect to such participant, such plan is not a direct or indirect transferee of a plan which is described in clause (i) or (ii) or to which this clause applied with respect to the participant.

(C) Exception for certain ESOP benefits

(i) In general

In the case of—

(I) a tax credit employee stock ownership plan (as defined in section 409(a)), or

(II) an employee stock ownership plan (as defined in section 4975(e)(7)),

subparagraph (A) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) apply.

(ii) Nonforfeitable benefit must be paid in full, etc.

In the case of any participant, clause (i) shall apply only if the requirements of subclauses (I), (II), and (III) of subparagraph (B)(iii) are met with respect to such participant.

(D) Cross reference

For—

(i) provisions under which participants may elect to waive the requirements of this paragraph, and

(ii) other definitions and special rules for purposes of this paragraph,

see section 417.

[*See main edition for text of (12)*]

(13) Assignment and alienation

(A) In general

A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that benefits provided under the plan may not be assigned or alienated. For purposes of the preceding sentence, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment made by any participant who is receiving benefits under the plan unless the assignment or alienation is made for purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued nonforfeitable benefit and is exempt from the tax imposed by section 4975 (relating to tax on prohibited transactions) by reason of section 4975(d)(1). This paragraph shall take effect on January 1, 1976 and shall not apply to assignments which were irrevocable on September 2, 1974.

(B) Special rules for domestic relations orders

Subparagraph (A) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that subparagraph (A) shall not apply if the order is determined to be a qualified domestic relations order.

[*See main edition for text of (14) to (16)*]

[(17), (18) Repealed. Pub. L. 97-248, title II, § 237(b), Sept. 3, 1982, 96 Stat. 511.]

[*See main edition for text of (19) and (20)*]

(21) A trust forming part of a tax credit employee stock ownership plan shall not fail to be considered a permanent program merely because employer contributions under the plan are determined solely by reference to the amount of credit which would be allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B).

(22) if [3] a defined contribution plan (other than a profit-sharing plan)—

[*See main edition for text of (A) and (B)*]

any trust forming part of such plan shall not constitute a qualified trust under this section unless the plan meets the requirements of subsection (e) of section 409.

(23) A stock bonus plan which otherwise meets the requirements of this section shall not be considered to fail to meet the requirements of this section because it provides a cash distribution option to participants if that option meets the requirements of section 409(h), except that in applying section 409(h) for purposes of this paragraph, the term "employer securities" shall include any securities of the employer held by the plan.

(24) Any group trust which otherwise meets the requirements of this section shall not be treated as not meeting such requirements on account of the participation or inclusion in such trust of the moneys of any plan or governmental unit described in section 818(a)(6).

(25) Requirement that actuarial assumptions be specified

A defined benefit plan shall not be treated as providing definitely determinable benefits unless, whenever the amount of any benefit is to be determined on the basis of actuarial assumptions, such assumptions are specified in the plan in a way which precludes employer discretion.

Paragraphs (11), (12), (13), (14), (15), (19), and (20) shall apply only in the case of a plan to which section 411 (relating to minimum vesting standards) applies without regard to subsection (e)(2) of such section.

[*See main edition for text of (b)*]

(c) Definitions and rules relating to self-employed individuals and owner-employees

For purposes of this section—

(1) Self-employed individual treated as employee

(A) In general

The term "employee" includes, for any taxable year, an individual who is a self-employed individual for such taxable year.

(B) Self-employed individual

The term "self-employed individual" means, with respect to any taxable year, an individual who has earned income (as defined in paragraph (2)) for such taxable year. To the extent provided in regulations prescribed by the Secretary, such term also includes, for any taxable year—

(i) an individual who would be a self-employed individual within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have net profits for the taxable year, and

(ii) an individual who has been a self-employed individual within the meaning of the preceding sentence for any prior taxable year.

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[3] So in original. Probably should be "If".

(2) Earned income

(A) In general

The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material income-producing factor,

(ii) without regard to paragraphs (4) and (5) of section 1402(c),

(iii) in the case of any individual who is treated as an employee under sections 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c),

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items, and

(v) with regard to the deductions allowed by sections 404 and 405(c) [4] to the taxpayer.

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date.

[*See main edition for text of* (*B*) *and* (*C*), (*3*) *to* (*5*)]

(d) Additional requirements for qualification of trusts and plans benefiting owner-employees

A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the following requirements of this subsection are met by the trust and by the plan of which such trust is a part:

(1)(A) If the plan provides contributions or benefits for an owner-employee who controls, or for two or more owner-employees who together control, the trade or business with respect to which the plan is established, and who also control as an owner-employee or as owner-employees one or more other trades or businesses, such plan and the plans established with respect to such other trades or businesses, when coalesced, constitute a single plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection with respect to the employees of all such trades or businesses (including the trade or business with respect to which the plan intended to qualify under this section is established).

(B) For purposes of subparagraph (A), an owner-employee, or two or more owner-employees, shall be considered to control a trade or business if such owner-employee, or such two or more owner-employees together—

(i) own the entire interest in an unincorporated trade or business, or

(ii) in the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in such partnership.

For purposes of the preceding sentence, an owner-employee, or two or more owner-employees, shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such owner-employee, or such two or more owner-employees, are considered to control within the meaning of the preceding sentence.

(2) The plan does not provide contributions or benefits for any owner-employee who controls (within the meaning of paragraph (1)(B)), or for two or more owner-employees who together control, as an owner-employee or as owner-employees, any other trade or business, unless the employees of each trade or business which such owner-employee or such owner-employees control are included under a plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection, and provides contributions and benefits for employees which are not less favorable than contributions and benefits provided for owner-employees under the plan.

(3) Under the plan, contributions on behalf of any owner-employee may be made only with respect to the earned income of such owner-employee which is derived from the trade or business with respect to which such plan is established.

[(e) Repealed. Pub. L. 98–369, div. A, title VII, § 713(d)(3), July 18, 1984, 98 Stat. 958]

(f) Certain custodial accounts and contracts

For purposes of this title, a custodial account, an annuity contract, or a contract (other than a life, health or accident, property, casualty, or liability insurance contract) issued by an insurance company qualified to do business in a State shall be treated as a qualified trust under this section if—

[*See main edition for text of* (*1*)]

(2) in the case of a custodial account the assets thereof are held by a bank (as defined in section 408(n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will hold the assets will be consistent with the requirements of this section.

For purposes of this title, in the case of a custodial account or contract treated as a qualified trust under this section by reason of this subsection, the person holding the assets of such account or holding such contract shall be treated as the trustee thereof.

[*See main edition for text of* (*g*)]

(h) Medical, etc., benefits for retired employees and their spouses and dependents

Under regulations prescribed by the Secretary, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but only if—

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[4] See References in Text note below.

[*See main edition for text of* (*1*) *to* (*3*)]

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits,

(5) notwithstanding the provisions of subsection (a)(2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer, and

(6) in the case of an employee who is a 5-percent owner, a separate account is established and maintained for such benefits payable to such employee (and his spouse and dependents) and such benefits (to the extent attributable to plan years beginning after March 31, 1984, for which the employee is a 5-percent owner) are only payable to such employee (and his spouse and dependents) from such separate account.

For purposes of paragraph (6), the term "5-percent owner" means any employee who, at any time during the plan year or any preceding plan year during which contributions were made on behalf of such employee, is or was a 5-percent owner (as defined in section 416(i)(1)(B)).

[*See main edition for text of* (*i*)]

[(j) Repealed. Pub. L. 97–248, title II, § 238(b), Sept. 3, 1982, 96 Stat. 512]

(k) Cash or deferred arrangements

(1) General rule

A profit-sharing or stock bonus plan (or a pre-ERISA money purchase plan) shall not be considered as not satisfying the requirements of subsection (a) merely because the plan includes a qualified cash or deferred arrangement.

(2) Qualified cash or deferred arrangement

A qualified cash or deferred arrangement is any arrangement which is part of a profit-sharing or stock bonus plan (or a pre-ERISA money purchase plan) which meets the requirements of subsection (a)—

[*See main edition for text of* (*A*)]

(B) under which amounts held by the trust which are attributable to employer contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than upon retirement, death, disability, or separation from service (or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½) and will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years; and

[*See main edition for text of* (*C*)]

(3) Application of participation and discrimination standards

(A) A cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement unless—

(i) those employees eligible to benefit under the arrangement satisfy the provisions of subparagraph (A) or (B) of section 410(b)(1), and

(ii) the actual deferral percentage for highly compensated employees (as defined in paragraph (4)) for such year bears a relationship to the actual deferral percentage for all other eligible employees for such plan year which meets either of the following tests:

(I) The actual deferral percentage for the group of highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 1.5.

(II) The excess of the actual deferral percentage for the group of highly compensated employees over that of all other eligible employees is not more than 3 percentage points, and the actual deferral percentage for the group of highly compensated employees is not more than the actual deferral percentage of all other eligible employees multiplied by 2.5.

If 2 or more plans which include cash or deferred arrangements are considered as 1 plan for purposes of section 401(a)(4) or 410(b), the cash or deferred arrangements included in such plans shall be treated as 1 arrangement for purposes of this subparagraph.

The deferral percentage taken into account under this subparagraph for any employee who is a participant under 2 or more cash or deferred arrangements of the employer shall be the sum of the deferral percentages for such employee under each of such arrangements.

[*See main edition for text of* (*B*), (*4*)]

(5) Pre-ERISA money purchase plan

For purposes of this subsection, the term "pre-ERISA money purchase plan" means a pension plan—

(A) which is a defined contribution plan (as defined in section 414(i)),

(B) which was in existence on June 27, 1974, and which, on such date, included a salary reduction arrangement, and

(C) under which neither the employee contributions nor the employer contributions may exceed the levels provided for by the contribution formula in effect under the plan on such date.

(*l*) Nondiscriminatory coordination of defined contribution plans with OASDI

(1) In general

Notwithstanding subsection (a)(5), the coordination of a defined contribution plan with OASDI meets the requirements of subsection (a)(4) only if the total contributions with respect to each participant, when increased by the OASDI contributions, bear a uniform relationship—

(A) to the total compensation of such employee, or

(B) to the basic or regular rate of compensation of such employee.

(2) Definitions

For purposes of paragraph (1)—

(A) OASDI contributions

The term "OASDI contributions" means the product of—

(i) so much of the remuneration paid by the employer to the employee during the plan year as—

(I) constitutes wages (within the meaning of section 3121(a) without regard to paragraph (1) thereof), and

(II) does not exceed the contribution and benefit base applicable under OASDI at the beginning of the plan year, multiplied by

(ii) the rate of tax applicable under section 3111(a) (relating to employer's OASDI tax) at the beginning of the plan year.

In the case of an individual who is an employee within the meaning of subsection (c)(1), the preceding sentence shall be applied by taking into account his earned income (as defined in subsection (c)(2)).

(B) OASDI

The term "OASDI" means the system of old-age, survivors, and disability insurance established under title II of the Social Security Act and the Federal Insurance Contributions Act.

(C) Remuneration

The term "remuneration" means—

(i) total compensation, or

(ii) basic or regular rate of compensation,

whichever is used in determining contributions or benefits under the plan.

(3) Determination of compensation, etc., of self-employed individuals

For purposes of this subsection, in the case of an individual who is an employee within the meaning of subsection (c)(1)—

(A) his total compensation shall include his earned income (as defined in subsection (c)(2)), and

(B) his basic or regular rate of compensation shall be determined (under regulations prescribed by the Secretary) with respect to that portion of his earned income which bears the same ratio to his earned income as the basic or regular compensation of the employees under the plan (other than employees within the meaning of subsection (c)(1)) bears to the total compensation of such employees.

(*o*) [5] Cross reference

For exemption from tax of a trust qualified under this section, see section 501(a).

(Aug. 16, 1954, ch. 736, 68A Stat. 134; Oct. 10, 1962, Pub. L. 87-792, § 2, 76 Stat. 809; Oct. 23, 1962, Pub. L. 87-863, § 2(a), 76 Stat. 1141; Feb. 26, 1964, Pub. L. 88-272, title II, § 219(a), 78 Stat. 57; July 30, 1965, Pub. L. 89-97, title I, § 106(d)(4), 79 Stat. 337; Nov. 13, 1966, Pub. L. 89-809, title II, §§ 204(b)(1), (c), 205(a), 80 Stat. 1577, 1578; Jan. 12, 1971, Pub. L. 91-691, § 1(a), 84 Stat. 2074; Sept. 2, 1974, Pub. L. 93-406, title II, §§ 1012(b), 1016(a)(2), 1021, 1022(a)-(d), (f), 1023, 2001(c)-(e)(4), (h)(1), 2004(a)(1), 88 Stat. 913, 929, 935, 937-940, 943, 952-955, 957, 979; Apr. 15, 1976, Pub. L. 94-267, § 1(c)(1), (2), 90 Stat. 367; Oct. 4, 1976, Pub. L. 94-455, title VIII, § 803(b)(2), title XV, § 1505(b), title XIX, §§ 1901(a)(56), 1906(b)(13)(A), 90 Stat. 1584, 1738, 1773, 1834; Nov. 6, 1978, Pub. L. 95-600, title I, §§ 135(a), 141(f)(3), 143(a), 152(e), 92 Stat. 2785, 2795, 2796, 2799; Apr. 1, 1980, Pub. L. 96-222, title I, § 101(a)(7)(L)(i)(V), (9), (14)(E)(iii), 94 Stat. 199, 201, 205; Sept. 26, 1980, Pub. L. 96-364, title II, § 208(a), (e), title IV, § 410(b), 94 Stat. 1289, 1290, 1308; Dec. 28, 1980, Pub. L. 96-605, title II, §§ 221(a), 225(b)(1), (2), 94 Stat. 3528, 3529; Aug. 13, 1981, Pub. L. 97-34, title III, §§ 312(b)(1), (c)(2)-(4), (e)(2), 314(a)(1), 335, 338(a), 95 Stat. 283-286, 297, 298; Sept. 3, 1982, Pub. L. 97-248, title II, §§ 237(a), (b), (e)(1), 238(b), (d)(1), (2), 240(b), 242(a), 249(a), 254(a), 96 Stat. 511-513, 520, 521, 527, 533; Jan. 12, 1983, Pub. L. 97-448, title I, § 103(c)(10)(A), (d)(2), (g)(2)(A), title III, § 306(a)(12), 96 Stat. 2377-2379, 2405; July 18, 1984, Pub. L. 98-369, div. A, title II, § 211(b)(5), title IV, §§ 474(r)(13), 491(e)(4), (5), title V, §§ 521(a), 524(d)(1), 527(a), (b), 528(b), title VII, § 713(c)(2)(A), (d)(3), 98 Stat. 754, 842, 853, 865, 872, 875-877, 957, 958; Aug. 23, 1984, Pub. L. 98-397, title II, §§ 203(a), 204(a), title III, § 301(b), 98 Stat. 1440, 1445, 1451.)

AMENDMENT OF SUBSECTION (c)(2)(A)

Pub. L. 98-21, title I, § 124(c)(4)(A), (d)(2), Apr. 20, 1983, 97 Stat. 91, provided that, applicable to taxable years beginning after Dec. 31, 1989, subpar. (a) of subsec. (c)(2) of this section is amended by striking out "and" at the end of clause (iv), by striking out the period at the end of clause (v) and inserting in lieu thereof ", and", and by inserting after clause (v) the following new clause:

"(vi) with regard to the deduction allowed to the taxpayer by section 164(f)."

REFERENCES IN TEXT

The Federal Insurance Contributions Act, referred to in subsecs. (a)(5) and (*l*)(2)(B), is act Aug. 16, 1954, ch. 736, 68A Stat. 415, as amended, which is classified generally to chapter 21 (§ 3101 et seq.) of this title. For complete classification of this Act to the Code, see section 3126 of this title and Tables.

The Social Security Act, referred to in subsecs. (a)(15) and (*l*)(2)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security

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[5] So in original. There are no subsec. (m) and (n).

Act is classified generally to subchapter II (§ 401 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 405, referred to in subsec. (c)(2)(A)(v), was repealed by Pub. L. 98-369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848.

AMENDMENTS

1984—Subsec. (a)(9). Pub. L. 98-369, § 521(a)(1), amended par. (9) generally, redesignating existing provisions as subpar. (A) and in subpar. (A) as so redesignated struck out "In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1)" before "a trust forming part of such plan", substituted "the plan provides that the entire interest of each employee—" for ", under the plan, the entire interest of each employee—", redesignated subpars. (A) and (B) as cls. (i) and (ii) respectively, in cl. (i) as so redesignated substituted provisions stating that a qualified plan provides that the entire interest will be distributed to the employee not later than the beginning date for former provisions which provided alternative dates for providing interest, in cl. (ii) as so redesignated substituted alternate distribution dates to be set in accordance with regulations for former provisions stating that a qualified plan shall be distributed not later than the taxable year in which the taxpayer attains age 70½, and struck out the par. following cl. (ii) which provided "A trust shall not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust is a part, of a method of distribution which does not meet the terms of the preceding sentence.", and added subpars. (B) to (F).

Pub. L. 98-369, § 521(a)(2), repealed amendment made by Pub. L. 97-248, § 242(a). See 1982 Amendment note below.

Subsec. (a)(10)(B)(iii). Pub. L. 98-369, § 524(d)(1), added cl. (iii).

Subsec. (a)(11). Pub. L. 98-397, § 203(a), amended par. (11) generally, adding provisions relating to preretirement survivor annuities, and substituting present four subpars. for former eight subpars.

Subsec. (a)(13). Pub. L. 98-397, § 204(a), designated existing provisions as subpar. (A), corrected the margin of subpar. (A), and added subpar. (B).

Subsec. (a)(21). Pub. L. 98-369, § 474(r)(13), substituted provisions relating to the amount of the credit which would be allowable under section 41 if the employer made the transfer described in section 41(c)(1)(B) for former provisions which had related to the amount of credit which would be allowable under section 46(a) if the employer made the transfer described in section 48(n)(1) or under section 44G if the employer made the transfer described in section 44G(c)(1)(B).

Subsec. (a)(22). Pub. L. 98-369, § 491(e)(4), substituted "section 409" for "section 409A".

Subsec. (a)(23). Pub. L. 98-369, § 491(e)(5), substituted "section 409(h)" for "section 409A(h)" in two places.

Subsec. (a)(24). Pub. L. 98-369, § 211(b)(5), substituted "section 818(a)(6)" for "section 805(d)(6)".

Subsec. (a)(25). Pub. L. 98-397, § 301(b), added par. (25).

Subsec. (e). Pub. L. 98-369, § 713(d)(3), repealed subsec. (e) which related to contributions for premiums on annuity, etc., contracts.

Subsec. (f)(2). Pub. L. 98-369, § 713(c)(2)(A), substituted "(as defined in section 408(n))" for "(as defined in subsection (d)(1))".

Subsec. (h)(6). Pub. L. 98-369, § 528(b), added par. (6).

Subsec. (k)(1), (2). Pub. L. 98-369, § 527(b)(1), added "(or a pre-ERISA money purchase plan)".

Subsec. (k)(2)(B). Pub. L. 98-369, § 527(b)(3), substituted "(or in the case of a profit sharing or stock bonus plan, hardship or the attainment of age 59½)" for ", hardship or the attainment of age 59½,".

Subsec. (k)(3)(A). Pub. L. 98-369, § 527(a), struck out "qualified" before "cash or deferred arrangement", substituted "shall not be treated as a qualified cash or deferred arrangement unless" for "shall be considered to satisfy the requirements of subsection (a)(4), with respect to the amount of contributions, and of subparagraph (B) of section 410(b)(1) for a plan year if", designated provisions beginning "those employees" and ending "section 401(b)(1)" as cl. (i) and the material following as cl. (ii), redesignated former cls. (i) and (ii) as subcls. (I) and (II) and added material following subcl. (II).

Subsec. (k)(5). Pub. L. 98-369, § 527(b)(2), added par. (5).

1983—Subsec. (a)(21). Pub. L. 97-448, § 103(g)(2)(A), designated part of existing provisions as subpar. (A) and added subpar. (B).

Subsec. (d)(2). Pub. L. 97-448, § 306(a)(12), substituted "paragraph (1)(B)" for "paragraph (9)(B)".

Subsec. (d)(5). Pub. L. 97-448, § 103(c)(10)(A), substituted "Subparagraphs (A) and (B) shall not apply to contributions described in subsection (e), and shall not apply to any deductible employee contribution (as defined in section 72(*o*)(5))" for "Subparagraphs (A) and (B) do not apply to contributions described in subsection (e)" in the second sentence.

Subsec. (j)(3). Pub. L. 97-448, § 103(d)(2), substituted "under subparagraph (A) of paragraph (2) shall be treated as beginning a new period of plan participation with respect only to such change" for "under subparagraph (A) of subsection (j)(2) shall be treated as beginning a new period of plan participation" in the last sentence.

1982—Subsec. (a)(9). Pub. L. 97-248, § 242(a), which was repealed by Pub. L. 98-369, § 521(a)(2), had amended par. (9) generally, redesignating existing provisions as subpar. (A), in subpar. (A), as so redesignated, struck out preliminary provision which limited the application of this paragraph to plans providing contributions or benefits for employees some or all of whom were employees within the meaning of subsec. (c)(1), redesignated former subpars. (A) and (B) as cls. (i) and (ii) of subpar. (A), in cl. (i), as so redesignated, substituted reference to a key employee who is a participant in a top-heavy plan for former reference to owner-employees (within the meaning of subsec. (c)(3)), redesignated former cls. (i) and (ii) of subpar. (B) as subcls. (I) and (II) of cl. (ii), struck out former provision that a trust would not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust was a part, of a method of distribution which did not meet the terms of this paragraph, and adding subpar. (B).

Subsec. (a)(10). Pub. L. 97-248, § 237(e)(1), amended par. (10) generally, redesignating subpar. (B) as (A) and striking out former subpar. (A) relating to qualified trust as a trust forming part of such plan, for provisions relating to discriminatory plans with respect to nonapplicability of paragraph (3), the first and second sentences of paragraph (5) and section 410 of this title.

Subsec. (a)(10)(B). Pub. L. 97-248, § 240(b), added subpar. (B).

Subsec. (a)(17), (18). Pub. L. 97-248, § 237(b), struck out pars. (17) and (18) which related, respectively, to a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d), and a trust which is part of a plan providing a defined benefit for employees some or all of whom are employees within the meaning of subsection (c)(1), or are shareholder-employees within the meaning of section 1379(d).

Subsec. (a)(24). Pub. L. 97-248 added par. (24).

Subsec. (c)(1). Pub. L. 97-248, § 238(d)(1), amended par. (1) generally, substituting in the paragraph catchline "Self-employed individual treated as employee" for "Employee", adding subparagraph catchlines, and substituting provisions defining the terms "employee" and "self-employed individual", for provisions defining the term "employee".

Subsec. (c)(2)(A). Pub. L. 97-248, § 238(d)(2), added cl. (v).

Subsec. (d). Pub. L. 97-248, § 237(a), redesignated pars. (9) to (11) as (1) to (3), respectively. Former pars. (1) to (7), which related to trusts created or organized before or after October 10, 1962, contributions under the plan, benefits under the plan for employees, contributions or benefits under the plan, limitations pursuant to the plan, applicability of requirements of subsec. (a)(4) of this section, and distributions under the plan, respectively, were struck out.

Subsec. (j). Pub. L. 97-248, § 238(b), struck out subsec. (j) which related to general requirements, regulation guidelines, applicable percentage, certian contributions and benefits not taken into account, definitions, and special rules with respect to defined benefit plans providing benefits for self-employed individuals and shareholder-employees.

Subsecs. (*l*), (*o*). Pub. L. 97-248, § 249(a), added subsec. (*l*) and redesignated former subsec. (*l*) as (*o*).

Effective Date of 1984 Amendments

Amendment by section 203(a) of Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, amendment by section 204(a) of Pub. L. 98-397 effective Jan. 1, 1985, and amendment by section 301(b) of Pub. L. 98-397 applicable to plan amendments made after July 30, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 211(b)(5) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(13) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 491(e)(4), (5) of Pub. L. 98-369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98-369, set out as a note under section 41 of this title.

Section 521(e) of Pub. L. 98-369 provided that:

"(1) In general.—The amendments made by this section [amending sections 72, 401, 403, and 408 of this title and repealing provisions set out as a note under this section] shall apply to years beginning after December 31, 1984.

"(2) Repeal of section 242 of TEFRA.—The amendment made by subsection (a)(2) [repealing provisions amending subsec. (a)(9) of this section and set out as a note under this section] shall take effect as if included in the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248].

"(3) Transition rule.—A trust forming part of a plan shall not be disqualified under paragraph (9) of section 401(a) of the Internal Revenue Code of 1954, as amended by subsection (a)(1), by reason of distributions under a designation (before January 1, 1984) by any employee in accordance with a designation described in section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (as in efffect [sic] before the amendments made by this Act) [formerly set out as an Effective Date of 1982 Amendment note below].

"(4) Special rule for governmental plans.—In the case of a governmental plan (within the meaning of section 414(d) of the Internal Revenue Code of 1954), paragraph (1) shall be applied by substituting '1986' for '1984'.

"(5) Special rule for collective bargaining agreements.—In the case of a plan maintained pursuant to one or more collective bargaining agreements ratified on or before the date of the enactment of this Act [July 18, 1984] between employee representatives and one or more employers, the amendments made by this section shall not apply to years beginning before the earlier of—

"(A) the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or

"(B) January 1, 1988.

For purposes of subparagraph (A), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement."

Section 524(d)(2) of Pub. L. 98-369 provided that: "The amendment made by this subsection [enacting subsec. (a)(10)(B)(iii) of this section] shall apply to plan years beginning after December 31, 1983."

Section 527(c) of Pub. L. 98-369 provided that:

"(1) Subsection (a).—

"(A) In general.—Except as provided in subparagraph (B), the amendment made by subsection (a) [amending subsec. (k)(3)(A) of this section] shall apply to plan years beginning after December 31, 1984.

"(B) Exception for certain existing plans.—The amendment made by subsection (a) shall not apply to any plan—

"(i) which was maintained by a State on June 8, 1984, and

"(ii) with respect to which a determination letter had been issued by the Secretary on December 6, 1982.

"(2) Subsection (b).—

"(A) In general.—The amendments made by this section [amending subsec. (k) of this section] shall apply with respect to plan years beginning after the date of the enactment of this Act [July 18, 1984].

"(B) Transitional rule.—Rules similar to the rules under section 135(c)(2) of the Revenue Act of 1978 [section 135(c)(2) of Pub. L. 95-600, set out below] shall apply with respect to any pre-ERISA money purchase plan (as defined in section 401(k)(5) of the Internal Revenue Code of 1954) for plan years beginning after December 31, 1979, and on or before the date of the enactment of this Act."

Section 528(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 401 and 415 of this title] shall apply to years beginning after March 31, 1984."

Amendment by section 713 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Effective Date of 1982 Amendment

Section 242(b) of Pub. L. 97-248, which had prescribed effective date for amendment by section 242(a) of Pub. L. 97-248, was repealed by Pub. L. 98-369, div. A, title V, § 521(a)(2), July 18, 1984, 98 Stat. 867.

Section 249(b) of Pub. L. 97-248 provided that: "The amendments made by this section [enacting subsec. (*l*) and redesignating former subsec. (*l*) as (*o*)] shall apply to plan years beginning after December 31, 1983."

Section 254(b) of Pub. L. 97-248 provided that: "The amendment made by subsection (a) [enacting subsec. (a)(24)] shall apply with respect to taxable years beginning after December 31, 1981."

Amendment by sections 237, 238, and 240 of Pub. L. 97-248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97-248, set out as an Effective Date note under section 416 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a)(21) of this section by section 141(f)(3) of Pub. L. 95-600 effective with respect to qualified investment for taxable years beginning after Dec. 31, 1978, see section 141(g)(1) of Pub. L. 95-600, set out as an Effective Date note under section 409 of this title.

DISTRIBUTION REQUIREMENTS FOR ACCOUNTS AND ANNUITIES OF AN INSURER IN A REHABILITATION PROCEEDING

Section 553 of Pub. L. 98-369 provided that:

"(a) IN GENERAL.—For purposes of sections 401(a)(9), 408(a)(6) and (7), and 408(b)(3) and (4) of the Internal Revenue Code of 1954—

"(1) a trust, custodial account, or annuity or other contract forming part of a pension or profit-sharing plan, or a retirement annuity, or

"(2) a grantor of an individual retirement account or an individual retirement annuity,

shall not be treated as failing to meet the requirements of such sections if such account, annuity, or contract was issued by an insurance company which, on March 15, 1984, was a party to a rehabilitation proceeding under the applicable State insurance law.

"(b) LIMITATION.—Subsection (a) shall apply only during the period during which—

"(1) the insurance company continues to be a party to the proceeding described in subsection (a), and

"(2) distributions under the trust, custodial account, or annuity or other contract may not be made by reason of such proceeding."

QUALIFICATION REQUIREMENTS MODIFIED IF REGULATIONS NOT ISSUED

Section 524(e) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—If the Secretary of the Treasury or his delegate does not publish final regulations under section 416 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) before January 1, 1985, the Secretary shall publish before such date plan amendment provisions which may be incorporated in a plan to meet the requirements of section 401(a)(10)(B)(ii) of such Code.

"(2) EFFECT OF INCORPORATION.—If a plan is amended to incorporate the plan amendment provisions described in paragraph (1), such plan shall be treated as meeting the requirements of section 401(a)(10)(B)(ii) of the Internal Revenue Code of 1954 during the period such amendment is in effect but not later than 6 months after the final regulations described in paragraph (1) are published.

"(3) FAILURE BY SECRETARY TO PUBLISH.—If the Secretary of the Treasury or his delegate does not publish plan amendment provisions described in paragraph (1), the plan shall be treated as meeting the requirements of section 401(a)(10)(B) of the Internal Revenue Code of 1954 if—

"(A) such plan is amended to incorporate such requirements by reference, except that

"(B) in the case of any optional requirement under section 416 of such Code, if such amendment does not specify the manner in which such requirement will be met, the employer shall be treated as having elected the requirement with respect to each employee which provides the maximum vested accrued benefit for such employee."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30, 62, 72, 83, 101, 104, 105, 120, 124, 125, 127, 129, 172, 219, 221, 318, 382, 402, 403, 404, 404A, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 447, 457, 501, 503, 511, 513, 514, 542, 818, 871, 1042, 1492, 1563, 2039, 2517, 3121, 3306, 3401, 3405, 3508, 4941, 4975, 6033, 6043, 6047, 6058, 6072, 6104, 6324, 7476 of this title; title 11 section 522; title 12 sections 1464, 1728, 1787, 1821; title 15 sections 77c, 78c, 78*l*, 80a-3, 636, 1866; title 19 section 2345; title 29 sections 1053, 1082, 1103, 1107, 1108, 1132, 1301, 1321, 1322, 1344; title 42 section 409; title 45 sections 702, 726.

§ 402. Taxability of beneficiary of employees' trust

(a) Taxability of beneficiary of exempt trust

[*See main edition for text of (1)*]

(2) Capital gains treatment for certain distributions

In the case of an employee trust described in section 401(a), which is exempt from tax under section 501(a), so much of the total taxable amount (as defined in subparagraph (D) of subsection (e)(4)) of a lump sum distribution as is equal to the product of such total taxable amount multiplied by a fraction—

[*See main edition for text of (A) and (B)*]

shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of computing the fraction described in this paragraph and the fraction under subsection (e)(4)(E), the Secretary may prescribe regulations under which plan years may be used in lieu of calendar years. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B), but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

[*See main edition for text of (3) and (4)*]

(5) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in a qualified trust is paid to him,

[*See main edition for text of (ii) and (iii)*]

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Maximum amount which may be rolled over

In the case of any qualified total distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the fair market value of all the property the employee receives in the distribution, reduced by the employee contributions (other than accumulated deductible employee contributions within the meaning of section 72(*o*)(5)). In the case of any partial distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to subparagraph (A)).

[*See main edition for text of (C)*]

(D) Special rules for partial distributions

(i) Requirements

Subparagraph (A) shall apply to a partial distribution only if—

(I) such distribution is of an amount equal to at least 50 percent of the balance to the credit of the employee in a qualified trust (determined immediately before such distribution and without regard to subsection (e)(4)(C)),

(II) such distribution is not one of a series of periodic payments, and

(III) the employee elects (at such time and in such manner as the Secretary shall by regulations prescribe) to have subparagraph (A) apply to such partial distribution.

(ii) Partial distributions may be transferred only to individual retirement plans

In the case of a partial distribution, a plan described in subclause (IV) or (V) of subparagraph (E)(iv)[6] shall not be treated as an eligible retirement plan.

(iii) Denial of 10-year averaging and capital gains treatment for subsequent distributions

If an election under clause (i) is made with respect to any partial distribution paid to any employee—

(I) paragraph (2) of this subsection,

(II) paragraphs (1) and (3) of subsection (e), and

(III) paragraph (2) of section 403(a),

shall not apply to any distribution (paid after such partial distribution) of the balance to the credit of such employee under the plan under which such partial distribution was made (or under any other plan which, under subsection (e)(4)(C), would be aggregated with such plan).

(iv) Special rule for unrealized appreciation

If an election under clause (i) is made with respect to any partial distribution, the second and third sentences of paragraph (1) shall not apply to such distribution.

(E) Definitions

For purposes of this paragraph—

(i) Qualified total distribution

The term "qualified total distribution" means 1 or more distributions—

(I) within 1 taxable year of the employee on account of a termination of the plan of which the trust is a part or, in the case of a profit-sharing or stock bonus plan, a complete discontinuance of contributions under such plan,

(II) which constitute a lump sum distribution within the meaning of subsection (e)(4)(A) (determined without reference to subparagraphs (B) and (H) of subsection (e)(4)), or

(III) which constitute a distribution of accumulated deductible employee contributions (within the meaning of section 72(o)(5)).

(ii) Employee contributions

The term "employee contributions" means—

(I) the excess of the amounts considered contributed by the employee (determined by applying section 72(f)), over

(II) any amounts theretofore distributed to the employee which were not includible in gross income (determined without regard to this paragraph).

(iii) Qualified trust

The term "qualified trust" means an employees' trust described in section 401(a) which is exempt from tax under section 501(a).

(iv) Eligible retirement plan

The term "eligible retirement plan" means—

(I) an individual retirement account described in section 408(a),

(II) an individual retirement annuity described in section 408(b) (other than an endowment contract),

(III) a qualified trust, and

(IV) an annuity plan described in section 403(a).

(v) Partial distribution

The term "partial distribution" means any distribution to an employee of any portion of the balance to the credit of such employee in a qualified trust; except that such term shall not include any distribution which is a qualified total distribution.

(F) Special rules

(i) Transfer treated as rollover contribution under section 408

For purposes of this title, a transfer described in subparagraph (A) to an eligible retirement plan described in subclause (I) or (II) of subparagraph (E)(iv) shall be treated as a rollover contribution described in section 408(d)(3).

(ii) Key employees

An eligible retirement plan described in subclause (III) or (IV) of subparagraph (E)(iv) shall not be treated as an eligible retirement plan for the transfer of a distribution if any part of the distribution is attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan. For purposes of the preceding sentence, the terms "key employee" and "top-heavy plan" have the same respective meanings as when used in section 416.

(6) Special rollover rules

(A) Time of termination

For purposes of paragraph (5)(E)(i), a complete discontinuance of contributions under a profit-sharing or stock bonus plan shall be deemed to occur on the day the plan administrator notifies the Secretary (in accordance with regulations prescribed by the Secretary) that all contributions to the plan have been completely discontinued. For purposes of section 411(d)(3), the plan shall be considered to be terminated no later than the day such notice is filed with the Secretary.

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[6] See References in Text note below.

(B) Sale of subsidiary or assets

For purposes of paragraph (5)(E)(i)—

[*See main edition for text of* (*i*) *and* (*ii*)]

shall be treated as a payment or distribution on account of the termination of the plan with respect to such employee if the employees of the employer corporation or the acquiring corporation (whichever applies) are not active participants in such plan at the time of such payment or distribution. For purposes of this subparagraph, in no event shall a payment or distribution be deemed to be in connection with a sale or other transfer of assets, or a liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship, if such payment or distribution is made later than the end of the second calendar year after the calendar year in which occurs such sale or other transfer of assets, or such liquidation, sale, or other means of terminating such parent-subsidiary or controlled group relationship.

[*See main edition for text of* (*C*)]

(D) Sales of distributed property

For purposes of subparagraphs (5) and (7)—

[*See main edition for text of* (*i*) *and* (*ii*)]

(iii) Designation where amount of distribution exceeds rollover contribution

In any case where part or all of the distribution consists of property other than money, the taxpayer may designate—

(I) the portion of the money or other property which is to be treated as attributable to employee contributions (or, in the case of a partial distribution, the amount not includible in gross income), and

(II) the portion of the money or other property which is to be treated as included in the rollover contribution.

Any designation under this clause for a taxable year shall be made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). Any such designation, once made, shall be irrevocable.

(iv) Treatment where no designation

In any case where part or all of the distribution consists of property other than money and the taxpayer fails to make a designation under clause (iii) within the time provided therein, then—

(I) the portion of the money or other property which is to be treated as attributable to employee contributions (or, in the case of a partial distribution, the amount not includible in gross income), and

(II) the portion of the money or other property which is to be treated as included in the rollover contribution

shall be determined on a ratable basis.

[*See main edition for text of* (*v*)]

(E) Special rule where employer maintains money purchase pension plan and other pension plan

(i) In general

In the case of any distribution from a money purchase pension plan which is maintained by an employer, for purposes of paragraph (5)(D) or (5)(E)(i)(II), subsection (e)(4)(C) shall be applied by not taking into account any pension plan maintained by such employer which is not a money purchase pension plan. The preceding sentence shall not apply to any distribution which is a qualified total distribution without regard to this subparagraph.

[*See main edition for text of* (*ii*)]

(F) Qualified domestic relations orders

If—

(i) within 1 taxable year of the recipient, the balance to the credit of the recipient by reason of any qualified domestic relations order (within the meaning of section 414(p)) is distributed or paid to the recipient,

(ii) the recipient transfers any portion of the property the recipient receives in such distributions to an eligible retirement plan described in subclause (I) or (II) of paragraph (5)(E)(iv), and

(iii) in the case of a distribution of property other than money, the amount so transferred consists of the property distributed,

then the portion of the distribution so transferred shall be treated as a distribution described in paragraph (5)(A).

(7) Rollover where spouse receives distributions after death of employee

If any distribution attributable to an employee is paid to the spouse of the employee after the employee's death, paragraph (5) shall apply to such distribution in the same manner as if the spouse were the employee.

[*See main edition for text of* (*8*)]

(9) Alternate payee under qualified domestic relations order treated as distributee

For purposes of subsection (a)(1) and section 72, the alternate payee shall be treated as the distributee of any distribution or payment made to the alternate payee under a qualified domestic relations order (as defined in section 414(p)).

[*See main edition for text of* (*b*) *to* (*d*)]

(e) Tax on lump sum distributions

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Definitions and special rules

[*See main edition for text of* (*A*) *to* (*K*)]

(L) Election to treat pre-1974 participation as post-1973 participation

For purposes of subparagraph (E), subsection (a)(2), and section 403(a)(2), if a taxpayer elects (at the time and in the manner provided under regulations prescribed by the Secretary), all calendar years of an employee's active participation in all plans in which the employee has been an active participant shall be considered years of active participation by such employee after December 31, 1973. An election made under this subparagraph, once made, shall be irrevocable and shall apply to all lump-sum distributions received by the taxpayer with respect to the employee. This subparagraph shall not apply if the taxpayer received a lump-sum distribution in a previous taxable year of the employee beginning after December 31, 1975, unless no portion of such lump-sum distribution was treated under subsection (a)(2) or section 403(a)(2) as gain from the sale or exchange of a capital asset held for more than 6 months.

(M) Balance to credit of employee not to include amounts payable under qualified domestic relations order

For purposes of this subsection, subsection (a)(2) of this section, and section 403(a)(2), the balance to the credit of an employee shall not include any amount payable to an alternate payee under a qualified domestic relations order (within the meaning of section 414(p)).

(5) Special rule where portion of lump-sum distribution attributable to rollover of bond purchased under qualified bond purchase plan

If any portion of a lump-sum distribution is attributable to a transfer described in section 405(d)(3)(A)(ii) (as in effect before its repeal by the Tax Reform Act of 1984), paragraphs (1) and (3) of this subsection and paragraph (2) of subsection (a) shall not apply to such portion.

(f) Written explanation to recipients of distributions eligible for rollover treatment

(1) In general

The plan administrator of any plan shall, when making a qualifying rollover distribution, provide a written explanation to the recipient—

(A) of the provisions under which such distribution will not be subject to tax if transferred to an eligible retirement plan within 60 days after the date on which the recipient received the distribution, and

(B) if applicable, the provisions of subsections (a)(2) and (e) of this section.

(2) Definitions

For purposes of this subsection, the terms "qualifying rollover distribution" and "eligible retirement plan" have the respective meanings given such terms by subsection (a)(5)(E).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 491(c)(2), (d)(9)-(11), title V, § 522(a)(1), (b)-(d)(8), title VII, § 713(c)(3), title X, § 1001(b)(3), 98 Stat. 848, 849, 868-870, 957, 1011; Aug. 23, 1984, Pub. L. 98-397, title II, §§ 204(c)(1), (3), (4), 207(a), 98 Stat. 1448, 1449.)

REFERENCES IN TEXT

Subclauses (IV) and (V) of subparagraph (E)(iv), referred to in subsec. (a)(5)(D)(ii), were redesignated subclauses (III) and (IV), respectively, of subparagraph (E)(iv) by section 491(d)(9) of Pub. L. 98-369.

Section 405(d)(3)(A)(ii) (as in effect before its repeal by the Tax Reform Act of 1984), referred to in subsec. (e)(5), means section 405(d)(3)(A)(ii) of this title prior to repeal by section 491(a) of Pub. L. 98-369. For text of section 405(d)(3)(A)(ii), see note set out under section 405 of this title.

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-369, § 1001(b)(3), substituted "6 months" for "1 year".

Subsec. (a)(5)(A)(i). Pub. L. 98-369, § 522(a)(1), substituted "any portion of the balance to the credit of an employee in a qualified trust is paid to him" for "the balance to the credit of an employee in a qualified trust is paid to him in a qualifying rollover distribution".

Subsec. (a)(5)(B). Pub. L. 98-369, § 522(d)(1)(A), (2), substituted "qualified total distribution" for "qualifying rollover distribution", and added "In the case of any partial distribution, the maximum amount transferred to which subparagraph (A) applies shall not exceed the portion of such distribution which is includible in gross income (determined without regard to subparagraph (A))."

Subsec. (a)(5)(D). Pub. L. 98-369, § 522(b), added subpar. (D). Former subpar. (D) redesignated (E).

Subsec. (a)(5)(D)(iv)(III)-(V). Pub. L. 98-369, § 491(d)(9), struck out subcl. (III), which included a retirement bond described in section 409 within the term "eligible retirement plan" and redesignated former subcls. (IV) and (V) and (III) and (IV), respectively.

Subsec. (a)(5)(E). Pub. L. 98-369, § 522(b), redesignated subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (a)(5)(E)(i). Pub. L. 98-369, § 522(d)(1)(B), substituted "qualified total distribution" for "qualifying rollover distribution" in heading and text.

Subsec. (a)(5)(E)(ii)(II). Pub. L. 98-369, § 522(d)(3), substituted "gross income (determined without regard to this paragraph)" for "gross income".

Subsec. (a)(5)(E)(v). Pub. L. 98-369, § 522(d)(4), substituted provision dealing with partial distribution for provision dealing with rollover of partial distributions of deductible employee contributions permitted.

Subsec. (a)(5)(F). Pub. L. 98-369, § 522(b), redesignated subpar. (E) as (F).

Subsec. (a)(5)(F)(i). Pub. L. 98-369, § 522(d)(5), substituted "subparagraph (E)(iv)" for "subparagraph (D)(iv)".

Pub. L. 98-369, § 491(d)(10), substituted "or (II)" for ", (II), or (III)".

Subsec. (a)(5)(F)(ii). Pub. L. 98-369, § 522(d)(5), substituted "subparagraph (E)(iv)" for "subparagraph (D)(iv)".

Pub. L. 98-369, § 491(d)(11), substituted "(III) or (IV)" for "(IV) and (V)".

Pub. L. 98-369, § 713(c)(3), substituted "Key employees" for "Self-employed individuals and owner-employees" in heading and "attributable to contributions made on behalf of the employee while he was a key employee in a top-heavy plan" for "attributable to a trust forming part of a plan under which the employee was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan" in text, and added sentence adopting the meaning of "key employee" and "top-heavy plan" used in section 416.

Subsec. (a)(6)(A), (B). Pub. L. 98-369, § 522(d)(6), substituted "paragraph (5)(E)(i)" for "paragraph (5)(D)(i)".

Subsec. (a)(6)(D)(iii), (iv). Pub. L. 98-369, § 522(d)(7), substituted "employee contributions (or, in the case of a partial distribution, the amount not includible in gross income)" for "employee contributions".

Subsec. (a)(6)(E)(i). Pub. L. 98-369, § 522(d)(1)(C), (8), substituted "qualified total distribution" for "qualifying rollover distribution", and "paragraph (5)(D) or (5)(E)(i)(II)" for "paragraph (5)(D)(i)(II)".

Subsec. (a)(6)(F). Pub. L. 98-397, § 204(c)(3), added subpar. (F).

Subsec. (a)(7). Pub. L. 98-369, § 522(c), substituted provisions relating to rollover where spouse receives distributions after death of employee for provisions dealing with rollover where spouse receives lump-sum distribution at death of employee.

Subsec. (a)(9). Pub. L. 98-397, § 204(c)(1), added par. (9).

Subsec. (e)(4)(L). Pub. L. 98-369, § 1001(b)(3), substituted "6 months" for "1 year".

Subsec. (e)(4)(M). Pub. L. 98-397, § 204(c)(4), added subpar. (M).

Subsec. (e)(5). Pub. L. 98-369, § 491(c)(2), added par. (5).

Subsec. (f). Pub. L. 98-397, § 207(a), added subsec. (f).

Effective Date of 1984 Amendments

Amendment by section 204 of Pub. L. 98-397 effective Jan. 1, 1985, and amendment by section 207 of Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 491(d)(9) to (11) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Section 491(f)(2) of Pub. L. 98-369 provided that: "The amendment made by subsection (c) [enacting subsec. (e)(5) of this section and amending section 405 of this title] shall apply to redemptions after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Section 522(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 402, 403, 408, and 409 of this title] shall apply to distributions made after the date of the amendment of this Act [probably means the date of enactment of this Act which is July 18, 1984], in taxable years ending after such date.

Amendment by section 713(c)(3) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 1001(b)(3) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

Treatment of Certain Distributions From Qualified Terminated Plan

Section 551 of Pub. L. 98-369 provided that:

"(a) In General.—For purposes of the Internal Revenue Code [of] 1954, if—

"(1) a distribution was made from a qualified terminated plan to an employee on December 16, 1976, and on January 6, 1977, such employee transferred all of the property received in such distribution to an individual retirement account (within the meaning of section 408(a) of such Code) established for the benefit of such employee, and

"(2) the remaining balance to the credit of such employee in such qualified terminated plan was distributed to such employee on January 21, 1977, and all the property received by such employee in such distribution was transferred by such employee to such individual retirement account on January 21, 1977,

then such distributions shall be treated as qualifying rollover distributions (within the meaning of section 402(a)(5) of such Code) and shall not be includible in the gross income of such employee for the taxable year in which paid.

"(b) Qualified Terminated Plan.—For purposes of this section, the term 'qualified terminated plan' means a pension plan—

"(1) with respect to which a notice of sufficiency was issued by the Pension Benefit Guaranty Corporation on December 2, 1976, and

"(2) which was terminated by corporate action on February 20, 1976.

"(c) Refund or Credit of Overpayment Barred by Statute of Limitations.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1954 or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period."

Section Referred to in Other Sections

This section is referred to in sections 55, 62, 72, 101, 219, 401, 403, 406, 407, 408, 415, 457, 691, 871, 911, 1441, 3121, 3306, 3405, 4973, 6428, 6652 of this title; title 5 section 8334; title 42 section 409.

§ 403. Taxation of employee annuities

(a) Taxability of beneficiary under a qualified annuity plan

[See main edition for text of (1)]

(2) Capital gains treatment for certain distributions

(A) General rule

If—

[See main edition for text of (i) to (iii)]

so much of the total taxable amount (as defined in section 402(e)(4)(D)) of such distribution as is equal to the product of such total taxable amount multiplied by the fraction described in section 402(a)(2) shall be treated as a gain from the sale or exchange of a capital asset held for more than 6 months. For purposes of this paragraph, in the case of an individual who is an employee without regard to section 401(c)(1), determination of whether or not any distribution is a lump sum distribution shall be made without regard to the requirement that an election be made under subsection (e)(4)(B) of section 402, but no distribution to any taxpayer other than an individual, estate, or trust may be treated as a lump sum distribution under this paragraph.

[See main edition for text of (B), (3)]

(4) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him,

[*See main edition for text of* (*ii*) *and* (*iii*)]

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Certain rules made applicable

Rules similar to the rules of subparagraphs (B) through (F) of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

(b) Taxability of beneficiary under annuity purchased by section 501(c)(3) organization or public school

(1) General rule

If—

[*See main edition for text of* (*A*) *to* (*C*)]

then amounts contributed by such employer for such annuity contract on or after such rights become nonforfeitable shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the exclusion allowance for such taxable year. The employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities). For purposes of applying the rules of this subsection to amounts contributed by an employer for a taxable year, amounts transferred to a contract described in this paragraph by reason of a rollover contribution described in paragraph (8) of this subsection or section 408(d)(3)(A)(iii) shall not be considered contributed by such employer.

[*See main edition for text of* (*2*)]

(3) Includible compensation

For purposes of this subsection, the term "includible compensation" means, in the case of any employee, the amount of compensation which is received from the employer described in paragraph (1)(A), and which is includible in gross income (computed without regard to section 911) for the most recent period (ending not later than the close of the taxable year) which under paragraph (4) may be counted as one year of service. Such term does not include any amount contributed by the employer for any annuity contract to which this subsection applies.

[*See main edition for text of* (*4*) *to* (*6*)]

(7) Custodial accounts for regulated investment company stock

[*See main edition for text of* (*A*) *to* (*C*)]

(D) Distribution requirements

For purposes of determining when the interest of an employee in a custodial account must be distributed, such account shall be treated in the same manner as an annuity contract.

(8) Rollover amounts

(A) General rule

If—

(i) any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him,

[*See main edition for text of* (*ii*) *and* (*iii*)]

then such distribution (to the extent so transferred) shall not be includible in gross income for the taxable year in which paid.

(B) Special rules for partial distributions

(i) In general

In the case of any distribution other than a total distribution, rules similar to the rules of clauses (i) and (ii) of section 402(a)(5)(D) shall apply.

(ii) Total distribution

For purposes of subparagraph (A), the term "total distribution" means one or more distributions from an annuity contract described in paragraph (1) which would constitute a lump-sum distribution within the meaning of section 402(e)(4)(A) (determined without regard to subparagraphs (B) and (H) of section 402(e)(4)) if such annuity contract were described in subsection (a), or 1 or more distributions of accumulated deductible employee contributions (within the meaning of section 72(*o*)(5)).

(C) Certain rules made applicable

Rules similar to the rules of subparagraphs (B), (C), (F)(i) [8] of section 402(a)(5) and of paragraphs (6) and (7) of section 402(a) shall apply for purposes of subparagraph (A).

[*See main edition for text of* (*9*); (*c*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 122(c)(4), 97 Stat. 87; July 18, 1984, Pub. L. 98-369, div. A, title IV, § 491(d)(12), title V, §§ 521(c), 522(a)(2), (3), (d)(9)-(11), title X, § 1001(b)(4), 98 Stat. 849, 867, 869-871, 1011.)

AMENDMENTS

1984—Subsec. (a)(2)(A). Pub. L. 98-369, § 1001(b)(4), substituted "6 months" for "1 year".

Subsec. (a)(4)(A)(i). Pub. L. 98-369, § 522(a)(2), substituted "any portion of the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him," for "the balance to the credit of an employee in an employee annuity described in paragraph (1) is paid to him in a qualifying rollover distribution."

Subsec. (a)(4)(B). Pub. L. 98-369, § 522(d)(9), substituted "(B) through (F)" for "(B) through (E)".

Subsec. (b)(1). Pub. L. 98-369, § 491(d)(12), struck out "or 409(b)(3)(C)" after "408(d)(3)(A)(iii)".

Subsec. (b)(7)(D). Pub. L. 98-369, § 521(c), added subpar. (D).

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[8] So in original. Probably should be "and (F)(i)".

Subsec. (b)(8)(A)(i). Pub. L. 98-369, § 522(a)(3), substituted "any portion of the balance to the credit of an employee in an annuity contract described in paragraph (1) is paid to him" for "the balance to the credit of an employee is paid to him in a qualifying distribution".

Subsec. (b)(8)(B). Pub. L. 98-369, § 522(d)(10), substituted provisions relating to special rules for partial distributions for provisions relating to the definition of qualifying distributions.

Subsec. (b)(8)(C). Pub. L. 98-369, § 522(d)(11), substituted "(F)(i)" for "(D)(v), and (E)(i)".

1983—Subsec. (b)(3). Pub. L. 98-21 substituted "section 911" for "sections 105(d) and 911".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(12) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Amendment by section 521(c) of Pub. L. 98-369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 522 of Pub. L. 98-369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98-369, set out as a note under section 402 of this title.

Amendment by section 1001(b)(4) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

CROSS REFERENCES

Limitation on retirement income inapplicable to any amount excluded under this section, see section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 101, 104, 219, 401, 402, 404, 406, 407, 408, 412, 414, 415, 457, 818, 871, 911, 1441, 2039, 2517, 3121, 3306, 3401, 3405, 4973, 4975, 6047, 6104, 7476, 7871 of this title; title 11 section 522; title 15 sections 77c, 78c; title 29 sections 1103, 1132, 1344; title 42 section 409.

§ 404. Deduction for contributions of an employer to an employees' trust or annuity plan and compensation under a deferred-payment plan

(a) General rule

If contributions are paid by an employer to or under a stock bonus, pension, profit-sharing, or annuity plan, or if compensation is paid or accrued on account of any employee under a plan deferring the receipt of such compensation, such contributions or compensation shall not be deductible under section 162 (relating to trade or business expenses) or section 212 (relating to expenses for the production of income); but, if they satisfy the conditions of either of such sections, they shall be deductible under this section, subject, however, to the following limitations as to the amounts deductible in any year:

[See main edition for text of (1)]

(2) Employees' annuities

In the taxable year when paid, in an amount determined in accordance with paragraph (1), if the contributions are paid toward the purchase of retirement annuities, or retirement annuities and medical benefits as described in section 401(h), and such purchase is part of a plan which meets the requirements of section 401(a)(3), (4), (5), (6), (7), (8), (9), (11), (12), (13), (14), (15), (16), (17), (18), (19), (20), and (22) and, if applicable, the requirements of section 401(a)(10) and of section 401(d), and if refunds of premiums, if any, are applied within the current taxable year or next succeeding taxable year toward the purchase of such retirement annuities, or such retirement annuities and medical benefits.

[See main edition for text of (3) to (7)]

(8) Self-employed individuals

In the case of a plan included in paragraph (1), (2), or (3) which provides contributions or benefits for employees some or all of whom are employees within the meaning of section 401(c)(1), for purposes of this section—

[See main edition for text of (A) to (C)]

(D) any reference to compensation shall, in the case of an individual who is an employee within the meaning of section 401(c)(1), be considered to be a reference to the earned income of such individual (determined without regard to the deductions allowed by this section and section 405(c)) [1] derived from the trade or business with respect to which the plan is established.

(9) Certain contributions to employee stock ownership plans

(A) Principal payments

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are paid into a trust which forms a part of an employee stock ownership plan (as described in section 4975(e)(7)), and such contributions are, on or before the time prescribed in paragraph (6), applied by the plan to the repayment of the principal of a loan incurred for the purpose of acquiring qualifying employer securities (as described in section 4975(e)(8)), such contributions shall be deductible under this paragraph for the taxable year determined under paragraph (6). The amount deductible under this paragraph shall not, however, exceed 25 percent of the compensation otherwise paid or accrued during the taxable year to the employees under such employee stock ownership plan. Any amount paid into such trust in any taxable year in excess of the amount deductible under this paragraph shall be deductible in the succeeding taxable years in order of time to the extent of the difference between the amount paid and deductible in each such succeeding year and the maximum amount deductible for such year under the preceding sentence.

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[1] See References in Text note below.

(B) Interest payment

Notwithstanding the provisions of paragraphs (3) and (7), if contributions are made to an employee stock ownership plan (described in subparagraph (A)) and such contributions are applied by the plan to the repayment of interest on a loan incurred for the purpose of acquiring qualifying employer securities (as described in subparagraph (A)), such contributions shall be deductible for the taxable year with respect to which such contributions are made as determined under paragraph (6).

(b) Method of contributions, etc., having the effect of a plan; unfunded deferred benefits

(1) Method of contributions, etc., having the effect of a plan

If—

(A) there is no plan, but

(B) there is a method or arrangement of employer contributions or compensation which has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or other plan deferring the receipt of compensation (including a plan described in paragraph (2)),

subsection (a) shall apply as if there were such a plan.

(2) Plans providing unfunded deferred benefits

(A) In general

For purposes of this section, any plan providing for deferred benefits (other than compensation) for employees, their spouses, or their dependents shall be treated as a plan deferring the receipt of compensation. In the case of such a plan, for purposes of this section, the determination of when an amount is includible in gross income shall be made without regard to any provisions of this chapter excluding such benefits from gross income.

(B) Exception for certain benefits

Subparagraph (A) shall not apply to—

(i) any benefit provided through a welfare benefit fund (as defined in section 419(e)), or

(ii) to any benefit with respect to which an election under section 463 applies.

[*See main edition for text of* (c) *and* (d)]

(e) Contributions allocable to life insurance protection for self-employed individuals

In the case of a self-employed individual described in section 401(c)(1), contributions which are allocable (determined under regulations prescribed by the Secretary) to the purchase of life, accident, health, or other insurance shall not be taken into account under paragraph (1), (2), or (3) of subsection (a).

[(f) Repealed. Pub. L. 98–369, div. A, title VII, § 713(b)(3), July 18, 1984, 98 Stat. 957]

[*See main edition for text of* (*g*)]

(h) Special rules for simplified employee pensions

[*See main edition for text of* (*1*) *to* (*3*)]

[(4) Repealed. Pub. L. 98–369, div. A, title VII, § 713(d)(5), July 18, 1984, 98 Stat. 958]

(i) Deductibility of unused portions of employee stock ownership credit

(1) Unused credit carryovers

If any portion of the employee stock ownership credit determined under section 41 for any taxable year has not, after the application of section 38(c), been allowed under section 38 for any taxable year, such portion shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which such portion could have been allowed as a credit under section 39.

(2) Reductions in credit

There shall be allowed as a deduction (subject to the limitations provided under this section) an amount equal to any reduction of the credit allowed under section 41 resulting from a final determination of such credit to the extent such reduction is not taken into account under section 41(c)(3).

[*See main edition for text of* (*j*)]

(k) Dividends paid deductions

In addition to the deductions provided under subsection (a), there shall be allowed as a deduction to a corporation the amount of any dividend paid in cash by such corporation during the taxable year with respect to the stock of such corporation if—

(1) such stock is held on the record date for the dividend by a tax credit employee stock ownership plan (as defined in section 409) or an employee stock ownership plan (as defined in section 4975(e)(7)) which is maintained by such corporation or by any other corporation that is a member of a controlled group of corporations (within the meaning of section 409(*l*)(4)) that includes such corporation, and

(2) in accordance with the plan provisions—

(A) the dividend is paid in cash to the participants in the plan, or

(B) the dividend is paid to the plan and is distributed in cash to participants in the plan not later than 90 days after the close of the plan year in which paid.

(Aug. 16, 1954, ch. 736, 68A Stat. 138; Sept. 2, 1958, Pub. L. 85–866, title I, § 24, 72 Stat. 1623; Oct. 10, 1962, Pub. L. 87–792, § 3, 76 Stat. 819; Oct. 23, 1962, Pub. L. 87–863, § 2(b), 76 Stat. 1141; Nov. 13, 1966, Pub. L. 89–809, title II, § 204(a), (b)(2), (3), 80 Stat. 1577; Dec. 30, 1969, Pub. L. 91–172, title III, § 321(b)(3), 83 Stat. 591; Sept. 2, 1974, Pub. L. 93–406, title II, §§ 1013(c), 1016(a)(3), 2001(a), (g)(2)(E), (F), 2004(b), (c)(1), 2007(a), (b), title IV, § 4401(a), formerly 4081(a), 88 Stat. 921, 929, 952, 957, 986, 993, 994, 1033, renumbered Sept. 26, 1980, Pub. L. 96–364, title I, § 108(a), 94 Stat. 1267; Apr. 15, 1976, Pub. L. 94–267, § 1(c)(3), 90 Stat. 367; Oct. 4, 1976, Pub. L. 94–455, title XV, § 1502(a)(2), title XIX, §§ 1901(a)(59), 1906(b)(13)(A), 90 Stat. 1737, 1774, 1834; Nov. 6, 1978, Pub. L. 95–600, title I, §§ 133(a), (b), 141(f)(9), 152(f), 92 Stat. 2783, 2795, 2799; Apr. 1, 1980, Pub. L. 96–222, title I, § 101(a)(10)(E), (J)(ii), 94 Stat. 202, 204; Sept. 26, 1980, Pub. L. 96-364, title II, § 205, 94 Stat. 1287; Aug. 13, 1981, Pub. L. 97-34, title III, §§ 312(a), 331(b), 333(a), 95 Stat. 283, 293, 296; Sept. 3, 1982, Pub. L. 97-248, title II, §§ 235(b), 237(e)(2), 238(a), 253(b), 96 Stat. 507, 512, 533; July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(14), title V, §§ 512(a), 542(a), title VII, § 713(b)(3), (d)(4)(A), (5), (6), (9), 98 Stat. 842, 862, 890, 957, 958.)

References in Text

Section 405, referred to in subsec. (a)(8)(D), was repealed by Pub. L. 98-369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848.

Amendments

1984—Subsec. (a)(8)(D). Pub. L. 98-369, § 713(d)(6), inserted "(determined without regard to the deductions allowed by this section and section 405(c))".

Subsec. (a)(9), (10). Pub. L. 98-369, § 713(d)(4)(A), struck out par. (9) relating to plans benefiting self-employed individuals and redesignated par. (10) as (9).

Subsec. (b). Pub. L. 98-369, § 512(a), amended subsec. (b) generally, inserting subsection heading, redesignating former subsection heading as par. (1) heading, designating existing provisions as par. (1), and in par. (1) as so designated, inserted "(including a plan described in paragraph (2))" after "compensation" and adding par. (2).

Subsec. (e). Pub. L. 98-369, § 713(d)(9), substituted "under paragraph (1), (2), or (3) of subsection (a)" for "under this section".

Subsec. (f). Pub. L. 98-369, § 713(b)(3), repealed subsec. (f) which related to certain loan repayments considered as contributions.

Subsec. (h)(4). Pub. L. 98-369, § 713(d)(5), repealed par. (4) which related to effect on self-employed individuals or shareholder-employees.

Subsec. (i). Pub. L. 98-369, § 474(r)(14), in par. (1), substituted "If any portion of the employee stock ownership credit determined under section 41 for any taxable year has not, after the application of section 38(c), been allowed under section 38 for any taxable year, such portion shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which such portion could have been allowed as a credit under section 39" for "There shall be allowed as a deduction (without regard to any limitations provided under this section) for the last taxable year to which an unused employee stock ownership credit carryover (within the meaning of section 44G(b)(2)(A)) may be carried, an amount equal to the portion of such unused credit carryover which expires at the close of such taxable year", and in par. (2), substituted references to section 41 and 41(c)(3) for references to section 44G and 44G(c)(3), respectively.

Subsec. (k). Pub. L. 98-369, § 542(a), added subsec. (k).

1982—Subsec. (a)(2). Pub. L. 97-248, § 237(e)(2), substituted "(8), (9)" for "(8)", and "401(a)(10) and of section 401(d)" for "401(a)(9), (10), (17), and (18) and of section 401(d) (other than paragraph (1))".

Subsec. (a)(3)(B). Pub. L. 97-248, § 253(b), added provision that the term "compensation otherwise paid or accrued during the taxable year to all employees" shall include any amount with respect to which an election under section 415(c)(3)(C) is in effect, but only to the extent that any contribution with respect to such amount is nonforfeitable.

Subsec. (e). Pub. L. 97-248, § 238(a), amended subsec. (e) generally, substituting provisions relating to contributions allocable to life insurance protection for self-employed individuals, for provisions relating to general requirements, contributions made under more than one plan, contributions allocable to insurance protection, and limitations of not lower than $750 or 100 percent of earned income with respect to special limitations for self-employed individuals.

Subsec. (j). Pub. L. 97-248, § 235(f), added subsec. (j).

Effective Date of 1984 Amendment

Amendment by section 474(r)(14) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 512(c) of Pub. L. 98-369 provided that:

"(1) In general.—Except as provided in paragraph (2), the amendments made by this section [amending sections 162 and 404 of this title] shall apply to amounts paid or incurred after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) Exception for certain extended vacation pay plans.—In the case of any extended vacation pay plan maintained pursuant to a collective bargaining agreement—

"(A) between employee representatives and 1 or more employers, and

"(B) in effect on June 22, 1984,

the amendments made by this section shall not apply before the date on which such collective bargaining agreement terminates (determined without regard to any extension thereof agreed to after June 22, 1984). For purposes of the preceding sentence, any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement."

Section 542(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 116, 404, and 3405 of this title] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984]."

Amendment by section 713 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Effective Date of 1982 Amendment

Section 253(c) of Pub. L. 97-248 provided that: "The amendments made by this section [amending subsec. (a)(3)(B) of this section and section 415(c)(3) of this title] shall apply to taxable years beginning after December 31, 1981."

Amendment by section 235(f) of Pub. L. 97-248, in the case of any plan which is not in existence on July 1, 1982, applicable to years ending after July 1, 1982, and in the case of any plan which is in existence on July 1, 1982, applicable to years beginning after Dec. 31, 1982, see section 235(g)(1) of Pub. L. 97-248, set out as a note under section 415 of this title.

Amendment by sections 237 and 238 of Pub. L. 97-248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97-248, set out as an Effective Date note under section 416 of this title.

Coordination of Repeals of Certain Sections

Section 713(d)(8) of Pub. L. 98-369 provided that: "Sections 404(e) and 1379(b) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of the Tax Equity and Fiscal Responsibility Act of 1982 [Sept. 3, 1982]) shall not apply to any plan to which section 401(j) of such Code applies (or would apply but for its repeal)."

Section Referred to in Other Sections

This section is referred to in sections 38, 41, 62, 72, 83, 104, 116, 162, 172, 381, 401, 402, 403, 404A, 406, 407, 413, 414, 415, 419, 465, 542, 556, 679, 2517, 3405, 4941 of this title; title 15 sections 77c, 78c, 78*l*, 80a-3; title 19 sections 2345, 2373; title 29 sections 1103, 1321, 1322, 1385, 1391, 1396.

§ 404A. Deduction for certain foreign deferred compensation plans

Section Referred to in Other Sections

This section is referred to in sections 419, 679, 6689 of this title.

[§ 405. Repealed. Pub. L. 98–369, div. A, title IV, § 491(a), July 18, 1984, 98 Stat. 848]

Section, added Pub. L. 87-792, § 5(a), Oct. 10, 1962, 76 Stat. 826, and amended Pub. L. 89-97, title I, § 106(d)(5), July 30, 1965, 79 Stat. 337; Pub. L. 91-172, title V, § 515(c)(1), Dec. 30, 1969, 83 Stat. 645; Pub. L. 93–406, title II, §§ 2004(c)(2), 2005(c)(11), Sept. 2, 1974, 88 Stat. 986, 992; Pub. L. 94–455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-34, title III, § 313(a), (b)(1), Aug. 13, 1981, 95 Stat. 285, 286; Pub. L. 97–452, § 2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98–369, div. A, title I, § 42(a)(6), July 18, 1984, 98 Stat. 557, related to qualified bond purchase plans.

Effective Date of Repeal

Section repealed applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as an Effective Date of 1984 Amendment note under section 55 of this title.

Rollover of Existing Bonds Into Qualified Employer Plans

Pub. L. 98–369, div. A, title IV, § 491(c)(1), (f)(2), July 18, 1984, 98 Stat. 848, 853, provided that, applicable to redemptions after July 18, 1984, in taxable years ending after such date, subsec. (d)(3)(A) of this section, as in effect before its repeal, is amended to read as follows:

"(A) In general.—If—

"(i) any qualified bond is redeemed,

"(ii) any portion of the excess of the proceeds from such redemption over the basis of such bond is transferred to an individual retirement plan which is maintained for the benefit of the individual redeeming such bond, or to a qualified trust (as defined in section 402(a)(5)(D)(iii)) for the benefit of such individual, and

"(iii) such transfer is made on or before the 60th day after the individual received the proceeds of such redemption,

then gross income shall not include the proceeds to the extent so transferred and the transfer shall be treated as a rollover contribution described in section 408(d)(3)."

Bonds Under Qualified Bond Purchase Plans Redeemable at any Time After July 18, 1984

Section 491(f)(4) of Pub. L. 98–369 provided that: "Notwithstanding—

"(A) subparagraph (D) of section 405(b)(1) of the Internal Revenue Code of 1954 (as in effect before its repeal by this section) [see above], and

"(B) the terms of any bond described in subsection (b) of such section 405,

such a bond may be redeemed at any time after the date of the enactment of this Act [July 18, 1984] in the same manner as if the individual redeeming the bond had attained age 59½."

§ 406. Employees of foreign affiliates covered by section 3121(*l*) agreements

(a) Treatment as employees of American employer

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of an American employer (as defined in section 3121(h)), an individual who is a citizen or resident of the United States and who is an employee of a foreign affiliate (as defined in section 3121(*l*)(8)) of such American employer shall be treated as an employee of such American employer, if—

(1) such American employer has entered into an agreement under section 3121(*l*) which applies to the foreign affiliate of which such individual is an employee;

(2) the plan of such American employer expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its foreign affiliates to which an agreement entered into by such American employer under section 3121(*l*) applies; and

(3) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the foreign affiliate.

(b) Special rules for application of section 401(a)

(1) Nondiscrimination requirements

For purposes of applying section 401(a)(4) and section 410(b) (without regard to paragraph (1)(A) thereof) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) if such individual is an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a foreign affiliate of such American employer, he shall be treated as having such capacity with respect to such American employer; and

(B) the determination of whether such individual is a highly compensated employee shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such American employer and by determining such individual's status with regard to such American employer.

(2) Determination of compensation

For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of an American employer under subsection (a)—

(A) the total compensation of such individual shall be the remuneration paid to such individual by the foreign affiliate which would constitute his total compensation if his services had been performed for such American employer, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary; and

(B) such individual shall be treated as having paid the amount paid by such American employer which is equivalent to the tax imposed by section 3101.

(c) Termination of status as deemed employee not to be treated as separation from service for purposes of capital gain provisions and limitation of tax

For purposes of applying subsections (a)(2) and (e) of section 402, and section 403(a)(2) with respect to an individual who is treated as an employee of an American employer under subsection (a), such individual shall not be considered as separated from the service of such American employer solely by reason of the fact that—

(1) the agreement entered into by such American employer under section 3121(*l*) which covers the employment of such individual is terminated under the provisions of such section,

(2) such individual becomes an employee of a foreign affiliate with respect to which such agreement does not apply,

(3) such individual ceases to be an employee of the foreign affiliate by reason of which he is treated as an employee of such American employer, if he becomes an employee of another entity in which such American employer has not less than a 10-percent interest (within the meaning of section 3121(*l*)(8)(B)), or

(4) the provision of the plan described in subsection (a)(2) is terminated.

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by an American employer, or by another taxpayer which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such American employer under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such American employer or to any other taxpayer which is entitled to deduct its contributions under such sections,

(2) there shall be allowed as a deduction to the foreign affiliate of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the American employer if he were an employee of the American employer, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (determined with the application of subsection (b)(2)).

Any amount deductible by a foreign affiliate under this subsection shall be deductible for its taxable year with or within which the taxable year of such American employer ends.

(e) Treatment as employee under related provisions

An individual who is treated as an employee of an American employer under subsection (a) shall also be treated as an employee of such American employer, with respect to the plan described in subsection (a)(2), for purposes of applying the following provisions of this title:

(1) Section 72(d) (relating to employees' annuities).

(2) Section 72(f) (relating to special rules for computing employees' contributions).

(3) Section 101(b) (relating to employees' death benefits).

(4) Section 2039 (relating to annuities).

(5) Section 2517 (relating to certain annuities under qualified plans).

(As amended Pub. L. 98-21, title III, § 321(c), (e)(2)(A)-(D)(i), Apr. 20, 1983, 97 Stat. 119, 120; Pub. L. 98-369, div. A, title IV, § 491(d)(13)-(15), July 18, 1984, 98 Stat. 849.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 491(d)(13), substituted in introductory provision "or an annuity plan described in section 403(a)" for ", an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)".

Subsec. (a)(3). Pub. L. 98-369, § 491(d)(14), substituted "or 403(a)" for ", 403(a), or 405(a)".

Subsec. (d). Pub. L. 98-369, § 491(d)(15)(A), (B), substituted in introductory provision "section 404" for "sections 404 and 405(c)", and "or annuity" for "annuity, or bond purchase".

Subsec. (d)(2). Pub. L. 98-369, § 491(d)(15)(C), struck out "(or section 405(c))" after "section 404".

1983—Pub. L. 98-21, § 321(e)(2)(D)(i), substituted "Employees of foreign affiliates covered by section 3121(*l*) agreements" for "Certain employees of foreign subsidiaries" in section catchline.

Subsec. (a). Pub. L. 98-21, § 321(c), amended subsec. (a) generally, substituting "American employer" for "domestic corporation" in heading and in text wherever appearing, adding reference to section 3121(h) of this title, adding "or resident" after "citizen" wherever appearing, substituting "foreign affiliate" for "foreign subsidiary" wherever appearing, and "foreign affiliates" for "foreign subsidiaries".

Subsec. (b). Pub. L. 98-21, § 321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing.

Subsec. (c). Pub. L. 98-21, § 321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation, and reference to an affiliate for reference to a subsidiary, wherever appearing in the provisions preceding par. (1) and in pars. (1) and (2).

Subsec. (c)(3). Pub. L. 98-21, § 321(e)(2)(A), (B), substituted "foreign affiliate by reason of which he is treated as an employee of such American employer, if he becomes an employee of another entity in which such American employer has not less than a 10-percent interest (within the meaning of section 3121(*l*)(8)(B)" for "foreign subsidiary by reason of which he is treated as an employee of such domestic corporation, if he becomes an employee of another corporation controlled by such domestic corporation".

Subsec. (d). Pub. L. 98-21, § 321(e)(2)(A), (C), substituted references to an American employer for references to a domestic corporation and reference to an affiliate for a reference to a subsidiary wherever appearing, substituted "another taxpayer" for "another corporation" in the provisions preceding par. (1), and substituted "any other taxpayer" for "any other corporation" in par. (1).

Subsec. (e). Pub. L. 98-21, § 321(e)(2)(A), substituted reference to an American employer for reference to a domestic corporation wherever appearing in provisions preceding par. (1).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(13) to (15) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 321(f) of Pub. L. 98-21 provided that:

"(1)(A) The amendments made by this section [amending sections 406, 407, 1402, 3121, and 6413 of this title and section 410 of Title 42, the Public Health and Welfare] (other than subsection (d) [amending section 407 of this title]) shall apply to agreements entered into after the date of the enactment of this Act [Apr. 20, 1983].

"(B) At the election of any American employer, the amendments made by this section (other than subsection (d)) shall also apply to any agreement entered into on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.

"(2)(A) The amendments made by subsection (d) [amending section 407 of this title] shall apply to plans established after the date of the enactment of this Act [Apr. 20, 1983].

"(B) At the election of any domestic parent corporation the amendments made by subsection (d) shall also apply to any plan established on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe."

§ 407. Certain employees of domestic subsidiaries engaged in business outside the United States

(a) Treatment as employees of domestic parent corporation

(1) In general

For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a) or an annuity plan described in section 403(a), of a domestic parent corporation, an individual who is a citizen or resident of the United States and who is an employee of a domestic subsidiary (within the meaning of paragraph (2)) of such domestic parent corporation shall be treated as an employee of such domestic parent corporation, if—

(A) the plan of such domestic parent corporation expressly provides for contributions or benefits for individuals who are citizens or residents of the United States and who are employees of its domestic subsidiaries; and

(B) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a) or 403(a)) are not provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

[*See main edition for text of* (2); (*b*) *and* (*c*)]

(d) Deductibility of contributions

For purposes of applying section 404 with respect to contributions made to or under a pension, profit-sharing, stock bonus, or annuity plan by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

[*See main edition for text of* (*1*)]

(2) there shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 by the domestic parent corporation if he were an employee of the domestic parent corporation, and

[*See main edition for text of* (*3*)]

Any amount deductible by a domestic subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic parent corporation ends.

[*See main edition for text of* (*e*)]

(As amended Pub. L. 98–21, title III, § 321(d), Apr. 20, 1983, 97 Stat. 119; Pub. L. 98–369, div. A, title IV, § 491(d)(16)–(18), July 18, 1984, 98 Stat. 850.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98–369, § 491(d)(16), substituted "or an annuity plan described in section 403(a)" for ", an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a)".

Subsec. (a)(1)(B). Pub. L. 98–369, § 491(d)(17), substituted "or 403(a)" for ", 403(a), or 405(a)".

Subsec. (d). Pub. L. 98–369, § 491(d)(18)(A), (B), substituted in introductory provision "section 404" for "sections 404 and 405(a)", and "or annuity" for "annuity, or bond purchase".

Subsec. (d)(2). Pub. L. 98–369, § 491(d)(18)(C), struck out "(or section 405(c))" after "section 404".

1983—Subsec. (a)(1). Pub. L. 98–21 inserted "or resident" after "citizen", and inserted "or residents" after "citizens" in subpar. (A).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(16) to (18) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 55 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–21 applicable to plans established after Apr. 20, 1983, except that at the election of any domestic parent corporation such amendment shall also apply to any plan established on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98–21 set out as a note under section 406 of this title.

§ 408. Individual retirement accounts

(a) Individual retirement account

For purposes of this section, the term "individual retirement account" means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(1) Except in the case of a rollover contribution described in subsection (d)(3) in section 402(a)(5), 402(a)(7), 403(a)(4), or 403(b)(8), no contribution will be accepted unless it is in cash, and contributions will not be accepted for the taxable year in excess of $2,000 on behalf of any individual.

(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

[*See main edition for text of* (*3*) *to* (*5*)]

(6) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) (relating to required distributions) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

[(7) Repealed. Pub. L. 98–369, div. A, title V, § 521(b)(1), July 18, 1984, 98 Stat. 867.]

(b) Individual retirement annuity

For purposes of this section, the term "individual retirement annuity" means an annuity contract, or an endowment contract (as determined under regulations prescribed by the Secretary), issued by an insurance company which meets the following requirements:

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) (relating to required distributions) shall apply to the distribution of the entire interest of the owner.

(4) The entire interest of the owner is nonforfeitable.

Such term does not include such an annuity contract for any taxable year of the owner in which it is disqualified on the application of subsection (e) or for any subsequent taxable year. For purposes of this subsection, no contract shall be treated as an endowment contract if it matures later than the taxable year in which the individual in whose name such contract is purchased attains age 70½; if it is not for the exclusive benefit of the individual in whose name it is purchased or his beneficiaries; or if the aggregate annual premiums under all such contracts purchased in the name of such individual for any taxable year exceed $2,000.

[(5) Redesignated (4)]

[*See main edition for text of* (*c*)]

(d) Tax treatment of distributions

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Rollover contribution

An amount is described in this paragraph as a rollover contribution if it meets the requirements of subparagraphs (A) and (B).

(A) In general

Paragraph (1) does not apply to any amount paid or distributed out of an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) the entire amount received (including money and any other property) is paid into an individual retirement account or individual retirement annuity (other than an endowment contract) for the benefit of such individual not later than the 60th day after the day on which he receives the payment or distribution;

(ii) the entire amount received (including money and any other property) represents the entire amount in the account or the entire value of the annuity and no amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust described in section 401(a) which is exempt from tax under section 501(a) (other than a trust forming part of a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan), or an annuity plan described in section 403(a) (other than a plan under which the individual was an employee within the meaning of section 401(c)(1) at the time contributions were made on his behalf under the plan) and any earnings on such sums and the entire amount thereof is paid into another such trust (for the benefit of such individual) or annuity plan not later than the 60th day on which he receives the payment or distribution; or

[*See main edition for text of* (*iii*)]

(B) Limitation

This paragraph does not apply to any amount described in subparagraph (A)(i) received by an individual from an individual retirement account or individual retirement annuity if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in that subparagraph from an individual retirement account or an individual retirement annuity which was not includible in his gross income because of the application of this paragraph. Clause (ii) of subparagraph (A) shall not apply to any amount paid or distributed out of an individual retirement account or an individual retirement annuity to which an amount was contributed which was treated as a rollover contribution by section 402(a)(7) (or in the case of an individual retirement annuity, such section as made applicable by section 403(a)(4)(B)).

(C) Denial of rollover treatment for inherited accounts, etc.

(i) In general

In the case of an inherited individual retirement account or individual retirement annuity—

(I) this paragraph shall not apply to any amount received by an individual from such an account or annuity (and no amount transferred from such account or annuity to another individual retirement account or annuity shall be excluded from gross income by reason of such transfer), and

(II) such inherited account or annuity shall not be treated as an individual retirement account or annuity for purposes of determining whether any other amount is a rollover contribution.

(ii) Inherited individual retirement account or annuity

An individual retirement account or individual retirement annuity shall be treated as inherited if—

(I) the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and

(II) such individual was not the surviving spouse of such other individual.

(D) Partial rollovers permitted

(i) In general

If any amount paid or distributed out of an individual retirement account or individual retirement annuity would meet the requirements of subparagraph (A) but for the fact that the entire amount was not paid into an eligible plan as required by clause (i), (ii), or (iii) of subparagraph (A), such amount shall be treated as meeting the requirements of subparagraph (A) to the extent it is paid into an eligible plan referred to in such clause not later than the 60th day referred to in such clause.

(ii) Eligible plan

For purposes of clause (i), the term "eligible plan" means any account, annuity, contract, or plan referred to in subparagraph (A).

[*See main edition for text of (4) and (5)*]

(6) Transfer of account incident to divorce

The transfer of an individual's interest in an individual retirement account or an individual retirement annuity to his former spouse under a divorce decree or under a written instrument incident to such divorce is not to be considered a taxable transfer made by such individual notwithstanding any other provision of this subtitle, and such interest at the time of the transfer is to be treated as an individual retirement account of such spouse, and not of such individual. Thereafter such account or annuity for purposes of this subtitle is to be treated as maintained for the benefit of such spouse.

[*See main edition for text of (e) to (g)*]

(h) Custodial accounts

For purposes of this section, a custodial account shall be treated as a trust if the assets of such account are held by a bank (as defined in subsection (n)) or another person who demonstrates, to the satisfaction of the Secretary, that the manner in which he will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an individual retirement account described in subsection (a). For purposes of this title, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(i) Reports

The trustee of an individual retirement account and the issuer of an endowment contract described in subsection (b) or an individual retirement annuity shall make such reports regarding such account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is, or is to be, maintained with respect to contributions (and the years to which they relate), distributions, and such other matters as the Secretary may require under regulations. The reports required by this subsection shall be filed at such time and in such manner and furnished to such individuals at such time and in such manner as may be required by those regulations.

(j) Increase in maximum limitations for simplified employee pensions

In the case of any simplified employee pension, subsections (a)(1) and (b)(2) of this section shall be applied by increasing the $2,000 amounts contained therein by the amount of the limitation in effect under section 415(c)(1)(A).

(k) Simplified employee pension defined

(1) In general

For purposes of this title, the term "simplified employee pension" means an individual retirement account or individual retirement annuity—

(A) with respect to which the requirements of paragraphs (2), (3), (4), and (5) of this subsection are met, and

(B) if such account or annuity is part of a top-heavy plan (as defined in section 416), with respect to which the requirements of section 416(c)(2) are met.

[*See main edition for text of (2)*]

(3) Contributions may not discriminate in favor of the highly compensated, etc.

[*See main edition for text of (A) and (B)*]

(C) Contributions must bear uniform relationship to total compensation

For purposes of subparagraph (A), employer contributions to simplified employee pensions shall be considered discriminatory unless contributions thereto bear a uniform relationship to the total compensation (not in excess of the first $200,000) of each employee maintaining a simplified employee pension. The Secretary shall annually adjust the $200,000 amount contained in the preceding sentence at the same time and in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A).

(D) Treatment of certain contributions and taxes

Except as provided in this subparagraph, employer contributions do not meet the requirements of this paragraph unless such contributions meet the requirements of this paragraph without taking into account contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contribution Act), title II of the Social Security Act, or any other Federal or State law. If the employer does not maintain an integrated plan at any time during the taxable year, OASDI contributions (as defined in section 401(*l*)(2)) may, for purposes of this paragraph, be taken into account as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension.

(E) Integrated plan defined

For purposes of subparagraph (D), the term "integrated plan" means a plan which meets the requirements of section 401(a) or 403(a) but would not meet such requirements if contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, or any other Federal or State law were not taken into account.

[*See main edition for text of (4) and (5)*]

[(6) **Repealed. Pub. L. 97–248, title II, § 238(d)(4)(A), Sept. 3, 1982, 96 Stat. 513**]

[*See main edition for text of (7); (l) and (m)*]

(n) Bank

For purposes of subsection (a)(2), the term "bank" means—

(1) any bank (as defined in section 581),

(2) an insured credit union (within the meaning of section 101(6) of the Federal Credit Union Act), and

(3) a corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or other officer of such State in charge of the administration of the banking laws of such State.

(o) Cross references

(1) For tax on excess contributions in individual retirement accounts or annuities, see section 4963.

(2) For tax on certain accumulations in individual retirement accounts or annuities, see section 4974.

(Added Pub. L. 93–406, title II, § 2002(b), Sept. 2, 1974, 88 Stat. 959, and amended Pub. L. 94-455, title XV, § 1501(b)(2), (5), (10), title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1735-1737, 1834; Pub. L. 95–600, title I, §§ 152(a), (b), 156(c)(1), (3), 157(c)(1), (d)(1), (e)(1)(A), (g)(3), (h)(2), title VII, § 703(c)(4), Nov. 6, 1978, 2797, 2802, 2803, 2805, 2806, 2808, 2939; Pub. L. 96–222, title I, § 101(a)(10)(A), (C), (F), (G), (J)(i), (14)(B), (E)(ii), Apr. 1, 1980, 94 Stat. 201–205; Pub. L. 96–605, title II, § 225(b)(3), (4), Dec. 28, 1980, 94 Stat. 3529; Pub. L. 97–34, title III, §§ 311(g)(1)(A)–(C), (2), (h)(2), 312(b)(2), (c)(5), 313(b)(2), 314(b)(1), Aug. 13, 1981, 95 Stat. 281–284, 286; Pub. L. 97-248, title II, §§ 237(e)(3), 238(d)(3), (4), 243(a), (b)(1)(A), title III, § 335(a)(1), Sept. 3, 1982, 96 Stat. 512, 513, 521, 522, 628; Pub. L. 97-448, title I, § 103(d)(1), (e), Jan. 12, 1983, 96 Stat. 2378; Pub. L. 98–369, div. A, title I, § 147(a), title IV, § 491(d)(19)–(24), title V, §§ 521(b), 522(d)(12), title VII, § 713(c)(2)(B), (f)(2), (5)(B), (g)(2), (j), July 18, 1984, 98 Stat. 687, 850, 867, 871, 957, 959, 960.)

References in Text

Section 101(6) of the Federal Credit Union Act, referred to in subsec. (n)(2), is classified to section 1752(6) of Title 12, Banks and Banking.

Amendments

1984—Subsec. (a)(1). Pub. L. 98–369, § 491(d)(19), substituted "or 403(b)(8)" for "403(b)(8), 405(d)(3), or 409(b)(3)(C)".

Subsec. (a)(6). Pub. L. 98–369, § 521(b)(1), added par. (6) and struck out former par. (6) which provided that the entire interest of an individual for whose benefit the trust is maintained will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, commencing before the close of such taxable year, in accordance with regulations prescribed by the Secretary, over (A) the life of such individual or the lives of such individual and his spouse, or (B) a period not extending beyond the life expectancy of such individual or the life expectancy of such individual and his spouse.

Subsec. (a)(7). Pub. L. 98–369, § 521(b)(1), struck out par. (7) which provided that if (A) an individual for whose benefit the trust is maintained dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (6) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the individual for whose benefit the trust was maintained and the term certain is for a period permitted under paragraph (6).

Subsec. (b)(3). Pub. L. 98–369, § 521(b)(2), added par. (3) and struck out former par. (3) which provided that the entire interest of the owner will be distributed to him not later than the close of his taxable year in which he attains age 70½, or will be distributed, in accordance with regulations prescribed by the Secretary, over (A) the life of such owner or the lives of such owner and his spouse, or (B) a period not extending beyond the life expectancy of such owner or the life expectancy of such owner and his spouse.

Subsec. (b)(4), (5). Pub. L. 98–369, § 521(b)(2), redesignated par. (5) as (4) and struck out former par. (4) which provided that if (A) the owner dies before his entire interest has been distributed to him, or (B) distribution has been commenced as provided in paragraph (3) to his surviving spouse and such surviving spouse dies before the entire interest has been distributed to such spouse, the entire interest (or the remaining part of such interest if distribution thereof has commenced) will be distributed within 5 years after his death (or the death of the surviving spouse). The preceding sentence shall not apply if distributions over a term certain commenced before the death of the owner and the term certain is for a period permitted under paragraph (3).

Subsec. (d)(3)(A)(i). Pub. L. 98–369, § 491(d)(20), struck out "or retirement bond" before "for the benefit".

Subsec. (d)(3)(A)(ii). Pub. L. 98–369, § 522(d)(12), substituted "rollover contribution of a qualified total distribution (as defined in section 402(a)(5)(E)(i)) from an employee's trust" for "rollover contribution from an employee's trust".

Subsec. (d)(3)(B). Pub. L. 98–369, § 491(d)(21), substituted "or an individual retirement annuity" for ", individual retirement annuity, or a retirement bond".

Subsec. (d)(3)(C), (D). Pub. L. 98–369, § 713(g)(2), designated the subpar. (C), as added by section 335(a)(1) of Pub. L. 97–248, relating to permitting partial rollovers, as subpar. (D).

Subsec. (d)(3)(D)(ii). Pub. L. 98-369, § 491(d)(22), struck out "bond," after "annuity,".

Subsec. (d)(6). Pub. L. 98-369, § 491(d)(23), substituted "or an individual retirement annuity" for ", individual retirement annuity, or retirement bond", and "or annuity" for ", annuity, or bond".

Subsec. (h). Pub. L. 98-369, § 713(c)(2)(B), substituted "(as defined in subsection (n))" for "(as defined in section 401(d)(1))".

Subsec. (i). Pub. L. 98-369, § 147(a), added "(and the years to which they relate)".

Subsec. (k)(1). Pub. L. 98-369, § 713(f)(2), amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

Subsec. (k)(3)(C). Pub. L. 98-369, § 713(f)(5)(B), added provision which required annual adjustment of the $200,000 amount concurrently with the dollar amount adjustment in section 415(c)(1)(A).

Subsec. (k)(3)(D). Pub. L. 98-369, § 713(j), substituted in penultimate sentence "OASDI contributions (as defined in section 401(*l*)(2)" for "taxes paid under section 3111 (relating to tax on employers) with respect to an employee" and "as contributions by the employer to the employee's simplified employee pension, but only if such contributions are so taken into account with respect to each employee maintaining a simplified employee pension" for "as a contribution by the employer to an employee's simplified pension" and deleted third sentence which provided "If contributions are made to the simplified employee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under chapter 2, and the taxes which would be payable under chapter 2 by such owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees."

Subsec. (k)(3)(E). Pub. L. 98-369, § 491(d)(24), substituted "or 403(a)" for ", 403(a), or 405(a)".

1982—Subsec. (a)(2). Pub. L. 97-248, § 237(e)(3)(A), substituted reference to subsection (n) of this section, for reference to section 401(d)(1).

Subsec. (a)(7). Pub. L. 97-248, § 243(a)(1), amended par. (7) generally, designating existing provisions as subpars. (A) and (B), in subpar. (B), as so designated, striking out "if" before "distribution", in provisions following subpar. (B) substituting "will be distributed within 5 years after his death (or the death of the surviving spouse)" for "will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries", and substituting "shall not apply" for "does not apply".

Subsec. (b)(4). Pub. L. 97-248, § 243(a)(2), amended par. (4) generally, designating existing provisions, as subpars. (A) and (B), in subpar. (B), as so redesignated, striking out "if" before "distribution", in provisions following subpar. (B) substituting "will be distributed within 5 years after his death (or the death of the surviving spouse)" for "will, within 5 years after his death (or the death of the surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which annuity will be immediately distributed to such beneficiary or beneficiaries", and substituting "shall not apply" for "shall have no application".

Subsec. (d)(3)(C). Pub. L. 97-248, § 243(b)(1)(A), added a subpar. (C) relating to denial of rollover treatment for inherited accounts.

Pub. L. 97-248, § 335(a)(1), added a subpar. (C) relating to permitting partial rollovers.

Subsec. (j). Pub. L. 97-248, § 238(d)(3), amended subsec. (j) generally, substituting provisions increasing amount by the amount of the limitation in effect under section 415(c)(1)(A), for provisions increasing amount by substituting "$15,000" for "$2,000".

Subsec. (k)(1). Pub. L. 97-248, § 238(d)(4)(B), struck out reference to par. (6) of this subsection.

Subsec. (k)(3)(C). Pub. L. 97-248, § 238(d)(4)(C), amended subpar. (C) generally, striking out cl. "(i)" designation and cl. (ii) which related to taking into account compensation in excess of $100,000 with respect to a simplified employee pension.

Subsec. (k)(6). Pub. L. 97-248, § 238(d)(4)(A), struck out par. (6) which related to prohibition on employer maintaining plan to which section 401(j) applies.

Subsecs. (n), (*o*). Pub. L. 97-248, § 237(e)(3)(B), added subsec. (n) and redesignated former subsec. (n) as (*o*).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 147(a) of Pub. L. 98-369 applicable to contributions made after Dec. 31, 1984, see section 147(d)(1) of Pub. L. 98-369, set out as a note under section 219 of this title.

Amendment by section 491(d)(19) to (24) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Amendment by section 521(b) of Pub. L. 98-369 applicable to years beginning after Dec. 31, 1984, see section 521(e) of Pub. L. 98-369, set out as a note under section 401 of this title.

Amendment by section 522(d)(12) of Pub. L. 98-369 applicable to distributions made after July 18, 1984, in taxable years ending after that date, see section 522(e) of Pub. L. 98-369, set out as a note under section 402 of this title.

Amendment by section 713 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Section 243(c) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title VII, § 713(g)(1), July 18, 1984, 98 Stat. 960, provided that: "The amendments made by this section [amending sections 219, 408, and 409 of this title] shall apply with respect to individuals dying after December 31, 1983."

Section 335(b) of Pub. L. 97-248 provided that: "The amendments made by subsection (a) [amending sections 408 and 409 of this title] shall apply to distributions made after December 31, 1982, in taxable years ending after such date."

Amendment by sections 237 and 238 of Pub. L. 97-248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97-248, set out as an Effective Date note under section 416 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26, 55, 72, 219, 401, 402, 403, 414, 415, 818, 2517, 4973, 4974, 4975, 6047, 6058, 6104, 6693, 7701 of this title; title 11 section 522; title 12 sections 1464, 1728, 1787, 1821; title 29 sections 1051, 1081, 1103, 1107, 1108; title 42 section 409.

§ 409. Qualifications for tax credit employee stock ownership plans

(a) Tax credit employee stock ownership plan defined

Except as otherwise provided in this title, for purposes of this title, the term "tax credit employee stock ownership plan" means a defined contribution plan which—

(1) meets the requirements of section 401(a),

(2) is designed to invest primarily in employer securities, and

(3) meets the requirements of subsections (b), (c), (d), (e), (f), (g), and (h) of this section.

(b) Required allocation of employer securities

(1) In general

A plan meets the requirements of this subsection if—

(A) the plan provides for the allocation for the plan year of all employer securities transferred to it or purchased by it (because of the requirements of section 41(c)(1)(B)) to the accounts of all participants who are entitled to share in such allocation, and

(B) for the plan year the allocation to each participant so entitled is an amount which bears substantially the same proportion to the amount of all such securities allocated to all such participants in the plan for that year as the amount of compensation paid to such participant during that year bears to the compensation paid to all such participants during that year.

(2) Compensation in excess of $100,000 disregarded

For purposes of paragraph (1), compensation of any participant in excess of the first $100,000 per year shall be disregarded.

(3) Determination of compensation

For purposes of this subsection, the amount of compensation paid to a participant for any period is the amount of such participant's compensation (within the meaning of section 415(c)(3)) for such period.

(4) Suspension of allocation in certain cases

Notwithstanding paragraph (1), the allocation to the account of any participant which is attributable to the basic employee plan credit or the credit allowed under section 41 (relating to the employee stock ownership credit) may be extended over whatever period may be necessary to comply with the requirements of section 415.

(c) Participants must have nonforfeitable rights

A plan meets the requirements of this subsection only if it provides that each participant has a nonforfeitable right to any employer security allocated to his account.

(d) Employer securities must stay in the plan

A plan meets the requirements of this subsection only if it provides that no employer security allocated to a participants's [13] account under subsection (b) (or allocated to a participant's account in connection with matched employer and employee contributions) may be distributed from that account before the end of the 84th month beginning after the month in which the security is allocated to the account. To the extent provided in the plan, the preceding sentence shall not apply in the case of—

(1) death, disability, or separation from service;

(2) a transfer of a participant to the employment of an acquiring employer from the employment of the selling corporation in the case of a sale to the acquiring corporation of substantially all of the assets used by the selling corporation in a trade or business conducted by the selling corporation, or

(3) with respect to the stock of a selling corporation, a disposition of such selling corporation's interest in a subsidiary when the participant continues employment with such subsidiary.

(e) Voting rights

(1) In general

A plan meets the requirements of this subsection if it meets the requirements of paragraph (2) or (3), whichever is applicable.

(2) Requirements where employer has a registration-type class of securities

If the employer has a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant in the plan is entitled to direct the plan as to the manner in which employer securities which are entitled to vote and are allocated to the account of such participant are to be voted.

(3) Requirement for other employers

If the employer does not have a registration-type class of securities, the plan meets the requirements of this paragraph only if each participant in the plan is entitled to direct the plan as to the manner in which voting rights under employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by more than a majority vote of outstanding common shares voted.

(4) Registration-type class of securities defined

For purposes of this subsection, the term, "registration-type class of securities" means—

(A) a class of securities required to be registered under section 12 of the Securities Exchange Act of 1934, and

(B) a class of securities which would be required to be so registered except for the exemption from registration provided in subsection (g)(2)(H) of such section 12.

(f) Plan must be established before employer's due date

(1) In general

A plan meets the requirements of this subsection only if it is established on or before the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

(2) Special rule for first year

A plan which otherwise meets the requirements of this section shall not be considered to have failed to meet the requirements of section 401(a) merely because it was not established by the close of the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan.

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[13] So in original.

(g) Transferred amounts must stay in plan even though investment credit is redetermined or recaptured

A plan meets the requirement of this subsection only if it provides that amounts which are transferred to the plan (because of the requirements of section 48(n)(1) or 41(c)(1)(B)) shall remain in the plan (and, if allocated under the plan, shall remain so allocated) even though part or all of the employee plan credit or the credit allowed under section 41 (relating to employee stock ownership credit) is recaptured or redetermined. For purposes of the preceding sentence, the references to section 48(n)(1) and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

(h) Right to demand employer securities; put option

(1) In general

A plan meets the requirements of this subsection if a participant who is entitled to a distribution from the plan—

(A) has a right to demand that his benefits be distributed in the form of employer securities, and

(B) if the employer securities are not readily tradable on an established market, has a right to require that the employer repurchase employer securities under a fair valuation formula.

(2) Plan may distribute cash in certain cases

A plan which otherwise meets the requirements of this subsection or of section 4975(e)(7) shall not be considered to have failed to meet the requirements of section 401(a) merely because under the plan the benefits may be distributed in cash or in the form of employer securities. In the case of an employer whose charter or bylaws restrict the ownership of substantially all outstanding employer securities to employees or to a trust described in section 401(a), a plan which otherwise meets the requirements of this subsection or section 4975(e)(7) shall not be considered to have failed to meet the requirements of this subsection or of section 401(a) merely because it does not permit a participant to exercise the right described in paragraph (1)(A) if such plan provides that participants entitled to a distribution from the plan shall have a right to receive such distribution in cash.

(3) Special rule for banks

In the case of a plan established and maintained by a bank (as defined in section 581) which is prohibited by law from redeeming or purchasing its own securities, the requirements of paragraph (1)(B) shall not apply if the plan provides that participants entitled to a distribution from the plan shall have a right to receive a distribution in cash.

(4) Put option period

An employer shall be deemed to satisfy the requirements of paragraph (1)(B) if it provides a put option for a period of at least 60 days following the date of distribution of stock of the employer and, if the put option is not exercised within such 60-day period, for an additional period of at least 60 days in the following plan year (as provided in regulations promulgated by the Secretary).

(i) Reimbursement for expenses of establishing and administering plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to meet such requirements merely because it provides that—

(1) Expenses of establishing plan

As reimbursement for the expenses of establishing the plan, the employer may withhold from amounts due the plan for the taxable year for which the plan is established (or the plan may pay) so much of the amounts paid or incurred in connection with the establishment of the plan as does not exceed the sum of—

(A) 10 percent of the first $100,000 which the employer is required to transfer to the plan for that taxable year under section 41(c)(1)(B), and

(B) 5 percent of any amount so required to be transferred in excess of the first $100,000; and

(2) Administrative expenses

As reimbursement for the expenses of administering the plan, the employer may withhold from amounts due the plan (or the plan may pay) so much of the amounts paid or incurred during the taxable year as expenses of administering the plan as does not exceed the lesser of—

(A) the sum of—

(i) 10 percent of the first $100,000 of the dividends paid to the plan with respect to stock of the employer during the plan year ending with or within the employer's taxable year, and

(ii) 5 percent of the amount of such dividends in excess of $100,000 or

(B) $100,000.

(j) Conditional contributions to the plan

A plan which otherwise meets the requirements of this section shall not be treated as failing to satisfy such requirements (or as failing to satisfy the requirements of section 401(a) of this title or of section 403(c)(1) of the Employee Retirement Income Security Act of 1974) merely because of the return of a contribution (or a provision permitting such a return) if—

(1) the contribution to the plan is conditioned on a determination by the Secretary that such plan meets the requirements of this section,

(2) the application for a determination described in paragraph (1) is filed with the Secretary not later than 90 days after the date on which an employee plan credit is claimed, and

(3) the contribution is returned within 1 year after the date on which the Secretary

issues notice to the employer that such plan does not satisfy the requirements of this section.

(k) Requirements relating to certain withdrawals

Notwithstanding any other law or rule of law—

(1) the withdrawal from a plan which otherwise meets the requirements of this section by the employer of an amount contributed for purposes of the matching employee plan credit shall not be considered to make the benefits forfeitable, and

(2) the plan shall not, by reason of such withdrawal, fail to be for the exclusive benefit of participants or their beneficiaries,

if the withdrawn amounts were not matched by employee contributions or were in excess of the limitations of section 415. Any withdrawal described in the preceding sentence shall not be considered to violate the provisions of section 403(c)(1) of the Employee Retirement Income Security Act of 1974. For purposes of this subsection, the reference to the matching employee plan credit shall refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

(l) Employer securities defined

For purposes of this section—

(1) In general

The term "employer securities" means common stock issued by the employer (or by a corporation which is a member of the same controlled group) which is readily tradable on an established securities market.

(2) Special rule where there is no readily tradable common stock

If there is no common stock which meets the requirements of paragraph (1), the term "employer securities" means common stock issued by the employer (or by a corporation which is a member of the same controlled group) having a combination of voting power and dividend rights equal to or in excess of—

(A) that class of common stock of the employer (or of any other such corporation) having the greatest voting power, and

(B) that class of common stock of the employer (or of any other such corporation) having the greatest dividend rights.

(3) Preferred stock may be issued in certain cases

Noncallable preferred stock shall be treated as employer securities if such stock is convertible at any time into stock which meets the requirements of paragraph (1) or (2) (whichever is applicable) and if such conversion is at a conversion price which (as of the date of the acquisition by the tax credit employee stock ownership plan) is reasonable. For purposes of the preceding sentence, under regulations prescribed by the Secretary, preferred stock shall be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

(4) Application to controlled group of corporations

(A) In general

For purposes of this subsection, the term "controlled group of corporations" has the meaning given to such term by section 1563(a) (determined without regard to subsections (a)(4) and (e)(3)(C) of section 1563).

(B) Where common parent owns at least 50 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possessing at least 50 percent of the voting power of all classes of stock and at least 50 percent of each class of nonvoting stock in a first tier subsidiary, such subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the first tier subsidiary were the common parent) shall be treated as includible corporations.

(C) Where common parent owns 100 percent of first tier subsidiary

For purposes of subparagraph (A), if the common parent owns directly stock possessing all of the voting power of all classes of stock and all of the nonvoting stock, in a first tier subsidiary, and if the first tier subsidiary owns directly stock possessing at least 50 percent of the voting power of all classes of stock, and at least 50 percent of each class of nonvoting stock, in a second tier subsidiary of the common parent, such second tier subsidiary (and all other corporations below it in the chain which would meet the 80 percent test of section 1563(a) if the second tier subsidiary were the common parent) shall be treated as includible corporations.

(m) Nonrecognition of gain or loss on contribution of employer securities to tax credit employee stock ownership plan

No gain or loss shall be recognized to the taxpayer with respect to the transfer of employer securities to a tax credit employee stock ownership plan maintained by the taxpayer to the extent that such transfer is required under section 41(c)(1)(B), or subparagraph (A) or (B) of section 48(n)(1).

(n) Cross references

(1) For requirements for allowance of employee plan credit, see section 48(n).

(2) For assessable penalties for failure to meet requirements of this section, or for failure to make contributions required with respect to the allowance of an employee plan credit or employee stock ownership credit, see section 6699.

(3) For requirements for allowance of an employee stock ownership credit, see section 41.

(Added Pub. L. 95-600, title I, § 141(a), Nov. 6, 1978, 92 Stat. 2787, § 409A, and amended Pub. L. 96-222, title I, § 101(a)(7)(D)-(F), (I), (J), (L)(i)(VI), (ii)(I), (II), (iii)(V), (v)(VI), (VII), Apr. 1, 1980, 94 Stat. 198-200; Pub. L. 96-605, title II, § 224(a), Dec. 28, 1980, 94 Stat. 3528; Pub. L. 97-34, title III, §§ 331(c)(1), 334, 336, 337(a), Aug. 13, 1981, 95 Stat. 293, 297, 298; Pub. L. 97-448, title I, § 103(h), (i), Jan. 12, 1983, 96

Stat. 2379; renumbered § 409 and amended Pub. L. 98-369, div. A, title IV, §§ 474(r)(15), 491(e)(1), July 18, 1984, 98 Stat. 843, 852.)

References in Text

Section 12 of the Securities Exchange Act of 1934, referred to in subsec. (e)(4), is classified to section 78*l* of Title 15, Commerce and Trade.

Section 403(c)(1) of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (j) and (k), is classified to section 1103(c)(1) of Title 29, Labor.

The enactment of the Tax Reform Act of 1984, referred to in subsecs. (g) and (k), means the enactment of div. A of Pub. L. 98-369, which was approved July 18, 1984.

Subsec. (n) of section 48, referred to in subsecs. (g), (m), and (n)(1), was repealed by section 474(*o*)(15) of Pub. L. 98-369.

Prior Provisions

A prior section 409, added Pub. L. 93-406, title II, § 2002(c), Sept. 2, 1974, 88 Stat. 964, and amended Pub. L. 94-455, title XV, § 1501(b)(6), title XIX, §§ 1901(a)(60), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1736, 1774, 1834; Pub. L. 95-600, title I, §§ 156(c)(2), (3), 157(e)(1)(B), Nov. 6, 1978, 92 Stat. 2803, 2806; Pub. L. 96-222, title I, § 101(a)(14)(B), Apr. 1, 1980, 94 Stat. 204; Pub. L. 97-34, title III, § 311(g)(1)(D), (3), Aug. 13, 1981, 95 Stat. 281; Pub. L. 97-248, title II, § 243(b)(1)(B), title III, § 335(a)(2), Sept. 3, 1982, 96 Stat. 523, 628; Pub. L. 97-452, § 2(c)(1), Jan. 12, 1983, 96 Stat. 2478; Pub. L. 98-369, div. A, title I, § 42(a)(7), title V, § 522(d)(13), July 18, 1984, 98 Stat. 557, 871, which related to retirement bonds, was repealed by Pub. L. 98-369, div. A, title IV, § 491(b), (f)(1), July 18, 1984, 98 Stat. 848, 853, applicable to obligations issued after Dec. 31, 1983.

Amendments

1984—Subsec. (b)(1)(A). Pub. L. 98-369, § 474(r)(15)(A), (B), substituted "41" for "44G" and struck out "48(n)(1)(A) or" after "requirements of section".

Subsec. (b)(4). Pub. L. 98-369, § 474(r)(15)(A), substituted "41" for "44G".

Subsec. (g). Pub. L. 98-369, § 474(r)(15)(A), (C), substituted "41" for "44G" in two places, and added provision directing that, for purposes of the preceding sentence, the references to section 48(n)(1) and the employee plan credit shall refer to such section and credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (i)(1)(A). Pub. L. 98-369, § 474(r)(15)(A), (D), substituted "41" for "44G", and struck out "48(n)(1) or" after "taxable year under section".

Subsec. (k). Pub. L. 98-369, § 474(r)(15)(E), added provision requiring that, for purposes of this subsection, the reference to the matching employee plan credit refer to such credit as in effect before the enactment of the Tax Reform Act of 1984.

Subsec. (m). Pub. L. 98-369, § 474(r)(15)(A), substituted "41" for "44G".

Subsec. (n)(3). Pub. L. 98-369, § 474(r)(15)(A), substituted "41" for "44G".

1983—Subsec. (d)(2). Pub. L. 97-448, § 103(i), struck out provisions covering the sale of substantially all of the stock of a subsidiary of the employer.

Subsec. (h)(2). Pub. L. 97-448, § 103(h), substituted "the requirements of this subsection or of section 401(a)" for "the requirements of section 401(a)".

1981—Subsec. (b). Pub. L. 97-34, § 331(c)(1)(A), (B), inserted in par. (1)(A) reference to section 44G(c)(1)(B), and inserted in par. (4) "or the credit allowed under section 44G (relating to the employee stock ownership credit)" after "basic employee plan credit".

Subsec. (d). Pub. L. 97-34, § 337, designated provision relating to death, disability, or separation from service as par. (1) and added pars. (2) and (3).

Subsec. (g). Pub. L. 97-34, § 331(c)(1)(C), (D), inserted reference to section 44G(c)(1)(B) and inserted "or the credit allowed under section 44G (relating to employee stock ownership credit)" after "employee plan credit".

Subsec. (h)(2). Pub. L. 97-34, § 334, substituted "this subsection" for "this section" and added provision respecting receipt of distributions in cash where employer's charter or bylaws restrict ownership of substantially all outstanding employer securities to employees or to a section 401(a) trust where a participant is not permitted to exercise the right described in par. (1)(A).

Subsec. (h)(3), (4). Pub. L. 97-34, § 336, added pars. (3) and (4).

Subsec. (i)(1)(A). Pub. L. 97-34, § 331(c)(1)(E), inserted reference to section 44G(c)(1)(B).

Subsec. (m). Pub. L. 97-34, § 331(c)(1)(F), inserted reference to section 44G(c)(1)(B).

Subsec. (n)(2), (3). Pub. L. 97-34, § 331(c)(1)(G), (H), inserted in par. (2) "or employee stock ownership credit" after "employee plan credit" and added par. (3).

1980—Pub. L. 96-222, § 101(a)(7)(L)(v)(VII), substituted "tax credit employee stock ownership plans" for "ESOPS" in section catchline.

Subsec. (a). Pub. L. 96-222, § 101(a)(7)(L)(ii)(I), (v)(VI), substituted in heading and in text "tax credit employee stock ownership plan" for "ESOP".

Subsec. (b)(4). Pub. L. 96-222, § 101(a)(7)(L)(iii)(V), substituted "employee plan credit" for "ESOP credit".

Subsec. (d). Pub. L. 96-222, § 101(a)(7)(F), inserted "(or allocated to a participant's account in connection with matched employer and employee contributions)" after "under subsection (b)".

Subsec. (f)(1). Pub. L. 96-222, § 101(a)(7)(I)(i), substituted "only if it is established on or before the due date (including any extension of such date) for the filing of the employer's tax return for the first taxable year of the employer for which an employee plan credit is claimed by the employer with respect to the plan" for "for a plan year only if it is established on or before the due date for the filing of the employer's tax return for the taxable year (including any extension of such date) in which or with which the plan year ends".

Subsec. (f)(2). Pub. L. 96-222, § 101(a)(7)(I)(ii), (L)(v)(VII), substituted "employee plan" for "ESOP" and inserted "with respect to the plan" after "by the employer".

Subsec. (g). Pub. L. 96-222, § 101(a)(7)(L)(iii)(V), substituted "employee plan credit" for "ESOP credit".

Subsec. (h)(2). Pub. L. 96-222, § 101(a)(7)(E), inserted "or of section 4975(e)(7)" after "the requirements of this section".

Subsecs. (j)(2), (k)(1). Pub. L. 96-222, § 101(a)(7)(L)(iii)(V), substituted "employee plan credit" for "ESOP credit".

Subsec. (*l*)(2)(B). Pub. L. 96-222, 101(a)(7)(J)(i), substituted "class of common stock" for "class of stock".

Subsec. (*l*)(3). Pub. L. 96-222, § 101(a)(7)(J)(ii), (L)(ii)(II), substituted "as employer securities" for "as meeting the requirements of paragraph (1)", "paragraph (1) or (2)" for "paragraph (2)", and "tax credit employee stock ownership plan" for "ESOP" and added provisions requiring preferred stock to be treated as noncallable if after the call there will be a reasonable opportunity for a conversion which meets the requirements of the preceding sentence.

Subsec. (*l*)(4). Pub. L. 96-605 substituted in heading "Application to controlled group of corporations" for "Controlled group of corporations defined" and in subpar. (B) heading "Where common parent owns at least" for "Common parent may own only" and added subpar. (C).

Subsec. (m). Pub. L. 96-222, § 101(a)(7)(D), (L)(i), substituted provisions relating to nonrecognition of gain or loss on contribution of employer securities to a tax credit employee stock ownership plan for provisions relating to contributions of stock of a controlling corporation.

Subsec. (n). Pub. L. 96-222, § 101(a)(7)(L)(iii)(V), substituted "employee plan credit" for "ESOP credit" in pars. (1) and (2).

Effective Date of 1984 Amendment

Amendment by section 474(r)(15) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Redesignation of former section 409A as 409 by section 491(e)(1) of Pub. L. 98-369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98-369, set out as a note under section 41 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

Effective Date of 1981 Amendment

Amendment by section 331(c)(1) of Pub. L. 97-34 applicable to taxable years ending after Dec. 31, 1982, see section 331(f)(2) of Pub. L. 97-34, set out as a note under section 404 of this title.

Section 337(b) of Pub. L. 97-34 provided that: "The amendments made by this section [amending this section] shall apply to distributions described in section 409A(d) of the Internal Revenue Code of 1954 (or any corresponding provision of prior law) made after March 29, 1975."

Amendment by sections 334 and 336 of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1981, see section 339 of Pub. L. 97-34, set out as a note under section 401 of this title.

Effective Date of 1980 Amendments

Section 224(b) of Pub. L. 96-605 provided that: "The amendment made by subsection (a) [amending subsec. (*l*)(4) of this section] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978."

Amendment of section heading and subsecs. (a), (b)(4), (d), (f)(1), (2), (g), (h)(2), (j)(2), (k)(1), (*l*)(2)(B), (3), (m), and (n) by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

Effective Date

Section 141(g) of Pub. L. 95-600, as added Pub. L. 96-222, title I, § 101(a)(7)(B), Apr. 1, 1980, 94 Stat. 197, provided that:

"(1) In general.—Except as otherwise provided in this subsection and subsection (h) [set out as an Effective Date of 1978 Amendment note under section 4975 of this title], the amendments made by this section [adding sections 409A [now 409] and 6699 of this title, amending sections 46(a)(2)(E), 48(n) to (p), 56(c), 401(a)(21), 404(a)(2), 415(c)(6)(B)(i), (ii), 805(d), 1504(a), 4975(d)(3), (e)(7)] shall apply with respect to qualified investment for taxable years beginning after December 31, 1978.

"(2) Election to have amendments apply during 1978.—At the election of the taxpayer, paragraph (1) shall be applied by substituting 'December 31, 1977' for 'December 31, 1978'; except that in the case of a plan in existence before December 31, 1978, any such election shall not affect the required allocation of employer securities attributable to qualified investment for taxable years beginning before January 1, 1979. An election under the preceding sentence shall be made at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe. Such an election, once made, shall be irrevocable.

"(3) Voting right provisions.—Section 409A(e) of the Internal Revenue Code of 1954 (as added by subsection (a)) [now section 409] shall apply to plans to which section 409A of such Code applies, beginning with the first day of such application.

"(4) Right to demand employer securities, etc.—Paragraphs (1)(A) and (2) of section 409A(h) of the Internal Revenue Code of 1954 (as added by subsection (a)) [now section 409] shall apply to distributions after December 31, 1978, made by a plan to which section 409A of such Code applies.

"(5) Subsection (f)(7).—The amendment made by subsection (f)(7) [amending section 415(c)(6)(B)(i), (ii) of this title] shall apply to years beginning after December 31, 1978.

"(6) Retroactive application of amendment made by subsection (d).—In determining the regular tax deduction under section 56(c) of the Internal Revenue Code of 1954 for any taxable year beginning before January 1, 1979, the amount of the credit allowable under section 38 of such Code shall be determined without regard to section 46(a)(2)(B) of such Code (as in effect before the enactment of the Energy Tax Act of 1978 [Nov. 9, 1978])."

Section Referred to in Other Sections

This section is referred to in sections 41, 133, 401, 404, 415, 1042, 2210, 4975, 4978, 6699 of this title; title 29 section 1055.

[§ 409A. Renumbered 409]

SUBPART B—SPECIAL RULES

Sec.
417. Definitions and special rules for purposes of minimum survivor annuity requirements.

Amendments

1984—Pub. L. 98-397, title II, § 203(c), Aug. 23, 1984, 98 Stat. 1445, added item 417.

§ 410. Minimum participation standards

(a) Participation

(1) Minimum age and service conditions

(A) General rule

A trust shall not constitute a qualified trust under section 401(a) if the plan of which it is a part requires, as a condition of participation in the plan, that an employee complete a period of service with the employer or employers maintaining the plan extending beyond the later of the following dates—

(i) the date on which the employee attains the age of 21; or

(ii) the date on which he completes 1 year of service.

(B) Special rules for certain plans

[*See main edition for text of* (i)]

(ii) In the case of any plan maintained exclusively for employees of an educational institution (as defined in section 170(b)(1)(A)(ii)) by an employer which is exempt from tax under section 501(a) which provides that each participant having at least 1 year of service has a right to 100 percent of his accrued benefit under the plan which is nonforfeitable (within the meaning of section 411) at the time such benefit accrues, clause (i) of subparagraph (A) shall be applied by substituting "26" for "21". This clause shall not apply to any plan to which clause (i) applies.

[*See main edition for text of* (*2*) *to* (*4*)]

(5) Breaks in service

[*See main edition for text of* (*A*) *to* (*C*)]

(D) Nonvested participants

(i) In general

For purposes of paragraph (1), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account in computing the period of service if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) Years of service not taken into account

If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) Nonvested participant defined

For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) Special rule for maternity or paternity absences

(i) General rule

In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service (as defined in section 411(a)(6)(A)) has occurred, the hours described in clause (ii).

(ii) Hours treated as hours of service

The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of such absence,

except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.

(iii) Year to which hours are credited

The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) Year defined

For purposes of this subparagraph, the term "year" means the period used in computations pursuant to paragraph (3).

(v) Information required to be filed

A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-397, title II, § 202(a), (d)(1), (e)(1), Aug. 23, 1984, 98 Stat. 1436-1438.)

AMENDMENTS

1984—Subsec. (a)(1)(A)(i). Pub. L. 98-397, § 202(a)(1), substituted "21" for "25".

Subsec. (a)(1)(B)(ii). Pub. L. 98-397, § 202(a)(2), substituted " '26' for '21' " for " '30' for '25' ".

Subsec. (a)(5)(D). Pub. L. 98-397, § 202(d)(1), amended subpar. (D) generally.

Subsec. (a)(5)(E). Pub. L. 98-397, § 202(e)(1), added subpar. (E).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of Title 29, Labor.

§ 411. Minimum vesting standards

(a) General rule

A trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age (as defined in paragraph (8)) and in addition satisfies the requirements of paragraphs (1) and (2) of this subsection and the requirements of paragraph (2) of subsection (b), and in the case of a defined benefit plan, also satisfies the requirements of paragraph (1) of subsection (b).

[See main edition for text of (1) to (3)]

(4) Service included in determination of nonforfeitable percentage

In computing the period of service under the plan for purposes of determining the nonforfeitable percentage under paragraph (2), all of an employee's years of service with the employer or employers maintaining the plan shall be taken into account, except that the following may be disregarded:

(A) years of service before age 18, except that in the case of a plan which does not satisfy subparagraph (A) or (B) of paragraph (2), the plan may not disregard any such year of service during which the employee was a participant;

[See main edition for text of (B) to (G), (5)]

(6) Breaks in service

[See main edition for text of (A) and (B)]

(C) 5 consecutive 1-year breaks in service under defined contribution plan

For purposes of paragraph (4), in the case of any participant in a defined contribution plan, or an insured defined benefit plan which satisfies the requirements of subsection (b)(1)(F), who has 5 consecutive 1-year breaks in service, years of service after such 5-year period shall not be required to be taken into account for purposes of determining the nonforfeitable percentage of his accrued benefit derived from employer contributions which accrued before such 5-year period.

(D) Nonvested participants

(i) In general

For purposes of paragraph (4), in the case of a nonvested participant, years of service with the employer or employers maintaining the plan before any period of consecutive 1-year breaks in service shall not be required to be taken into account if the number of consecutive 1-year breaks in service within such period equals or exceeds the greater of—

(I) 5, or

(II) the aggregate number of years of service before such period.

(ii) Years of service not taken into account

If any years of service are not required to be taken into account by reason of a period of breaks in service to which clause (i) applies, such years of service shall not be taken into account in applying clause (i) to a subsequent period of breaks in service.

(iii) Nonvested participant defined

For purposes of clause (i), the term "nonvested participant" means a participant who does not have any nonforfeitable right under the plan to an accrued benefit derived from employer contributions.

(E) Special rule for maternity or paternity absences

(i) General rule

In the case of each individual who is absent from work for any period—

(I) by reason of the pregnancy of the individual,

(II) by reason of the birth of a child of the individual,

(III) by reason of the placement of a child with the individual in connection with the adoption of such child by such individual, or

(IV) for purposes of caring for such child for a period beginning immediately following such birth or placement,

the plan shall treat as hours of service, solely for purposes of determining under this paragraph whether a 1-year break in service has occurred, the hours described in clause (ii).

(ii) Hours treated as hours of service

The hours described in this clause are—

(I) the hours of service which otherwise would normally have been credited to such individual but for such absence, or

(II) in any case in which the plan is unable to determine the hours described in subclause (I), 8 hours of service per day of absence,

except that the total number of hours treated as hours of service under this clause by reason of any such pregnancy or placement shall not exceed 501 hours.

(iii) Year to which hours are credited

The hours described in clause (ii) shall be treated as hours of service as provided in this subparagraph—

(I) only in the year in which the absence from work begins, if a participant would be prevented from incurring a 1-year break in service in such year solely because the period of absence is treated as hours of service as provided in clause (i); or

(II) in any other case, in the immediately following year.

(iv) Year defined

For purposes of this subparagraph, the term "year" means the period used in computations pursuant to paragraph (5).

(v) Information required to be filed

A plan shall not fail to satisfy the requirements of this subparagraph solely because it provides that no credit will be given pursuant to this subparagraph unless the individual furnishes to the plan administrator such timely information as the plan may reasonably require to establish—

(I) that the absence from work is for reasons referred to in clause (i), and

(II) the number of days for which there was such an absence.

(7) Accrued benefit

[*See main edition for text of* (*A*)]

(B) Effect of certain distributions

Notwithstanding paragraph (4), for purposes of determining the employee's accrued benefit under the plan, the plan may disregard service performed by the employee with respect to which he has received—

(i) a distribution of the present value of his entire nonforfeitable benefit if such distribution was in an amount (not more than $3,500) permitted under regulations prescribed by the Secretary, or

(ii) a distribution of the present value of his nonforfeitable benefit attributable to such service which he elected to receive.

Clause (i) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan. Clause (ii) of this subparagraph shall apply only if such distribution was made on termination of the employee's participation in the plan or under such other circumstances as may be provided under regulations prescribed by the Secretary.

(C) Repayment of subparagraph (B) distributions

For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service as provided in subparagraph (B) unless the plan provides an opportunity for the participant to repay the full amount of the distribution described in such subparagraph (B) with, in the case of a defined benefit plan, interest at the rate determined for purposes of subsection (c)(2)(C) and provides that upon such repayment the employee's accrued benefit shall be recomputed by taking into account service so disregarded. This subparagraph shall apply only in the case of a participant who—

[*See main edition for text of* (*i*) *to* (*iii*)]

In the case of a defined contribution plan, the plan provision required under this subparagraph may provide that such repayment must be made before the participant has 5 consecutive 1-year breaks in service commencing after such withdrawal.

[*See main edition for text of* (*8*) *to* (*10*)]

(11) Restrictions on certain mandatory distributions

(A) In general

If the present value of any accrued benefit *exceeds $3,500, such benefit shall not be* treated as nonforfeitable if the plan provides that the present value of such benefit could be immediately distributed without the consent of the participant.

(B) Determination of present value

For purposes of subparagraph (A), the present value shall be calculated by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

(b) Accrued benefit requirements

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Year of participation

(A) Definition

For purposes of determining an employee's accrued benefit, the term "year of participation" means a period of service (beginning at the earliest date on which the employee is a participant in the plan and which is included in a period of service required to be taken into account under section 410(a)(5), determined without regard to section 410(a)(5)(E)) as determined under regulations prescribed by the Secretary of Labor which provide for the calculation of such period on any reasonable and consistent basis.

[*See main edition for text of* (*B*) *to* (*E*); (*c*)]

(d) Special rules

[*See main edition for text of* (*1*) *to* (*5*)]

(6) Accrued benefit not to be decreased by amendment

(A) In general

A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in section 412(c)(8), or section 4281 of the Employee Retirement Income Security Act of 1974.

(B) Treatment of certain plan amendments

For purposes of subparagraph (A), a plan amendment which has the effect of—

(i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(ii) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accured benefits. In the case of a retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the preamendment conditions for the subsidy. The Secretary may by regulations provide that this subparagraph shall not apply to a plan amendment *described in clause (ii) (other than a* plan amendment having an effect described in clause (i)).

[*See main edition for text of* (*e*)]

(As amended Pub. L. 98-397, title II, §§ 202(b), (c), (d)(2), (e)(2), (3), (f), 205, title III, § 301(a)(1), Aug. 23, 1984, 98 Stat. 1437, 1439, 1440, 1449, 1450.)

REFERENCES IN TEXT

Section 4281 of the Employee Retirement Income Security Act of 1974, referred to in subsecs. (a)(3)(F)(i), (ii) and (d)(6)(A), is classified to section 1441 of Title 29, Labor.

AMENDMENTS

1984—Subsec. (a)(4)(A). Pub. L. 98-397, § 202(b), substituted "18" for "22".

Subsec. (a)(6)(C). Pub. L. 98-397, § 202(c), substituted "5 consecutive 1-year breaks" for "1-year break", in heading, and in text substituted "5 consecutive 1-year breaks in service" for "any 1-year break in service" and "such 5-year period" for "such break" in two places.

Subsec. (a)(6)(D). Pub. L. 98-397, § 202(d)(2), amended subpar. (D) generally.

Subsec. (a)(6)(E). Pub. L. 98-397, § 202(e)(2), added subpar. (

Subsec. (a)(7)(B)(i). Pub. L. 98-397, § 205(b), substituted "$3,500" for "$1,750".

Subsec. (a)(7)(C). Pub. L. 98-397, § 202(f), substituted "5 consecutive 1-year breaks in service" for "any one-year break in service".

Subsec. (a)(11). Pub. L. 98-397, § 205(a), added par. (11).

Subsec. (b)(3)(A). Pub. L. 98-397, § 202(e)(3), added ", determined without regard to section 410(a)(5)(E)".

Subsec. (d)(6). Pub. L. 98-397, § 301(a)(1), designated existing provisions as subpar. (A) and added subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-397, applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of Title 29, Labor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 219, 401, 402, 410, 412, 413, 414, 416, 417, 418D, 418E, 4978; title 29 sections 1082, 1202, 1322a, 1343, 1390.

§ 412. Minimum funding standards

(a) General rule

Except as provided in subsection (h), this section applies to a plan if, for any plan year beginning on or after the effective date of this section for such plan—

(1) such plan included a trust which qualified (or was determined by the Secretary to have qualified) under section 401(a), or

(2) such plan satisfied (or was determined by the Secretary to have satisfied) the requirements of section 403(a).

A plan to which this section applies shall have satisfied the minimum funding standard for such plan for a plan year if as of the end of such plan year, the plan does not have an accumulated funding deficiency. For purposes of this section and section 4971, the term "accumulated funding deficiency" means for any plan the excess of the total charges to the funding standard account for all plan years (beginning with the first plan year to which this section applies) over the total credits to such account for such years or, if less, the excess of the total charges to the alternative minimum funding standard account for such plan years over the total credits to such account for such years. In any plan year in which a multiemployer plan is in reorganization, the accumulated funding deficiency of the plan shall be determined under section 418B.

[See main edition for text of (b) to (k)]

(As amended Pub. L. 98-369, div. A, title IV, § 491(d)(25), July 18, 1984, 98 Stat. 850.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-369 struck out "or 405(a)" after "section 403(a)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 404, 404A, 411, 413, 414, 418, 418B, 418D, 4971, 6059, 6110, 6692 of this title; title 29 sections 1083, 1202, 1301, 1322a, 1342, 1343, 1393, 1421, 1423, 1425.

§ 414. Definitions and special rules

[See main edition for text of (a)]

(b) Employees of controlled group of corporations

For purposes of sections 401, 408(k), 410, 411, 415, and 416, all employees of all corporations which are members of a controlled group of corporations (within the meaning of section 1563(a), determined without regard to section 1563(a)(4) and (e)(3)(C)) shall be treated as employed by a single employer. With respect to a plan adopted by more than one such corporation, the minimum funding standard of section 412, the tax imposed by section 4971, and the applicable limitations provided by section 404(a) shall be determined as if all such employers were a single employer, and allocated to each employer in accordance with regulations prescribed by the Secretary.

(c) Employees of partnerships, proprietorships, etc., which are under common control

For purposes of sections 401, 408(k), 410, 411, 415, and 416, under regulations prescribed by the Secretary, all employees of trades or businesses (whether or not incorporated) which are under common control shall be treated as employed by a single employer. The regulations prescribed under this subsection shall be based on principles similar to the principles which apply in the case of subsection (b).

[See main edition for text of (d) to (g)]

(h) Tax treatment of certain contributions

(1) In general

Effective with respect to taxable years beginning after December 31, 1973, for purposes of this title, any amount contributed—

(A) to an employees' trust described in section 401(a), or

(B) under a plan described in section 403(a), shall not be treated as having been made by the employer if it is designated as an employee contribution.

[*See main edition for text of* (*2*); (*i*) *to* (*k*)]

(*l*) Mergers and consolidations of plans or transfers of plan assets

A trust which forms a part of a plan shall not constitute a qualified trust under section 401 and a plan shall be treated as not described in section 403(a) unless in the case of any merger or consolidation of the plan with, or in the case of any transfer of assets or liabilities of such plan to, any other trust plan after September 2, 1974, each participant in the plan would (if the plan then terminated) receive a benefit immediately after the merger, consolidation, or transfer which is equal to or greater than the benefit he would have been entitled to receive immediately before the merger, consolidation, or transfer (if the plan had then terminated). The preceding sentence does not apply to any multiemployer plan with respect to any transaction to the extent that participants either before or after the transaction are covered under a multiemployer plan to which Title IV of the Employee Retirement Income Security Act of 1974 applies.

(m) Employees of an affiliated service group

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Employee benefit requirements

For purposes of this subsection, the employee benefit requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), and (16) of section 401(a),

(B) sections 408(k), 410, 411, 415, and 416,

(C) section 105(h), and

(D) section 125.

(5) Certain organizations performing management functions

For purposes of this subsection, the term "affiliated service group" also includes a group consisting of—

(A) an organization the principal business of which is performing, on a regular and continuing basis, management functions for 1 organization (or for 1 organization and other organizations related to such 1 organization), and

(B) the organization (and related organizations) for which such functions are so performed by the organization described in subparagraph (A).

For purposes of this paragraph, the term "related organizations" has the same meaning as the term "related persons" when used in section 103(b)(6)(C).

(6) [3] Other definitions

For purposes of this subsection—

(A) Organization defined

The term "organization" means a corporation, partnership, or other organization.

(B) Ownership

In determining ownership, the principles of section 318(a) shall apply.

[(7) [3] Repealed. Pub. L. 98–369, div. A, title V, § 526(d)(2), July 18, 1984, 98 Stat. 875]

(n) Employee leasing

(1) In general

For purposes of the pension requirements listed in paragraph (3), except to the extent otherwise provided in regulations, with respect to any person (hereinafter in this subsection referred to as the "recipient") for whom a leased employee performs services—

(A) the leased employee shall be treated as an employee of the recipient, but

(B) contributions or benefits provided by the leasing organization which are attributable to services performed for the recipient shall be treated as provided by the recipient.

(2) Leased employee

For purposes of paragraph (1), the term "leased employee" means any person who is not an employee of the recipient and who provides services to the recipient if—

(A) such services are provided pursuant to an agreement between the recipient and any other person (in this subsection referred to as the "leasing organization"),

(B) such person has performed such services for the recipient (or for the recipient and related persons) on a substantially full-time basis for a period of at least 1 year, and

(C) such services are of a type historically performed, in the business field of the recipient, by employees.

(3) Pension requirements

For purposes of this subsection, the pension requirements listed in this paragraph are—

(A) paragraphs (3), (4), (7), and (16) of section 401(a), and

(B) sections 408(k), 410, 411, 415, and 416.

(4) Time when leased employee is first considered as employee

In the case of any leased employee, paragraph (1) shall apply only for purposes of determining whether the pension requirements listed in paragraph (3) are met for periods after the close of the 1-year period referred to in paragraph (2); except that years of service for the recipient shall be determined by taking into account the entire period for which the leased employee performed services for the recipient (or related persons).

(5) Safe harbor

This subsection shall not apply to any leased employee if such employee is covered by a plan which is maintained by the leasing organization if, with respect to such employee, such plan—

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[3] See Codification note below.

(A) is a money purchase pension plan with a nonintegrated employer contribution rate of at least 7½ percent, and

(B) provides for immediate participation and for full and immediate vesting.

(6) Related persons

For purposes of this subsection, the term "related persons" has the same meaning as when used in section 103(b)(6)(C).

(o) Regulations

The Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in subsections (m) and (n)) as may be necessary to prevent the avoidance of any employee benefit requirement listed in subsection (m)(4) or (n)(3) through the use of—

(1) separate organizations,

(2) employee leasing, or

(3) other arrangements.

(p) Qualified domestic relations order defined

For purposes of this subsection and section 401(a)(13)—

(1) In general

(A) Qualified domestic relations order

The term "qualified domestic relations order" means a domestic relations order—

(i) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(ii) with respect to which the requirements of paragraphs (2) and (3) are met.

(B) Domestic relations order

The term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(i) relates to the provision of child support, alimony payments, or marital property rights to a spouse, child, or other dependent of a participant, and

(ii) is made pursuant to a State domestic relations law (including a community property law).

(2) Order must clearly specify certain facts

A domestic relations order meets the requirements of this paragraph only if such order clearly specifies—

(A) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(B) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(C) the number of payments or period to which such order applies, and

(D) each plan to which such order applies.

(3) Order may not alter amount, form, etc., of benefits

A domestic relations order meets the requirements of this paragraph only if such order—

(A) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(B) does not require the plan to provide increased benefits,[4] (determined on the basis of actuarial value), and

(C) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(4) Exception for certain payments made after earliest retirement age

(A) In general

In the case of any payment before a participant has separated from service, a domestic relations order shall not be treated as failing to meet the requirements of subparagraph (A) of paragraph (3) solely because such order requires that payment of benefits be made to an alternate payee—

(i) on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(ii) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of the benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(iii) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of clause (ii), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(B) Earliest retirement age

For purposes of this paragraph, the term "earliest retirement age" has the meaning given such term by section 417(f)(3), except that in the case of any defined contribution plan, the earliest retirement age shall be the date which is 10 years before the normal retirement age (within the meaning of section 411(a)(8)).

(5) Treatment of former spouse as surviving spouse for purposes of determining survivor benefits

To the extent provided in any qualified domestic relations order—

(A) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of sections 401(a)(11) and 417, and

(B) if married for at least 1 year, the surviving spouse shall be treated as meeting the requirements of section 417(d).

A plan shall not be treated as failing to meet the requirements of subsection (a) or (k) of section 401 which prohibit payment of benefits before termination of employment solely by reason of payments to an alternate payee pursuant to a qualified domestic relations order.

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[4] So in original. The comma probably should not appear.

(6) Plan procedures with respect to orders

(A) Notice and determination by administrator

In the case of any domestic relations order received by a plan—

(i) the plan administrator shall promptly notify the participant and any other alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(ii) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(B) Plan to establish reasonable procedures

Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders.

(7) Procedures for period during which determination is being made

(A) In general

During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall segregate in a separate account in the plan or in an escrow account the amounts which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(B) Payment to alternate payee if order determined to be qualified domestic relations order

If within 18 months the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (plus any interest thereon) to the person or persons entitled thereto.

(C) Payment to plan participant in certain cases

If within 18 months—

(i) it is determined that the order is not a qualified domestic relations order, or

(ii) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (plus any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(D) Subsequent determination or order to be applied prospectively only

Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period shall be applied prospectively only.

(8) Alternate payee defined

The term "alternate payee" means any spouse, former spouse, child or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(9) Consultation with the Secretary

In prescribing regulations under this subsection and section 401(a)(13), the Secretary of Labor shall consult with the Secretary.

(Added Pub. L. 93-406, title II, § 1015, Sept. 2, 1974, 88 Stat. 925, and amended Pub. L. 94-455, title XIX, §§ 1901(a)(64), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1775, 1834; Pub. L. 95-600, title I, § 152(d), Nov. 6, 1978, 92 Stat. 2799; Pub. L. 96-364, title II, §§ 207, 208(a), title IV, § 407(b), Sept. 26, 1980, 94 Stat. 1288, 1289, 1305; Pub. L. 96-605, title II, § 201(a), Dec. 28, 1980, 94 Stat. 3526; Pub. L. 96-613, § 5(a), Dec. 28, 1980, 94 Stat. 3580; Pub. L. 97-248, title II, §§ 240(c), 246(a), 248(a), Sept. 3, 1982, 96 Stat. 520, 525, 526; Pub. L. 98-369, div. A, title IV, § 491(d)(26), (27), title V, § 526(a)(1), (b)(1), (d)(1), (2), title VII, § 713(i), July 18, 1984, 98 Stat. 850, 874, 875, 960; Pub. L. 98-397, title II, § 204(b), Aug. 23, 1984, 98 Stat. 1445.)

CODIFICATION

Section 526(d)(1), (2) of Pub. L. 98-369 added subsec. (*o*), relating to regulations, and made a conforming amendment by striking out par. (6) of subsec. (m). However, par. (5), relating to definitions, and par. (6), relating to regulations, had been redesignated as pars. (6) and (7), respectively, by section 246(a) of Pub. L. 97-248. Accordingly, the amendment by section 526(d)(2) of Pub. L. 98-369 was executed by striking out par. (7) of subsec. (m) to reflect the probable intent of Congress and to give effect to the amendment of par. (6) of subsec. (m) by section 526(a)(1) of Pub. L. 98-369.

AMENDMENTS

1984—Subsec. (h)(1)(B). Pub. L. 98-369, § 491(d)(26), struck out "or 405(a)" after "section 403(a)".

Subsec. (*l*). Pub. L. 98-369, § 491(d)(27), struck out "or 405" after "section 403(a)".

Subsec. (m)(6)(B). Pub. L. 98-369, § 526(a)(1), substituted "section 318(a)" for "section 267(c)".

Subsec. (m)(7). Pub. L. 98-369, § 526(d)(2), struck out par. (7) relating to regulations. See subsec. (*o*) of this section and Codification note above.

Subsec. (n)(2). Pub. L. 98-369, §§ 526(b)(1), 713(i), made identical amendments, substituting "any person who is not an employee of the recipient and" for "any person" in the matter preceding subpar. (A).

Subsec. (*o*). Pub. L. 98-369, § 526(d)(1), added subsec. (*o*).

Subsec. (p). Pub. L. 98-397 added subsec. (p).

1982—Subsecs. (b), (c). Pub. L. 97-248, § 240(c)(1), added reference to section 416.

Subsec. (m)(4)(B). Pub. L. 97-248, § 240(c)(2), added reference to section 416.

Subsec. (m)(5) to (7). Pub. L. 97-248, § 246(a), added par. (5) and redesignated former pars. (5) and (6) as (6) and (7), respectively.

Subsec. (n). Pub. L. 97-248, § 248(a), added subsec. (n).

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-397 effective Jan. 1, 19 except as otherwise provided, see section 303(d) of

Pub. L. 98-397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 491(d)(26), (27) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Section 526(a)(2) of Pub. L. 98-369 provided that: "The amendment made by this subsection [amending subsec. (m)(6)(B) of this section] shall apply to taxable years beginning after December 31, 1984."

Section 526(b)(2) of Pub. L. 98-369 provided that: "The amendment made by this subsection [amending subsec. (n)(2) of this section] shall apply to taxable years beginning after December 31, 1983."

Section 526(d)(3) of Pub. L. 98-369 provided that: "The amendments made by this subsection [adding subsec. (*o*) and striking out par. (6)[7] of subsec. (m) of this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 713(i) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 240(c) of Pub. L. 97-248, applicable to years beginning after Dec. 31, 1983, see section 241(a) of Pub. L. 97-248, set out as a note under section 416 of this title.

Section 246(b) of Pub. L. 97-248 provided that: "The amendments made by subsection (a) [amending subsec. (m) of this section] shall apply to taxable years beginning after December 31, 1983."

Section 248(b) of Pub. L. 97-248 provided that: "The amendment made by subsection (a) [enacting subsec. (n) of this section] shall apply to taxable years beginning after December 31, 1983."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 79, 105, 108, 125, 132, 170, 401, 402, 403, 404, 410, 411, 412, 415, 416, 419A, 505, 818, 2210, 3121, 3306, 3405, 4975, 4977, 6047, 6057, 6058, 6059, 6659, 6692 of this title; title 15 sections 77c, 78c; title 29 sections 1002, 1301, 1321, 1453; title 42 section 409.

§ 415. Limitations on benefits and contribution under qualified plans

(a) General rule

[See main edition for text of (1)]

(2) Section applies to certain annuities and accounts

In the case of—

(A) an employee annuity plan described in section 403(a),

(B) an annuity contract described in section 403(b), or

(C) a simplified employee pension described in section 408(k),

such a contract, plan, or pension shall not be considered to be described in section 403(a), 403(b), or 408(k), as the case may be, unless it satisfies the requirements of subparagraph (A) or subparagraph (B) of paragraph (1), whichever is appropriate, and has not been disqualified under subsection (g). In the case of an annuity contract described in section 403(b), the preceding sentence shall apply only to the portion of the annuity contract which exceeds the limitation of subsection (b) or the limitation of subsection (c), whichever is appropriate, and the amount of the contribution for such portion shall reduce the exclusion allowance as provided in section 403(b)(2).

(b) Limitation for defined benefit plans

[See main edition for text of (1)]

(2) Annual benefit

(A) In general

For purposes of paragraph (1), the term "annual benefit" means a benefit payable annually in the form of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions (as defined in sections 402(a)(5), 403(a)(4), and 408(d)(3)) are made.

(B) Adjustment for certain other forms of benefit

If the benefit under the plan is payable in any form other than the form described in subparagraph (A), or if the employees contribute to the plan or make rollover contributions (as defined in sections 402(a)(5), 403(a)(4), and 408(d)(3)), the determinations as to whether the limitation described in paragraph (1) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary by adjusting such benefit so that it is equivalent to the benefit described in subparagraph (A). For purposes of this subparagraph, any ancillary benefit which is not directly related to retirement income benefits shall not be taken into account; and that portion of any joint and survivor annuity which constitutes a qualified joint and survivor annuity (as defined in section 401(a)(11)(G)(iii)) shall not be taken into account.

(C) Adjustment to $90,000 limit where benefit begins before age 62

If the retirement income benefit under the plan begins before age 62, the determination as to whether the $90,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by reducing the limitation of paragraph (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 62. The reduction under this subparagraph shall not reduce the limitation of paragraph (1)(A) below—

[See main edition for text of (i) and (ii)]

(D) Adjustment to $90,000 limit where benefit begins after age 65

If the retirement income benefit under the plan begins after age 65, the determination as to whether the $90,000 limitation set forth in paragraph (1)(A) has been satisfied shall be made, in accordance with regulations prescribed by the Secretary, by increasing the limitation of paragraph (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 65.

(E) Limitation on certain assumptions

(i) For purposes of adjusting any benefit or limitation under subparagraph (B) or (C), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan.

(ii) For purposes of adjusting any limitation under subparagraph (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan.

(iii) For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.

[*See main edition for text of* (*3*) *to* (*7*)]

(c) Limitation for defined contribution plans

[*See main edition for text of* (*1*)]

(2) Annual addition

For purposes of paragraph (1), the term "annual addition" means the sum of any year of—

[*See main edition for text of* (*A*) *to* (*C*)]

For the purposes of this paragraph, employee contributions under subparagraph (B) are determined without regard to any rollover contributions (as defined in sections 402(a)(5), 403(a)(4), 403(b)(8), and 408(d)(3)) without regard to employee contributions to a simplified employee pension allowable as a deduction under section 219(a), and without regard to deductible employee contributions within the meaning of section 72(*o*)(5).

(3) Participant's compensation

For purposes of paragraph (1)—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) Special rules for permanent and total disability

In the case of a participant in a profit-sharing or stock bonus plan—

(i) who is permanently and totally disabled (as defined in section 37(e)(3)) [6],

[*See main edition for text of* (*ii*) *and* (*iii*)]

the term "participant's compensation" means the compensation the participant would have received for the year if the participant was paid at the rate of compensation paid immediately before becoming permanently and totally disabled. This subparagraph shall apply only if contributions made with respect to amounts treated as compensation under this subparagraph are nonforfeitable when made.

[*See main edition for text of* (*4*)]

[(5) Repealed. Pub. L. 97-248, title II, § 238(d)(5), Sept. 3, 1982, 96 Stat. 513]

(6) Special limitation for employee stock ownership plan

[*See main edition for text of* (*A*)]

(B) For purposes of this paragraph—

[*See main edition for text of* (*i*)]

(ii) the term "employer securities" has the meaning given to such term by section 409,

[*See main edition for text of* (*iii*) *and* (*iv*)]

(C) In the case of an employee stock ownership plan (as described in section 4975(e)(7)), under which no more than one-third of the employer contributions for a year which are deductible under paragraph (9) of section 404(a) are allocated to the group of employees consisting of officers, shareholders owning more than 10 percent of the employer's stock (determined under subparagraph (B)(iv)), or employees described in subparagraph (B)(iii), the limitations imposed by this section shall not apply to—

(i) forfeitures of employer securities under an employee stock ownership plan (as described in section 4975(e)(7)) if such securities were acquired with the proceeds of a loan (as described in section 404(a)(9)(A)), or

(ii) employer contributions to such an employee stock ownership plan which are deductible under section 404(a)(9)(B) and charged against the participant's account.

(7) Certain contributions by church plans not treated as exceeding limits

(A) Alternative exclusion allowance

Any contribution or addition with respect to any participant, when expressed as an annual addition, which is allocable to the application of section 403(b)(2)(D) to such participant for such year, shall be treated as not exceeding the limitations of paragraph (1).

(B) Contributions not in excess of $40,000 ($10,000 per year)

(i) In general

Notwithstanding any other provision of this subsection, at the election of a participant who is an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), contributions and other additions for an annuity contract or retirement income account described in section 403(b) with respect to such participant, when expressed as an annual addition to such participant's account, shall be treated as not exceeding the limitation of paragraph (1) if such annual addition is not in excess of $10,000.

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[6] See References in Text note below.

(ii) $40,000 aggregate limitation

The total amount of additions with respect to any participant which may be taken into account for purposes of this subparagraph for all years may not exceed $40,000.

(iii) No election if paragraph (4)(A) election made

No election may be made under this subparagraph for any year if an election is made under paragraph (4)(A) for such year.

(C) Annual addition

For purposes of this paragraph, the term "annual addition" has the meaning given such term by paragraph (2).

[(8) Redesignated (7)]

(d) Cost-of-living adjustments

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Freeze on adjustment to defined contribution and benefit limits

The Secretary shall not make any adjustment under subparagraph (A) or (B) of paragraph (1) with respect to any year beginning after December 31, 1982, and before January 1, 1988.

(e) Limitation in case of defined benefit plan and defined contribution plan for same employee

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Defined contribution plan fraction

For purposes of this subsection, the defined contribution plan fraction for any year is a fraction—

[*See main edition for text of* (*A*)]

(B) the denominator of which is the sum of the lesser of the following amounts determined for such year and for each prior year of service with the employer:

[*See main edition for text of* (*i*)]

(ii) the product of—

(I) 1.4, multiplied by—

(II) the amount which may be taken into account under subsection (c)(1)(B) (or subsection (c)(7), if applicable) with respect to such individual under such plan for such year.

[*See main edition for text of* (*4*) *and* (*5*)]

(6) Special transition rule for defined contribution fraction for years ending after December 31, 1982

[*See main edition for text of* (*A*) *and* (*B*)]

(C) Plan must have been in existence on or before July 1, 1982

This paragraph shall apply only to plans which were in existence on or before July 1, 1982.

[*See main edition for text of* (*f*) *to* (*j*)]

(k) Special rules

(1)[2] Defined benefit plan and defined contribution plan

For purposes of this title, the term "defined contribution plan" or "defined benefit plan" means a defined contribution plan (within the meaning of section 414(i)) or a defined benefit plan (within the meaning of section 414(j)), whichever applies, which is—

(A) a plan described in section 401(a) which includes a trust which is exempt from tax under section 501(a),

(B) an annuity plan described in section 403(a),

(C) an annuity contract described in section 403(b),

(D) an individual retirement account described in section 408(a),

(E) an individual retirement annuity described in section 408(b), or

(F) a simplified employee pension.

(*l*) Treatment of certain medical benefits

(1) In general

For purposes of this section, contributions allocated to any individual medical account which is part of a defined benefit plan shall be treated as an annual addition to a defined contribution plan for purposes of subsection (c).

(2) Individual medical benefit account

For purposes of paragraph (1), the term "individual medical benefit account" means any separate account—

(A) which is established for a participant under a defined benefit plan, and

(B) from which benefits described in section 401(h) are payable solely to such participant, his spouse, or his dependents.

(Added Pub. L. 93-406, title II, § 2004(a)(2), Sept. 2, 1974, 88 Stat. 979, and amended Pub. L. 94-455, title VIII, § 803(b)(4), (f), title XV, §§ 1501(b)(3), 1502(a)(1), 1511(a), title XIX, §§ 1901(a)(65), (b)(8)(D), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1584, 1589, 1735–1737, 1741, 1775, 1794, 1834; Pub. L. 95-600, title I, §§ 141(f)(7), 152(g), 153(a), Nov. 6, 1978, 92 Stat. 2795, 2800; Pub. L. 96-222, title I, § 101(a)(7)(L)(i)(VII), (iv)(I), (10)(I), (J)(iii), (11), 94 Stat. 199, 200, 203, 204; Pub. L. 96-605, title II, § 222(a), Dec. 28, 1980, 94 Stat. 3528; Pub. L. 97-34, title III, §§ 311(g)(4), (h)(3), 333(b)(1), Aug. 13, 1981, 95 Stat. 281, 282, 297; Pub. L. 97-248, title II, §§ 235(a), (b)(2)(A), (3), (c)–(e), 238(d)(5), 251(c)(1), (2), 253(a), Sept. 3, 1982, 96 Stat. 505–507, 513, 530, 532; Pub. L. 98-21, title I, § 122(c)(5), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98-369, div. A, title I, § 15(a), title IV, § 491(d)(28)–(32), (e)(6), title (V), § 528(a), title VII, § 713(a)(1), (3), (d)(4)(B), (7), (k), July 18, 1984, 98 Stat. 505, 850, 853, 876, 955, 956, 958, 960.)

AMENDMENT OF SECTION

Pub. L. 97-248, title II, § 235(b)(1), (b)(2)(B), (g)(2)(B), Sept. 3, 1982, 96 Stat.

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[2] Subsection enacted without a par. (2).

505, 508, as amended Pub. L. 98–369, div. A, title I, § 15(b), July 18, 1984, 98 Stat. 505, provided that, applicable to adjustments for years beginning after Dec. 31, 1985, subsection (d)(1) is amended by striking out "primary insurance amounts" and inserting in lieu thereof "benefit amounts", and subsection (d)(2)(A) is amended by striking out "1974" and inserting in lieu thereof "1986".

References in Text

Section 37, referred to in subsec. (c)(3)(C)(i), was renumbered section 22 by section 471(c)(1) of Pub. L. 98–369.

Amendments

1984—Subsec. (a)(2). Pub. L. 98–369, § 491(d)(28), struck out subpar. (D) which related to application of this section to a plan described in section 405(a), and in provision following subpar. (C) struck out "405(a)," after "403(b),".

Subsec. (b)(2)(A). Pub. L. 98–369, § 491(d)(29), substituted "and 408(d)(3)" for "408(d)(3) and 409(b)(3)(C)".

Subsec. (b)(2)(B). Pub. L. 98–369, § 491(d)(30), substituted "and 408(d)(3)" for "408(d)(3) and 409(b)(3)(C)".

Subsec. (b)(2)(C). Pub. L. 98–369, § 713(a)(1)(A), substituted provision respecting determination as to whether $90,000 limitation has been satisfied by reducing the limitation of par. (1)(A) so that such limitation (as so reduced) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 62 for provision for such determination by adjusting the benefit so that it is equivalent to such a benefit beginning at age 62.

Subsec. (b)(2)(D). Pub. L. 98–369, § 713(a)(1)(B), substituted "limit" for "limitation" in heading, and in text substituted provision respecting determination as to whether $90,000 limitation has been satisfied by increasing the limitation of par. (1)(A) so that such limitation (as so increased) equals an annual benefit (beginning when such retirement income benefit begins) which is equivalent to a $90,000 annual benefit beginning at age 65 for provision for such determination by adjusting the benefit so that it is equivalent to such a benefit beginning at age 65.

Subsec. (b)(2)(E). Pub. L. 98–369, § 713(a)(1)(C), provided in cls. (i) and (iii) for adjustment of any limitation and substituted in cl. (ii) "any limitation" for "any benefit".

Subsec. (c)(2). Pub. L. 98–369, § 491(d)(31), substituted "and 408(d)(3)" for "405(d)(3), 408(d)(3), and 409(b)(3)(C)".

Subsec. (c)(3)(C). Pub. L. 98–369, § 713(k), inserted in introductory text "in a profit-sharing or stock bonus plan", and substituted in last sentence "if contributions made with respect to amounts treated as compensation under this subparagraph" for "if contributions made with respect to such participant".

Subsec. (c)(6)(B)(ii). Pub. L. 98–369, § 491(e)(6), substituted "section 409" for "section 409A".

Subsec. (c)(6)(C). Pub. L. 98–369, § 713(d)(4)(B)(i)–(iii), substituted "paragraph (9)" for "paragraph (10)" of section 404(a), section "404(a)(9)(A)" for "404(a)(10)(A)", and section "404(a)(9)(B)" for "404(a)(10)(B)".

Subsec. (c)(7), (8). Pub. L. 98–369, § 713(d)(7)(A), redesignated par. (8) as (7), and struck out former par. (7) relating to certain level premium annuity contracts under plans benefiting owner-employees.

Subsec. (d)(3). Pub. L. 98–369, § 15(a), substituted "January 1, 1988" for "January 1, 1986".

Subsec. (e)(3)(B)(ii)(II). Pub. L. 98–369, § 713(d)(7)(B), deleted reference to subsec. (c)(8).

Subsec. (e)(6)(C). Pub. L. 98–369, § 713(a)(3), added subpar. (C).

Subsec. (k)(1). Pub. L. 98–369, § 491(d)(32), struck out subpars. (C) and (H), which included a qualified bond purchase plan described in section 405(a) and an individual retirement bond described in section 409 within the term "defined contribution plan" or "defined benefit plan", respectively, and redesignated subpars. (D) to (G) as (C) to (F), respectively.

Subsec. (*l*). Pub. L. 98–369, § 528(a), added subsec. (*l*).

1983—Subsec. (c)(3)(C)(i). Pub. L. 98–21 substituted "section 37(e)(3)" for "section 105(d)(4)".

1982—Subsec. (c)(5). Pub. L. 97–248, § 238(d)(5), struck out par. (5) relating to application with section 404(e)(4).

Effective Date of 1984 Amendment

Amendment by section 15 of Pub. L. 98–369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98–369, set out as a note under section 48 of this title.

Amendment by section 491(d)(28) to (32) of Pub. L. 98–369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98–369, set out as a note under section 55 of this title.

Amendment by section 491(e)(6) of Pub. L. 98–369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98–369, set out as a note under section 41 of this title.

Amendment by section 528(a) of Pub. L. 98–369 applicable to years beginning after Mar. 31, 1984, see section 528(c) of Pub. L. 98–369, set out as a note under section 401 of this title.

Amendment by section 713 of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98–21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98–21, set out as a note under section 22 of this title.

Effective Date of 1982 Amendment

Section 235(g) of Pub. L. 97–248, as amended by Pub. L. 97–448, title III, § 306(a)(10), Jan. 12, 1983, 96 Stat. 2404; Pub. L. 98–369, div. A, title VII, § 713(a)(2), (4), (f)(3), July 18, 1984, 98 Stat. 956, 959, provided that:

[*See main edition for text of* (*1*) *and* (*2*)]

"(3) Transition rule where the sum of defined contribution and defined benefit plan fractions exceeds 1.0.—In the case of a plan which satisfied the requirements of section 415 of the Internal Revenue Code of 1954 for the last year beginning before January 1, 1983, the Secretary of the Treasury or his delegate shall prescribe regulations under which an amount is subtracted from the numerator of the defined contribution plan fraction (not exceeding such numerator) so that the sum of the defined benefit plan fraction and the defined contribution plan fraction computed under section 415(e)(1) of the Internal Revenue Code of 1954 (as amended by the Tax Equity and Fiscal Responsibility Act of 1982) does not exceed 1.0 for such year. A similar rule shall apply with respect to the last plan year beginning before January 1, 1984, for purposes of applying section 416(h) of the Internal Revenue Code of 1954.

"(4) Right to higher accrued defined benefit preserved.—

"(A) In general.—In the case of an individual who is a participant before January 1, 1983, in a defined benefit plan which is in existence on July 1, 1982, and with respect to which the requirements of section 415 of such Code have been met for all years, if such individual's current accrued benefit under such plan exceeds the limitation of subsection (b) of section 415 of the Internal Revenue Code of 1954 (as amended by this section), then (in the case of such plan) for purposes of subsections (b) and (e) of such section, the limitation of such subsection (b) with respect to such individual shall be equal to such current accrued benefit.

"(B) CURRENT ACCRUED BENEFIT DEFINED.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'current accrued benefit' means the individual's accrued benefit (at the close of the last year beginning before January 1, 1983) when expressed as an annual benefit (within the meaning of section 415(b)(2) of such Code as in effect before the amendments made by this Act). In the case of any plan described in the first sentence of paragraph (5), the preceding sentence shall be applied by substituting for 'January 1, 1983' the applicable date determined under paragraph (5).

"(ii) SPECIAL RULE.—For purposes of determining the amount of any individual's current accrued benefit—

"(I) no change in the terms and conditions of the plan after July 1, 1982, and

"(II) no cost-of-living adjustment occurring after July 1, 1982,

shall be taken into account. For purposes of subclause (I), any change in the terms and conditions of the plan pursuant to a collective bargaining agreement entered into before July 1, 1982, and ratified before September 3, 1982, shall be treated as a change made before July 1, 1982.

[*See main edition for text of* (5)]

Amendment by section 238(d)(5) of Pub. L. 97-248 applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97-248, set out as an Effective Date note under section 416 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41, 219, 401, 403, 404, 408, 409, 414, 416, 419A, 4973 of this title; title 15 section 1866; title 29 sections 1002, 1321; title 45 section 726.

§ 416. Special rules for top-heavy plans

[*See main edition for text of* (a) *and* (b)]

(c) Plan must provide minimum benefits

[*See main edition for text of* (1)]

(2) Defined contribution plans

[*See main edition for text of* (A) *and* (B)]

[(C) **Repealed. Pub. L. 98-369, div. A, title V, § 524(c)(1), July 18, 1984, 98 Stat. 872**]

(d) Not more than $200,000 in annual compensation taken into account

[*See main edition for text of* (1)]

(2) Cost-of-living adjustments

The Secretary shall annually adjust the $200,000 amount contained in paragraph (1) of this subsection and in clause (ii) of subsection (c)(2)(B) at the same time and in the same manner as he adjusts the dollar amount contained in section 415(c)(1)(A).

[*See main edition for text of* (e)]

(f) Coordination where employer has 2 or more plans

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section where the employer has 2 or more plans including (but not limited to) regulations to prevent inappropriate omissions or required duplication of minimum benefits or contributions.

(g) Top-heavy plan defined

For purposes of this section—

[*See main edition for text of* (1) *and* (2)]

(3) Distributions during last 5 years taken into account

For purposes of determining—

[*See main edition for text of* (A) *and* (B)]

such present value or amount shall be increased by the aggregate distributions made with respect to such employee under the plan during the 5-year period ending on the determination date. The preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

(4) Other special rules

For purposes of this subsection—

[*See main edition for text of* (A) *to* (D)]

(E) Benefits not taken into account if employee not employed for last 5 years

If any individual has not received any compensation from any employer maintaining the plan (other than benefits under the plan) at any time during the 5-year period ending on the determination date, any accrued benefit for such individual (and the account of such individual) shall not be taken into account.

[*See main edition for text of* (h)]

(i) Definitions

For purposes of this section—

(1) Key employee

(A) In general

The term "key employee" means an employee who, at any time during the plan year or any of the 4 preceding plan years, is—

(i) an officer of the employer having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) for any such plan year,

(ii) 1 of the 10 employees having annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A) and owning (or considered as owning within the meaning of section 318) the largest interests in the employer,

[*See main edition for text of* (iii) *and* (iv)]

For purposes of clause (i), no more than 50 employees (or, if lesser, the greater of 3 or 10 percent of the employees) shall be treated as officers. For purposes of clause (ii), if 2 employees have the same interest in the employer, the employee having greater annual compensation from the employer shall be treated as having a larger interest.

(B) Percentage owners

[*See main edition for text of* (*i*) *and* (*ii*)]

(iii) Constructive ownership rules

For purposes of this subparagraph and subparagraph (A)(ii)—

[*See main edition for text of* (*I*) *and* (*II*)]

(C) Aggregation rules do not apply for purposes of determining ownership in the employer

The rules of subsections (b), (c), and (m) of section 414 shall not apply for purposes of determining ownership in the employer.

[*See main edition for text of* (*2*) *to* (*6*)]

(As amended Pub. L. 98-369, div. A, title V, § 524(a)(1), (b)(1), (c)(1), title VII, § 713(f)(1), (4), (5)(A), (6), July 18, 1984, 98 Stat. 872, 959, 960.)

AMENDMENTS

1984—Subsec. (c)(2)(C). Pub. L. 98-369, § 524(c)(1), struck out subpar. (C) which provided that for purposes of this paragraph, any employer contribution attributable to a salary reduction or similar arrangement shall not be taken into account.

Subsec. (d)(2). Pub. L. 98-369, § 713(f)(5)(A), inserted "at the same time and".

Subsec. (f). Pub. L. 98-369, § 713(f)(6)(A), substituted "required" for "require".

Subsec. (g)(3). Pub. L. 98-369, § 713(f)(4), added at end of par. (3) provision that the preceding sentence shall also apply to distributions under a terminated plan which if it had not been terminated would have been required to be included in an aggregation group.

Subsec. (g)(4)(E). Pub. L. 98-369, § 524(b)(1), added subpar. (E).

Subsec. (i)(1)(A). Pub. L. 98-369, § 713(f)(1)(A), (C), substituted in provisions preceding cl. (i) "an employee" for "any participant in an employer plan" and added at end thereof provision for treatment of an employee with the greater annual compensation as having a larger interest in the employer where, for purposes of cl. (ii), 2 employees have the same interest in the employer.

Subsec. (i)(1)(A)(i). Pub. L. 98-369, § 524(a)(1), added "having an annual compensation greater than 150 percent of the amount in effect under section 415(c)(1)(A) for any plan year".

Subsec. (i)(1)(A)(ii). Pub. L. 98-369, § 713(f)(1)(B), required a key employee to have annual compensation from the employer of more than the limitation in effect under section 415(c)(1)(A).

Subsec. (i)(1)(B)(iii). Pub. L. 98-369, § 713(f)(6)(B), substituted subparagraph "(A)(ii)" for "(A)(ii)(II)".

Subsec. (i)(1)(C). Pub. L. 98-369, § 713(f)(1)(A), substituted in heading "ownership in the employer" for "5-percent or 1-percent owners".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 524(a)(2) of Pub. L. 98-369 provided that: "The amendment made by this subsection [amending subsec. (i)(1)(A) of this section] shall apply to plan years beginning after December 31, 1983."

Section 524(b)(2) of Pub. L. 98-369 provided that: "The amendment made by this subsection [enacting subsec. (g)(4)(E) of this section] shall apply to plan years beginning after December 31, 1984."

Section 524(c)(2) of Pub. L. 98-369 provided that: "The amendment made by this subsection [amending subsec. (c)(2) of this section] shall apply to plan years beginning after December 31, 1984."

Amendment by section 713 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 79, 125, 280F, 401, 402, 408, 414, 419A of this title.

§ 417. Definitions and special rules for purposes of minimum survivor annuity requirements

(a) Election to waive qualified joint and survivor annuity or qualified preretirement survivor annuity

(1) In general

A plan meets the requirements of section 401(a)(11) only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both), and

(ii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2) and (3) of this subsection.

(2) Spouse must consent to election

Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A) the spouse of the participant consents in writing to such election, and the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3) Plan to provide written explanations

(A) Explanation of joint and survivor annuity

Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary may prescribe), a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B) Explanation of qualified preretirement survivor annuity

Each plan shall provide to each participant, within the period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35 (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(4) Special rules where plan fully subsidizes costs

(A) In general

The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if the plan fully subsidizes the costs of such benefit.

(B) Definition

For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(5) Applicable election period defined

For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 90-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(b) Definition of qualified joint and survivor annuity

For purposes of this section and section 401(a)(11), the term "qualified joint and survivor annuity" means an annuity—

(1) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(2) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(c) Definition of qualified preretirement survivor annuity

For purposes of this section and section 401(a)(11)—

(1) In general

Except as provided in paragraph (2), the term "qualified preretirement survivor annuity" means a survivor annuity or the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

(2) Special rule for defined contribution plans

In the case of any defined contribution plan or participant described in clause (ii) or (iii) of section 401(a)(11)(B), the term "qualified preretirement survivor annuity" means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the account balance of the participant as of the date of death.

(d) Survivor annuities need not be provided if participant and spouse married less than 1 year

(1) In general

Except as provided in paragraph (2), a plan shall not be treated as failing to meet the requirements of section 401(a)(11) merely because the plan provides that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of—

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) Treatment of certain marriages within 1 year of annuity starting date for purposes of qualified joint and survivor annuities

For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(e) Restrictions on cash-outs

(1) Plan may require distribution if present value not in excess of $3,500

A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed $3,500. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consents in writing to such distribution.

(2) Plan may distribute benefit in excess of $3,500 only with consent

If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds $3,500, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3) Determination of present value

For purposes of paragraphs (1) and (2), the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity shall be determined as of the date of the distribution and by using an interest rate not greater than the interest rate which would be used (as of the date of the distribution) by the Pension Benefit Guaranty Corporation for purposes of determining the present value of a lump sum distribution on plan termination.

(f) Other definitions and special rules

For purposes of this section and section 401(a)(11)—

(1) Vested participant

The term "vested participant" means any participant who has a nonforfeitable right (within the meaning of section 411(a)) to any portion of the accrued benefit derived from employer contributions.

(2) Annuity starting date

The term "annuity starting date" means the first day of the first period for which an amount is received as an annuity (whether by reason of retirement or disability).

(3) Earliest retirement age

The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(4) Plan may take into account increased costs

A plan may take into account in any equitable manner (as determined by the Secretary) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(5) Consultation with the Secretary of Labor

In prescribing regulations under this section and section 401(a)(11), the Secretary shall consult with the Secretary of Labor.

(Added Pub. L. 98-397, title II, § 203(b), Aug. 23, 1984, 98 Stat. 1441.)

EFFECTIVE DATE

Section applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as an Effective Date of 1984 Amendment note under section 1001 of Title 29, Labor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 414 of this title.

SUBPART D—TREATMENT OF WELFARE BENEFIT FUNDS

Sec.	
419.	Treatment of funded welfare benefit plans.
419A.	Qualified asset account; limitation on additions to account.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 4976 of this title.

§ 419. Treatment of funded welfare benefit plans

(a) General rule

Contributions paid or accrued by an employer to a welfare benefit fund—

(1) shall not be deductible under section 162 or 212, but

(2) if they satisfy the requirements of either of such sections, shall (subject to the limitation of subsection (b)) be deductible under this section for the taxable year in which paid.

(b) Limitation

The amount of the deduction allowable under subsection (a)(2) for any taxable year shall not exceed the welfare benefit fund's qualified cost for the taxable year.

(c) Qualified cost

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term "qualified cost" means, with respect to any taxable year, the sum of—

(A) the qualified direct cost for such taxable year, and

(B) subject to the limitation of section 419A(b), any addition to a qualified asset account for the taxable year.

(2) Reduction for funds after-tax income

In the case of any welfare benefit fund, the qualified cost for any taxable year shall be reduced by such fund's after-tax income for such taxable year.

(3) Qualified direct cost

(A) In general

The term "qualified direct cost" means, with respect to any taxable year, the aggregate amount (including administrative expenses) which would have been allowable as a deduction to the employer with respect to the benefits provided during the taxable year, if—

(i) such benefits were provided directly by the employer, and

(ii) the employer used the cash receipts and disbursements method of accounting.

(B) Time when benefits provided

For purposes of subparagraph (A), a benefit shall be treated as provided when such benefit would be includible in the gross income of the employee if provided directly by the employer (or would be so includible but for any provision of this chapter excluding such benefit from gross income).

(C) 60-month amortization of child care facilities

(i) In general

In determining qualified direct costs with respect to any child care facility for purposes of subparagraph (A), in lieu of depreciation the adjusted basis of such facility shall be allowable as a deduction ratably over a period of 60 months beginning with the month in which the facility is placed in service.

(ii) Child care facility

The term "child care facility" means any tangible property which qualifies under regulations prescribed by the Secretary as a child care center primarily for children of employees of the employer; except that such term shall not include any property—

(I) not of a character subject to depreciation; or

(II) located outside the United States.

(4) After-tax income

(A) In general

The term "after-tax income" means, with respect to any taxable year, the gross income of the welfare benefit fund reduced by the sum of—

(i) the deductions allowed by this chapter which are directly connected with the production of such gross income, and

(ii) the tax imposed by this chapter on the fund for the taxable year.

(B) Treatment of certain amounts

In determining the gross income of any welfare benefit fund—

(i) contributions and other amounts received from employees shall be taken into account, but

(ii) contributions from the employer shall not be taken into account.

(5) Item only taken into account once

No item may be taken into account more than once in determining the qualified cost of any welfare benefit fund.

(d) Carryover of excess contributions

If—

(1) the amount of the contributions paid (or deemed paid under this subsection) by the employer during any taxable year to a welfare benefit fund, exceeds

(2) the limitation of subsection (b),

such excess shall be treated as an amount paid by the employer to such fund during the succeeding taxable year.

(e) Welfare benefit fund

For purposes of this section—

(1) In general

The term "welfare benefit fund" means any fund—

(A) which is part of a plan of an employer, and

(B) through which the employer provides welfare benefits to employees or their beneficiaries.

(2) Welfare benefit

The term "welfare benefit" means any benefit other than a benefit with respect to which—

(A) section 83(h) applies,

(B) section 404 applies (determined without regard to section 404(b)(2)),

(C) section 404A applies, or

(D) an election under section 463 applies.

(3) Fund

The term "fund" means—

(A) any organization described in paragraph (7), (9), (17), or (20) of section 501(c),

(B) any trust, corporation, or other organization not exempt from the tax imposed by this chapter, and

(C) to the extent provided in regulations, any account held for an employer by any person.

(f) Method of contributions, etc., having the effect of a plan

If—

(1) there is no plan, but

(2) there is a method or arrangement of employer contributions or benefits which has the effect of a plan,

this section shall apply as if there were a plan.

(g) Extension to plans for independent contractors

If any fund would be a welfare benefit fund (as modified by subsection (f)) but for the fact that there is no employee-employer relationship—

(1) this section shall apply as if there were such a plan, and

(2) any reference in this section to the employer shall be treated as a reference to the person for whom services are provided, and any reference in this section to an employee

shall be treated as a reference to the person providing the services.

(Added Pub. L. 98-369, div. A, title V, § 511(a), July 18, 1984, 98 Stat. 854.)

EFFECTIVE DATE

Section 511(e) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this subpart and section 4976 of this title and amending section 512 of this title] shall apply to contributions paid or accrued after December 31, 1985, in taxable years ending after such date.

"(2) SPECIAL RULE FOR COLLECTIVE BARGAINING AGREEMENTS.—In the case of plan maintained pursuant to 1 or more collective bargaining agreements—

"(A) between employee representatives and 1 or more employers, and

"(B) in effect on July 1, 1985 (or ratified on or before such date),

the amendments made by this section and section 514 [Pub. L. 98-369 did not contain a section 514] shall not apply to years beginning before the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after July 1, 1985).

"(3) SPECIAL RULE FOR PARAGRAPH (2).—For purposes of paragraph (2), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by this section shall not be treated as a termination of such collective bargaining agreement.

"(4) SPECIAL EFFECTIVE DATE FOR CONTRIBUTIONS OF FACILITIES.—Notwithstanding paragraphs (1) and (2), the amendments made by this section shall apply in the case of—

"(A) any contribution after June 22, 1984, of a facility to a welfare benefit fund, and

"(B) any other contribution after June 22, 1984, to a welfare benefit fund to be used to acquire or improve a facility.

"(5) BINDING CONTRACT EXCEPTIONS TO PARAGRAPH (4).—Paragraph (4) shall not apply to any facility placed in service before January 1, 1987—

"(A) which is acquired or improved by the fund (or contributed to the fund) pursuant to a binding contract in effect on June 22, 1984, and at all times thereafter, or

"(B) the construction of which by or for the fund began before June 22, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 162, 404, 419A, 1239 of this title.

§ 419A. Qualified asset account; limitation on additions to account

(a) General rule

For purposes of this subpart, the term "qualified asset account" means any account consisting of assets set aside to provide for the payment of—

(1) disability benefits,
(2) medical benefits,
(3) SUB or severance pay benefits, or
(4) life insurance benefits.

(b) Limitation on additions to account

No addition to any qualified asset account may be taken into account under section 419(c)(1)(B) to the extent such addition results in the amount in such account exceeding the account limit.

(c) Account limit

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the account limit for any qualified asset account for any taxable year is the amount reasonably and actuarially necessary to fund—

(A) claims incurred but unpaid (as of the close of such taxable year) for benefits referred to in subsection (a), and

(B) administrative costs with respect to such claims.

(2) Additional reserve for post-retirement medical and life insurance benefits

The account limit for any taxable year may include a reserve funded over the working lives of the covered employees and actuarially determined on a level basis (using assumptions that are reasonable in the aggregate) as necessary for—

(A) post-retirement medical benefits to be provided to covered employees (determined on the basis of current medical costs), or

(B) post-retirement life insurance benefits to be provided to covered employees.

(3) Amount taken into account for SUB or severance pay benefits

(A) In general

The account limit for any taxable year with respect to SUB or severance pay benefits is 75 percent of the average annual qualified direct costs for SUB or severance pay benefits for any 2 of the immediately preceding 7 taxable years (as selected by the fund).

(B) Special rule for certain new plans

In the case of any new plan for which SUB or severance pay benefits are not available to any key employee, the Secretary shall, by regulations, provide for an interim amount to be taken into account under paragraph (1).

(4) Limitation on amounts to be taken into account

(A) Disability benefits

For purposes of paragraph (1), disability benefits payable to any individual shall not be taken into account to the extent such benefits are payable at an annual rate in excess of the lower of—

(i) 75 percent of such individual's average compensation for his high 3 years (within the meaning of section 415(b)(3)), or

(ii) the limitation in effect under section 415(b)(1)(A).

(B) Limitation on SUB or severance pay benefits

For purposes of paragraph (3), any SUB or severance pay benefit payable to any individual shall not be taken into account to the extent such benefit is payable at an annual rate in excess of 150 percent of the limitation in effect under section 415(c)(1)(A).

(5) Special limitation where no actuarial certification

(A) In general

Unless there is an actuarial certification of the account limit determined under paragraph (1) for any taxable year, the account limit for such taxable year shall not exceed the sum of the safe harbor limits for such taxable year.

(B) Safe harbor limits

(i) Short-term disability benefits

In the case of short-term disability benefits, the safe harbor limit for any taxable year is 17.5 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to such benefits.

(ii) Medical benefits

In the case of medical benefits, the safe harbor limit for any taxable year is 35 percent of the qualified direct costs (other than insurance premiums) for the immediately preceding taxable year with respect to medical benefits.

(iii) SUB or severance pay benefits

In the case of SUB or severance pay benefits, the safe harbor limit for any taxable year is the amount determined under paragraph (3).

(iv) Long-term disability or life insurance benefits

In the case of any long-term disability benefit or life insurance benefit, the safe harbor limit for any taxable year shall be the amount prescribed by regulations.

(d) Requirement of separate accounts for post-retirement medical or life insurance benefits provided to key employees

(1) In general

In the case of any employee who is a key employee—

(A) a separate account shall be established for any medical benefits or life insurance benefits provided with respect to such employee after retirement, and

(B) medical benefits and life insurance benefits provided with respect to such employee after retirement may only be paid from such separate account.

(2) Coordination with section 415

For purposes of section 415, any amount attributable to medical benefits allocated to an account established under paragraph (1) shall be treated as an annual addition to a defined contribution plan for purposes of section 415(c).

(3) Key employee

For purposes of this section, the term "key employee" means any employee who, at any time during the plan year or any preceding plan year, is or was a key employee as defined in section 416(i).

(e) Special limitations on reserves for medical benefits or life insurance benefits provided to retired employees

(1) Benefits must be nondiscriminatory

No reserve may be taken into account under subsection (c)(2) for post-retirement medical benefits or life insurance benefits to be provided to covered employees unless the plan meets the requirements of section 505(b)(1) with respect to such benefits.

(2) Taxable life insurance benefits not taken into account

No life insurance benefit may be taken into account under subsection (c)(2) to the extent—

(A) such benefit is includible in gross income under section 79, or

(B) such benefit would be includible in gross income under section 101(b) (determined by substituting "$50,000" for "$5,000").

(f) Definitions and other special rules

For purposes of this section—

(1) SUB or severance pay benefit

The term "SUB or severance pay benefit" means—

(A) any supplemental unemployment compensation benefit (as defined in section 501(c)(17)(D)), and

(B) any severance pay benefit.

(2) Medical benefit

The term "medical benefit" means a benefit which consists of the providing (directly or through insurance) of medical care (as defined in section 213(d)).

(3) Life insurance benefit

The term "life insurance benefit" includes any other death benefit.

(4) Valuation

For purposes of this section, the amount of the qualified asset account shall be the value of the assets in such account (as determined under regulations).

(5) Higher limit in case of collectively bargained plans

Not later than July 1, 1985, the Secretary shall by regulations provide for special account limits in the case of any qualified asset account under a welfare benefit fund established under a collective bargaining agreement.

(6) Exception for 10-or-more employer plans

(A) In general

This subpart shall not apply in the case of any welfare benefit fund which is part of a 10 or more employer plan. The preceding sentence shall not apply to any plan which maintains experience-rating arrangements with respect to individual employers.

(B) 10 or more employer plan

For purposes of subparagraph (A), the term "10 or more employer plan" means a plan—

(i) to which more than 1 employer contributes, and

(ii) to which no employer normally contributes more than 10 percent of the total contributions contributed under the plan by all employers.

(7) Adjustments for existing excess reserves

(A) Increase in account limit

The account limit for any of the first 4 taxable years to which this section applies shall be increased by the applicable percentage of any existing excess reserves.

(B) Applicable percentage

For purposes of subparagraph (A)—

In the case of:	The applicable percentage is:
The first taxable year to which this section applies	80
The second taxable year to which this section applies	60
The third taxable year to which this section applies	40
The fourth taxable year to which this section applies	20.

(C) Existing excess reserve

For purposes of this paragraph, the term "existing excess reserve" means the excess (if any) of—

(i) the amount of assets set aside for purposes described in subsection (a) as of the close of the first taxable year ending after the date of the enactment of the Tax Reform Act of 1984, over

(ii) the account limit which would have applied under this section to such taxable year if this section had applied to such taxable year.

(g) Employer taxed on income of welfare benefit fund in certain cases

(1) In general

In the case of any welfare benefit fund which is not an organization described in paragraph (7), (9), (17), or (20) of section 501(c), the employer shall include in gross income for any taxable year an amount equal to such fund's deemed unrelated income for the fund's taxable year ending within the employer's taxable year.

(2) Deemed unrelated income

For purposes of paragraph (1), the deemed unrelated income of any welfare benefit fund shall be the amount which would have been its unrelated business taxable income under section 512(a)(3) if such fund were an organization described in paragraph (7), (9), (17), or (20) of section 501(c).

(h) Aggregation rules

For purposes of this subpart—

(1) Aggregation of funds

At the election of the employer, 2 or more welfare benefit funds of such employer may be treated as 1 fund.

(2) Treatment of related employers

Rules similar to the rules of subsections (b), (c), (m), and (n) of section 414 shall apply.

(i) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this subpart. Such regulations may provide that the plan administrator of any welfare benefit fund which is part of a plan to which more than 1 employer contributes shall submit such information to the employers contributing to the fund as may be necessary to enable the employers to comply with the provisions of this section.

(Added Pub. L. 98-369, div. A, title V, § 511(a), July 18, 1984, 98 Stat. 856.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (f)(7)(C)(i), is the date of enactment of division A of Pub. L. 98-369, which was approved July 18, 1984.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 419, 512, 4976 of this title.

PART II—CERTAIN STOCK OPTIONS

§ 422. Qualified stock options

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 421, 422A, 425, 1042, 6039 of this title.

§ 422A. Incentive stock options

[*See main edition for text of* (a) *and* (b)]

(c) Special rules

[*See main edition for text of* (1) *to* (8)]

(9) Special rule when disabled

For purposes of subsection (a)(2), in the case of an employee who is disabled (within the meaning of section 37(e)(3)[1]), the 3-month period of subsection (a)(2) shall be 1 year.

(10) Fair market value

For purposes of this section, the fair market value of stock shall be determined without regard to any restriction other than a restriction which, by its terms, will never lapse.

(As amended Pub. L. 98-369, div. A, title V, § 555(a)(1), div. B, title VI, § 2662(f)(1), July 18, 1984, 98 Stat. 897, 1159.)

REFERENCES IN TEXT

Section 37, referred to in subsec. (c)(9), was renumbered section 22 by section 471(c)(1) of Pub. L. 98-369.

AMENDMENTS

1984—Subsec. (c)(9). Pub. L. 98-369, § 2662(f)(1), substituted "section 37(e)(3)" for "section 105(d)(4)".

Subsec. (c)(10). Pub. L. 98-369, § 555(a)(1), added par. (10).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 555(c)(1) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [probably should be "(a)(1)" which added subsec. (c)(10) of this section] shall apply to options granted after March 20, 1984, except that such subsection shall not apply to any incentive stock option granted before September 20, 1984, pursuant to a plan adopted or corporate action taken by the board of directors of the grantor corporation before May 15, 1984."

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[1] See References in Text note below.

Amendment by section 2662 of Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

Section Referred to in Other Sections

This section is referred to in sections 57, 421, 425, 1042, 6039 of this title.

§ 423. Employee stock purchase plans

(a) General rule

Section 421(a) shall apply with respect to the transfer of a share of stock to an individual pursuant to his exercise of an option granted after December 31, 1963 (other than a restricted stock option granted pursuant to a plan described in section 424(c)(3)(B)), under an employee stock purchase plan (as defined in subsection (b)) if—

(1) no disposition of such share is made by him within 2 years after the date of the granting of the option nor within 6 months after the transfer of such share to him; and

[*See main edition for text of* (2); (b) *and* (c)]

(As amended Pub. L. 98-369, div. A, title X, § 1001(b)(5), July 18, 1984, 98 Stat. 1011.)

Amendments

1984—Subsec. (a)(1). Pub. L. 98-369 substituted "6 months" for "1 year".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

Section Referred to in Other Sections

This section is referred to in sections 421, 424, 425, 1042, 6039 of this title.

§ 424. Restricted stock options

Section Referred to in Other Sections

This section is referred to in sections 421, 422, 422A, 423, 425, 1042, 6039 of this title.

§ 425. Definitions and special rules

[*See main edition for text of* (a) *to* (g)]

(h) Modification, extension, or renewal of option

[*See main edition for text of* (1) *and* (2)]

(3) Definition of modification

The term "modification" means any change in the terms of the option which gives the employee additional benefits under the option, but such term shall not include a change in the terms of the option—

(A) attributable to the issuance or assumption of an option under subsection (a);

(B) to permit the option to qualify under sections 422(b)(6), 423(b)(9), and 424(b)(2); or

(C) in the case of an option not immediately exercisable in full, to accelerate the time at which the option may be exercised.

If a restricted stock option is exercisable after the expiration of 10 years from the date such option is granted, subparagraph (B) shall not apply unless the terms of the option are also changed to make it not exercisable after the expiration of such period.

[*See main edition for text of* (i) *and* (j)]

(As amended Pub. L. 98-369, div. A, title V, § 555(b), July 18, 1984, 98 Stat. 898.)

Amendments

1984—Subsec. (h)(3)(B). Pub. L. 98-369 struck out reference to section 422A(b)(5).

Effective Date of 1984 Amendment

Section 555(c)(3) of Pub. L. 98-369 provided that: "The amendment made by subsection (c) [probably should be "(b)" which amended subsec. (h)(3)(B) of this section] shall apply with respect to modifications of options after March 20, 1984."

Subchapter E—Accounting Periods and Methods of Accounting

PART I—ACCOUNTING PERIODS

§ 441. Period for computation of taxable income

[*See main edition for text of* (a)]

(b) Taxable year

For purposes of this subtitle, the term "taxable year" means—

(1) the taxpayer's annual accounting period, if it is a calendar year or a fiscal year;

(2) the calendar year, if subsection (g) applies;

(3) the period for which the return is made, if a return is made for a period of less than 12 months; or

(4) in the case of a FSC or DISC filing a return for a period of at least 12 months, the period determined under subsection (h).

[*See main edition for text of* (c) *to* (e)]

(f) Election of year consisting of 52-53 weeks

[*See main edition for text of* (1)]

(2) Special rules for 52-53-week year

(A) Effective dates

In any case in which the effective date or the applicability of any provision of this title is expressed in terms of taxable years beginning, including, or ending with reference to a specified date which is the first or last day of a month, a taxable year described in paragraph (1) shall (except for purposes of the computation under section 15) be treated—

[*See main edition for text of* (i) *and* (ii)]

as the case may be.

[*See main edition for text of* (B), (3); (g)]

(h) Taxable year of FSC's and DISC's

(1) In general

For purposes of this subtitle, the taxable year of any FSC or DISC shall be the taxable year of that shareholder (or group of shareholders with the same 12-month taxable year) who has the highest percentage of voting power.

(2) Special rule where more than one shareholder (or group) has highest percentage

If 2 or more shareholders (or groups) have the highest percentage of voting power under paragraph (1), the taxable year of the FSC or DISC shall be the same 12-month period as that of any such shareholder (or group).

(3) Subsequent changes of ownership

The Secretary shall prescribe regulations under which paragraphs (1) and (2) shall apply to a change of ownership of a corporation after the taxable year of the corporation has been determined under paragraph (1) or (2) only if such change is a substantial change of ownership.

(4) Voting power determined

For purposes of this subsection, voting power shall be determined on the basis of total combined voting power of all classes of stock of the corporation entitled to vote.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(b)(2), title VIII, § 803, 98 Stat. 830, 1000.)

AMENDMENTS

1984—Subsec. (b)(4). Pub. L. 98-369, § 803(a), added par. (4).

Subsec. (f)(2)(A). Pub. L. 98-369, § 474(b)(2), substituted "section 15" for "section 21" in provisions preceding cl. (i).

Subsec. (h). Pub. L. 98-369, § 803(b), added subsec. (h).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(b)(2) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 803 of Pub. L. 98-369 applicable to any DISC established after Mar. 21, 1984, see section 805(a)(4) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

§ 443. Returns for a period of less than 12 months

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3, 441, 536, 546, 557, 811, 852, 857, 1362, 1398, 6012, 6013 of this title.

PART II—METHODS OF ACCOUNTING

SUBPART A—METHODS OF ACCOUNTING IN GENERAL

§ 446. General rule for methods of accounting

[*See main edition for text of* (a) *to* (e)]

(f) Failure to request change of method of accounting

If the taxpayer does not file with the Secretary a request to change the method of accounting, the absence of the consent of the Secretary to a change in the method of accounting shall not be taken into account—

(1) to prevent the imposition of any penalty, or the addition of any amount to tax, under this title, or

(2) to diminish the amount of such penalty or addition to tax.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 161(a), 98 Stat. 696.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-369 added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 161(b) of Pub. L. 98-369 provided that: "The amendment made by this section [enacting subsec. (f) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984]."

SUBPART B—TAXABLE YEAR FOR WHICH ITEMS OF GROSS INCOME INCLUDED

§ 451. General rule for taxable year of inclusion

MODIFICATION OF REGULATIONS ON THE COMPLETED CONTRACT METHOD OF ACCOUNTING

Pub. L. 97-248, title II, § 229, Sept. 3, 1982, 96 Stat. 493, as amended by Pub. L. 98-369, div. A, title VII, § 712(m), July 18, 1984, 98 Stat. 955, provided that:

[*See main edition for text of* (a) *and* (b)]

"(c) EFFECTIVE DATES; SPECIAL RULES.—

[*See main edition for text of* (1) *to* (3)]

"(4) UNDERPAYMENTS OF ESTIMATED TAX FOR 1982.—To the extent provided in regulations, no addition to tax shall be made under section 6654 or 6655 of the Internal Revenue Code of 1954 for the taxpayer's first taxable year ending after December 31, 1982, by reason of a long-term contract, but only with respect to installments required to be paid before April 13, 1983."

§ 453. Installment method

[*See main edition for text of* (a) *to* (f)]

(g) Sale of depreciable property to 80-percent owned entity

[*See main edition for text of* (1) *and* (2)]

(h) Use of installment method by shareholders in section 337 liquidations

(1) Receipt of obligations not treated as receipt of payment

[*See main edition for text of* (A) *and* (B)]

(C) Special rule where obligor and shareholder are related persons

If the obligor of any installment obligation and the shareholder are married to each other or are related persons (within the meaning of section 1239(b)), to the extent such installment obligation is attributable to the disposition by the corporation of depreciable property—

[*See main edition for text of* (i) *and* (ii), (D) *and* (E), (2)]

(i) Recognition of recapture income in year of disposition

(1) In general

In the case of any installment sale of property to which subsection (a) applies—

(A) notwithstanding subsection (a), any recapture income shall be recognized in the year of the disposition, and

(B) any gain in excess of the recapture income shall be taken into account under the installment method.

(2) Recapture income

For purposes of paragraph (1), the term "recapture income" means, with respect to any installment sale, the aggregate amount which would be treated as ordinary income under section 1245 or 1250 for the taxable year of the disposition if all payments to be received were received in the taxable year of disposition.

[See main edition for text of (j)]

(As amended Pub. L. 98-369, div. A, title I, § 112(a), title IV, § 421(b)(6)(B), (C), July 18, 1984, 98 Stat. 635, 794.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-369, § 421(b)(6)(C), in heading struck out "spouse or" after "property to".

Subsec. (h)(1)(C). Pub. L. 98-369, § 421(b)(6)(B), inserted "married to each other or are".

Subsec. (i). Pub. L. 98-369, § 112(a), amended subsec. (i) generally, substituting provisions relating to recognition of recapture income in year of disposition for provisions relating to application of subsec. (a) in the case of an installment sale of section 179 property.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 112(b) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending subsec. (i) of this section] shall apply with respect to dispositions made after June 6, 1984.

"(2) EXCEPTION.—The amendments made by this section shall not apply with respect to any disposition conducted pursuant to a contract which was binding on March 22, 1984, and at all times thereafter.

"(3) SPECIAL RULE FOR CERTAIN DISPOSITIONS BEFORE OCTOBER 1, 1984.—The amendments made by this section shall not apply to any disposition before October 1, 1984, of all or substantially all of the personal property of a cable television business pursuant to a written offer delivered by the seller on June 20, 1984, but only if the last payment under the installment contract is due no later than October 1, 1989."

Amendment by section 421(b)(6)(B), (C) of Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 381, 453B, 644, 679, 691, 3406, 6158 of this title.

§ 453B. Gain or loss disposition of installment obligations

[See main edition for text of (a) to (c)]

(d) Effect of distribution in certain liquidations

[See main edition for text of (1)]

(2) Liquidations to which section 337 applies

If—

[See main edition for text of (A) and (B)]

then no gain or loss shall be recognized to such corporation by reason of such distribution. The preceding sentence shall not apply to the extent that under subsection (a) gain to the distributing corporation would be considered as gain to which section 341(f), 617(d)(1), 1245(a), 1250(a), 1252(a), 1254(a), or 1276(a) applies. In the case of any installment obligation which would have met the requirements of subparagraphs (A) and (B) of the first sentence of this paragraph but for section 337(f), gain shall be recognized to such corporation by reason of such distribution only to the extent gain would have been recognized under section 337(f) if such corporation had sold or exchanged such installment obligation on the date of such distribution.

(e) Life insurance companies

(1) In general

In the case of a disposition of an installment obligation by any person other than a life insurance company (as defined in section 816(a)) to such an insurance company or to a partnership of which such an insurance company is a partner, no provision of this subtitle providing for the nonrecognition of gain shall apply with respect to any gain resulting under subsection (a). If a corporation which is a life insurance company for the taxable year was (for the preceding taxable year) a corporation which was not a life insurance company, such corporation shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year, all installment obligations which it held on such last day. A partnership of which a life insurance company becomes a partner shall, for purposes of this subsection and subsection (a), be treated as having transferred to a life insurance company, on the last day of the preceding taxable year of such partnership, all installment obligations which it holds at the time such insurance company becomes a partner.

(2) Special rule where life insurance company elects to treat income as not related to insurance business

Paragraph (1) shall not apply to any transfer or deemed transfer of an installment obligation if the life insurance company elects (at such time and in such manner as the Secretary may by regulations prescribe) to determine its life insurance company taxable income—

(A) by returning the income on such installment obligation under the installment method prescribed in section 453, and

(B) as if such income were an item attributable to a noninsurance business (as defined in section 806(c)(3)).

[See main edition for text of (f)]

(g) Transfers between spouses or incident to divorce

In the case of any transfer described in subsection (a) of section 1041—

(1) subsection (a) of this section shall not apply, and

(2) the same tax treatment with respect to the transferred installment obligation shall apply to the transferee as would have applied to the transferor.

(As amended Pub. L. 98-369, div. A, title I, § 43(c)(2), title II, § 211(b)(6), title IV, §§ 421(b)(3), 492(b)(3), July 18, 1984, 98 Stat. 558, 754, 794, 854.)

Amendments

1984—Subsec. (d)(2). Pub. L. 98-369, § 492(b)(3), struck out "1251(c)," after "1250(a)," in provision following subpar. (B).

Pub. L. 98-369, § 43(c)(2), substituted "1254(a), or 1276(a)" for "or 1254(a)".

Subsec. (e)(1). Pub. L. 98-369, § 211(b)(6)(A), substituted "section 816(a)" for "section 801(a)".

Subsec. (e)(2). Pub. L. 98-369, § 211(b)(6)(B), substituted "as not related to insurance business" for "as investment income" in heading, and in text substituted "as if such income were an item attributable to a noninsurance business (as defined in section 806(c)(3))" for "if such income would not otherwise be returnable as an item referred to in section 804(b) or as long-term capital gain, as if the income on such obligations were income specified in section 804(b)".

Subsec. (g). Pub. L. 98-369, § 421(b)(3), added subsec. (g).

Effective Date of 1984 Amendment

Amendment of subsec. (d)(2) by section 43(c)(2) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 211(b)(6) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Enactment of subsec. (g) by section 421(b)(3) of Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

Amendment by section 492(b)(3) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98-369, set out as a note under section 170 of this title.

Treatment of Elections Under Section 453B(e)(2)

Section 217(b) of Pub. L. 98-369 provided that: "If an election is made under section 453B(e)(2) before January 1, 1984, with respect to any installment obligation, any income from such obligation shall be treated as attributable to a noninsurance business (as defined in section 806(c)(3) of the Internal Revenue Code of 1954)."

Section Referred to in Other Sections

This section is referred to in sections 311, 336, 337, 467, 691, 1255, 1278 of this title.

§ 454. Obligations issued at discount

Section Referred to in Other Sections

This section is referred to in sections 852, 1037, 1283, 7871 of this title.

§ 457. Deferred compensation plans with respect to service for State and local governments

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Tax treatment of participants where plan or arrangement of State is not eligible

[*See main edition for text of* (*1*)]

(2) Exceptions

Paragraph (1) shall not apply to—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) that portion of any plan which consists of a transfer of property described in section 83, and

(D) that portion of any plan which consists of a trust to which section 402(b) applies.

[(E) Redesignated (D)]

[*See main edition for text of* (*3*)]

(As amended Pub. L. 98-369, div. A, title IV, § 491(d)(33), July 18, 1984, 98 Stat. 851.)

Amendments

1984—Subsec. (e)(2). Pub. L. 98-369, § 491(d)(33), struck out subpar. (C) which provided that par. (1) of this subsection not apply to a qualified bond purchase plan described in section 405(a), and redesignated subpars. (D) and (E) as (C) and (D), respectively.

Effective Date of 1984 Amendment

Amendment by section 491(d)(33) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Section Referred to in Other Sections

This section is referred to in section 3121 of this title.

SUBPART C—TAXABLE YEAR FOR WHICH DEDUCTIONS TAKEN

Sec.
467. Certain payments for use of property or services.[1]
468. Special rules for mining and solid waste reclamation and closing costs.
468A. Special rules for nuclear decommissioning costs.

Amendments

1984—Pub. L. 98-369, div. A, title I, §§ 91(b)(2), (c)(2), 92(b), July 18, 1984, 98 Stat. 604, 606, 612, added items 467, 468, and 468A.

§ 461. General rule for taxable year of deduction

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Contested liabilities

If—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) but for the fact that the asserted liability is contested, a deduction would be allowed for the taxable year of the transfer (or for an

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[1] So in original. Does not conform to section catchline.

earlier taxable year) determined after application of subsection (h),

then the deduction shall be allowed for the taxable year of the transfer. This subsection shall not apply in respect of the deduction for income, war profits, and excess profits taxes imposed by the authority of any foreign country or possession of the United States.

[See main edition for text of (g)]

(h) Certain liabilities not incurred before economic performance

(1) In general

For purposes of this title, in determining whether an amount has been incurred with respect to any item during any taxable year, the all events test shall not be treated as met any earlier than when economic performance with respect to such item occurs.

(2) Time when economic performance occurs

Except as provided in regulations prescribed by the Secretary, the time when economic performance occurs shall be determined under the following principles:

(A) Services and property provided to the taxpayer

If the liability of the taxpayer arises out of—

(i) the providing of services to the taxpayer by another person, economic performance occurs as such person provides such services,

(ii) the providing of property to the taxpayer by another person, economic performance occurs as the person provides such property, or

(iii) the use of property by the taxpayer, economic performance occurs as the taxpayer uses such property.

(B) Services and property provided by the taxpayer

If the liability of the taxpayer requires the taxpayer to provide property or services, economic performance occurs as the taxpayer provides such property or services.

(C) Workers compensation and tort liabilities of the taxpayer

If the liability of the taxpayer requires a payment to another person and—

(i) arises under any workers compensation act, or

(ii) arises out of any tort,

economic performance occurs as the payments to such person are made. Subparagraphs (A) and (B) shall not apply to any liability described in the preceding sentence.

(D) Other items

In the case of any other liability of the taxpayer, economic performance occurs at the time determined under regulations prescribed by the Secretary.

(3) Exception for certain recurring items

(A) In general

Notwithstanding paragraph (1) an item shall be treated as incurred during any taxable year if—

(i) the all events test with respect to such item is met during such taxable year (determined without regard to paragraph (1)),

(ii) economic performance with respect to such item occurs within the shorter of—

(I) a reasonable period after the close of such taxable year, or

(II) 8½ months after the close of such taxable year,

(iii) such item is recurring in nature and the taxpayer consistently treats items of such kind as incurred in the taxable year in which the requirements of clause (i) are met, and

(iv) either—

(I) such item is not a material item, or

(II) the accrual of such item in the taxable year in which the requirements of clause (i) are met results in a more proper match against income than accruing such item in the taxable year in which economic performance occurs.

(B) Financial statements considered under subparagraph (A)(iv)

In making a determination under subparagraph (A)(iv), the treatment of such item on financial statements shall be taken into account.

(C) Paragraph not to apply to workers compensation and tort liabilities

This paragraph shall not apply to any item described in subparagraph (C) of paragraph (2).

(4) All events test

For purposes of this subsection, the all events test is met with respect to any item if all events have occurred which determine the fact of liability and the amount of such liability can be determined with reasonable accuracy.

(5) Subsection not to apply to certain cases to which other provisions of this title specifically apply

This subsection shall not apply to any item to which any of the following provisions apply:

(A) Subsection (c) or (f) of section 166 (relating to reserves for bad debts).

(B) Section 463 (relating to vacation pay).

(C) Section 466 (relating to discount coupons).

(D) Any other provisions of this title which specifically provides for a deduction for a reserve for estimated expenses.

(i) Tax shelters may not deduct items earlier than when economic performance occurs

(1) In general

In the case of a tax shelter computing taxable income under the cash receipts and disbursements method of accounting, such tax shelter shall not be allowed a deduction under this chapter with respect to any item any earlier than the time when such item would be treated as incurred under subsection

(h) (determined without regard to paragraph (3) thereof).

(2) Exception (to extent of cash basis) when economic performance occurs within 90 days after the close of the taxable year

(A) In general

Paragraph (1) shall not apply to any item if economic performance with respect to such item occurs within 90 days after the close of the taxable year.

(B) Deduction limited to cash basis

(i) Tax shelter partnerships

In the case of a tax shelter which is a partnership, in applying section 704(d) to a deduction or loss for any taxable year attributable to an item which is deductible by reason of subparagraph (A), the term "cash basis" shall be substituted for the term "adjusted basis".

(ii) Other tax shelters

Under regulations prescribed by the Secretary, in the case of a tax shelter other than a partnership, the aggregate amount of the deductions allowable by reason of subparagraph (A) for any taxable year shall be limited in a manner similar to the limitation under clause (i).

(C) Cash basis defined

For purposes of subparagraph (B), a partner's cash basis in a partnership shall be equal to the adjusted basis of such partner's interest in the partnership, determined without regard to—

(i) any liability of the partnership, and

(ii) any amount borrowed by the partner with respect to such partnership which—

(I) was arranged by the partnership or by any person who participated in the organization, sale, or management of the partnership (or any person related to such person within the meaning of section 168(e)(4)), or

(II) was secured by any assets of the partnership.

(D) Special cash basis rule for spudding of oil or gas wells

Solely for purposes of applying subparagraph (A), economic performance with respect to the act of drilling of an oil or gas well shall be treated as occurring when the drilling of the well is commenced.

(3) Tax shelter defined

For purposes of this subsection, the term "tax shelter" means—

(A) any enterprise (other than a C corporation) if at any time interests in such enterprise have been offered for sale in any offering required to be registered with any Federal or State agency having the authority to regulate the offering of securities for sale,

(B) any syndicate (within the meaning of section 256(e)(3)(B)), and

(C) any tax shelter (within the meaning of section 6661(b)(2)(C)(ii)).

(4) Special rules for farming

In the case of the trade or business of farming (as defined in section 464(e))—

(A) section 464 shall be applied to any tax shelter described in paragraph (3)(C),

(B) section 464 shall be applied before this subsection, and

(C) in determining whether an entity is a tax shelter, the definition of farming syndicate in section 464(c) shall be substituted for subparagraphs (A) and (B) of paragraph (3).

(5) Economic performance

For purposes of this subsection, the term "economic performance" has the meaning given such term by subsection (h).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 91(a), (e), 98 Stat. 598, 607.)

AMENDMENTS

1984—Subsec. (f)(4). Pub. L. 98-369, § 91(e), added "determined after application of subsection (h)".

Subsecs. (h), (i). Pub. L. 98-369, § 91(a), added subsecs. (h) and (i).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 91(g)-(i) of Pub. L. 98-369 provided that:

"(g) EFFECTIVE DATES.—

"(1) IN GENERAL.—Except as provided in this subsection and subsections (h) and (i), the amendments made by this section [enacting sections 88, 468, and 468A of this title, amending sections 172 and 461 of this title] shall apply to amounts with respect to which a deduction would be allowable under chapter 1 of the Internal Revenue Code of 1954 (determined without regard to such amendments) after—

"(A) in the case of amounts to which section 461(h) of such Code (as added by such amendments) applies, the date of the enactment of this Act [July 18, 1984], and

"(B) in the case of amounts to which section 461(i) of such Code (as so added) applies, after March 31, 1984.

"(2) TAXPAYER MAY ELECT EARLIER APPLICATION.—

"(A) IN GENERAL.—In the case of amounts described in paragraph (1)(A), a taxpayer may elect to have the amendments made by this section apply to amounts which—

"(i) are incurred before the date of the enactment of this Act [July 18, 1984] (determined without regard to such amendments), and

"(ii) are incurred on or after the date of the enactment of this Act (determined with regard to such amendments).

"(B) ELECTION TREATED AS CHANGE IN THE METHOD OF ACCOUNTING.—For purposes of section 481 of the Internal Revenue Code of 1954, if an election is made under subparagraph (A) with respect to any amount, the application of the amendments made by this section shall be treated as a change in method of accounting—

"(i) initiated by the taxpayer,

"(ii) made with the consent of the Secretary of the Treasury, and

"(iii) with respect to which section 481 of such Code shall be applied by substituting a 3-year adjustment period for a 10-year adjustment period.

"(3) SECTION 461(h) TO APPLY IN CERTAIN CASES.—Notwithstanding paragraph (1), section 461(h) of the Internal Revenue Code of 1954 (as added by this section) shall be treated as being in effect to the extent necessary to carry out any amendments made by this section which take effect before section 461(h).

"(h) EXCEPTION FOR CERTAIN EXISTING ACTIVITIES AND CONTRACTS.—If—

"(1) Existing accounting practices.—If, on March 1, 1984, any taxpayer was regularly computing his deduction for mining reclamation activities under a current cost method of accounting (as determined by the Secretary of the Treasury or his delegate), the liability for reclamation activities—

"(A) for land disturbed before the date of the enactment of this Act [July 18, 1984], or

"(B) to which paragraph (2) applies,

shall be treated as having been incurred when the land was disturbed.

"(2) Fixed price supply contract.—

"(A) In general.—In the case of any fixed price supply contract entered into before March 1, 1984, the amendments made by subsection (b) [enacting section 468 of this title] shall not apply to any minerals extracted from such property which are sold pursuant to such contract.

"(B) No extension or renegotiation.—Subparagraph (A) shall not apply—

"(i) to any extension of any contract beyond the period such contract was in effect on March 1, 1984, or

"(ii) to any renegotiation of, or other change in, the terms and conditions of such contract in effect on March 1, 1984.

"(l) Transitional Rule for Accrued Vacation Pay.—

"(1) In general.—In the case of any taxpayer—

"(A) with respect to whom a deduction was allowable (other than under section 463 of the Internal Revenue Code of 1954) for vested accrued vacation pay for the last taxable year ending before the date of the enactment of this Act [July 18, 1984], and

"(B) who elects the application of section 463 of such Code for the first taxable year ending after the date of the enactment of this Act,

then, for purposes of section 463(b) of such Code, the opening balance of the taxpayer with respect to any vested accrued vacation pay shall be determined under section 463(b)(1) of such Code.

"(2) Vested accrued vacation pay.—For purposes of this subsection, the term 'vested accrued vacation pay' means any amount allowable under section 162(a) of such Code with respect to vacation pay of employees of the taxpayer (determined without regard to section 463 of such Code)."

Section Referred to in Other Sections

This section is referred to in sections 164, 468A of this title.

§ 463. Accrual of vacation pay

(a) Allowance of deduction

At the election of a taxpayer whose taxable income is computed under an accrual method of accounting, if the conditions of section 162(a) are otherwise satisfied, the deduction allowable under section 162(a) with respect to vacation pay shall be an amount equal to the sum of—

(1) a reasonable addition to an account representing the taxpayer's liability for vacation pay earned by employees before the close of the taxable year and expected to be paid during the taxable year or within 12 months following the close of the taxable year; plus

(2) the amount (if any) of the reduction at the close of the taxable year in the suspense account provided in subsection (c)(2).

Such liability for vacation pay earned before the close of the taxable year shall include amounts which, because of contingencies, would not (but for this section) be deductible under section 162(a) as an accrued expense. All payments with respect to vacation pay shall be charged to such account.

[See main edition for text of (b) to (e)]

(As amended Pub. L. 98-369, div. A, title V, § 561(a), July 18, 1984, 98 Stat. 901.)

Amendments

1984—Subsec. (a)(1). Pub. L. 98-369 substituted "expected to be paid during" for "payable during".

Effective Date of 1984 Amendment

Section 561(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (a)(1) of this section] shall apply to taxable years beginning after March 31, 1984."

Section Referred to in Other Sections

This section is referred to in sections 81, 404, 419, 461 of this title.

§ 464. Limitations on deductions in case of farming syndicates

Section Referred to in Other Sections

This section is referred to in sections 278, 461, 465, 1256 of this title.

§ 465. Deductions limited to amount at risk

(a) Limitation to amount at risk

(1) In general

In the case of—

(A) an individual, and

(B) a C corporation with respect to which the stock ownership requirement of paragraph (2) of section 542(a) is met,

engaged in an activity to which this section applies, any loss from such activity for the taxable year shall be allowed only to the extent of the aggregate amount with respect to which the taxpayer is at risk (within the meaning of subsection (b)) for such activity at the close of the taxable year.

[See main edition for text of (2) and (3)]

(b) Amounts considered at risk

[See main edition for text of (1) and (2)]

(3) Certain borrowed amounts excluded

(A) In general

Except to the extent provided in regulations, for purposes of paragraph (1)(B), amounts borrowed shall not be considered to be at risk with respect to an activity if such amounts are borrowed from any person who has an interest in such activity or from a related person to a person (other than the taxpayer) having such an interest.

(B) Exceptions

(i) Interest as creditor

Subparagraph (A) shall not apply to an interest as a creditor in the activity.

(ii) Interest as shareholder with respect to amounts borrowed by corporation

In the case of amounts borrowed by a corporation from a shareholder, subparagraph (A) shall not apply to an interest as a shareholder.

(C) Related person defined

For purposes of subparagraph (A), the term "related person" has the meaning given such term by section 168(e)(4).

[*See main edition for text of* (*4*) *and* (*5*)]

(c) Activities to which section applies

[*See main edition for text of* (*1*)]

(2) Separate activities

For purposes of this section—

(A) In general

Except as provided in subparagraph (B), a taxpayer's activity with respect to each—

(i) film or video tape,

(ii) section 1245 property which is leased or held for leasing,

(iii) farm,

(iv) oil and gas property (as defined under section 614), or

(v) geothermal property (as defined under section 614),

shall be treated as a separate activity.

(B) Aggregation rules

(i) Special rule for leases of section 1245 property by partnerships or S corporations

In the case of any partnership or S corporation, all activities with respect to section 1245 properties which—

(I) are leased or held for lease, and

(II) are placed in service in any taxable year of the partnership or S corporation,

shall be treated as a single activity.

(ii) Other aggregation rules

Rules similar to the rules of subparagraphs (B) and (C) of paragraph (3) shall apply for purposes of this paragraph.

[*See main edition for text of* (*3*) *to* (*6*)]

(7) Exclusion of active businesses of qualified C corporations

(A) In general

In the case of a taxpayer which is a qualified C corporation—

(i) each qualifying business carried on by such taxpayer shall be treated as a separate activity, and

(ii) subsection (a) shall not apply to losses from such business.

(B) Qualified C corporation

For purposes of subparagraph (A), the term "qualified C corporation" means any corporation described in subparagraph (B) of subsection (a)(1) which is not—

(i) a personal holding company (as defined in section 542(a)),

(ii) a foreign personal holding company (as defined in section 552(a)), or

(iii) a personal service corporation (as defined in section 269A(b) but determined by substituting "5 percent" for "10 percent" in section 269A(b)(2)).

(C) Qualifying business

For purposes of this paragraph, the term "qualifying business" means any active business if—

(i) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 1 full-time employee substantially all the services of whom were in the active management of such business,

(ii) during the entire 12-month period ending on the last day of the taxable year, such corporation had at least 3 full-time, nonowner employees substantially all of the services of whom were services directly related to such business,

(iii) the amount of the deductions attributable to such business which are allowable to the taxpayer solely by reason of sections 162 and 404 for the taxable year exceeds 15 percent of the gross income from such business for such year, and

(iv) such business is not an excluded business.

(D) Special rules for application of subparagraph (C)

(i) Partnerships in which taxpayer is a qualified corporate partner

In the case of an active business of a partnership, if—

(I) the taxpayer is a qualified corporate partner in the partnership, and

(II) during the entire 12-month period ending on the last day of the partnership's taxable year, there was at least 1 full-time employee of the partnership (or of a qualified corporate partner) substantially all the services of whom were in the active management of such business,

then the taxpayer's proportionate share (determined on the basis of its profits interest) of the activities of the partnership in such business shall be treated as activities of the taxpayer (and clause (i) of subparagraph (C) shall not apply in determining whether such business is a qualifying business of the taxpayer).

(ii) Qualified corporate partner

For purposes of clause (i), the term "qualified corporate partner" means any corporation if—

(I) such corporation is a general partner in the partnership,

(II) such corporation has an interest of 10 percent or more in the profits and losses of the partnership, and

(III) such corporation has contributed property to the partnership in an amount not less than the lesser of $500,000 or 10 percent of the net worth of the corporation.

For purposes of subclause (III), any contribution of property other than money shall be taken into account at its fair market value.

(iii) Deduction for owner employee compensation not taken into account

For purposes of clause (iii) of subparagraph (C), there shall not be taken into account any deduction in respect of compensation for personal services rendered by any employee (other than a non-owner employee) of the taxpayer or any member of such employee's family (within the meaning of section 318(a)(1)).

(iv) Special rule for banks

For purposes of clause (iii) of subparagraph (C), in the case of a bank (as defined in section 581) or a financial institution to which section 591 applies—

(I) gross income shall be determined without regard to the exclusion of interest from gross income under section 103, and

(II) in addition to the deductions described in such clause, there shall also be taken into account the amount of the deductions which are allowable for amounts paid or credited to the accounts of depositors or holders of accounts as dividends or interest on their deposits or withdrawable accounts under section 163 or 591.

(v) Special rule for life insurance companies

(I) In general

Clause (iii) of subparagraph (C) shall not apply to any insurance business of a qualified life insurance company.

(II) Insurance business

For purposes of subclause (I), the term "insurance business" means any business which is not a noninsurance business (within the meaning of section 806(c)(3)).

(III) Qualified life insurance company

For purposes of subclause (I), the term "qualified life insurance company" means any company which would be a life insurance company as defined in section 816 if unearned premiums were not taken into account under subsections (a)(2) and (c)(2) of section 816.

(E) Definitions

For purposes of this paragraph—

(i) Non-owner employee

The term "non-owner employee" means any employee who does not own, at any time during the taxable year, more than 5 percent in value of the outstanding stock of the taxpayer. For purposes of the preceding sentence, section 318 shall apply, except that "5 percent" shall be substituted for "50 percent" in section 318(a)(2)(C).

(ii) Excluded business

The term "excluded business" means—

(I) equipment leasing (as defined in paragraph (6)), and

(II) any business involving the use, exploitation, sale, lease, or other disposition of master sound recordings, motion picture films, video tapes, or tangible or intangible assets associated with literary, artistic, musical, or similar properties.

(iii) Special rules relating to communications industry, etc.

(I) Business not excluded where taxpayer not completely at risk

A business involving the use, exploitation, sale, lease, or other disposition of property described in subclause (II) of clause (ii) shall not constitute an excluded business by reason of such subclause if the taxpayer is at risk with respect to all amounts paid or incurred (or chargeable to capital account) in such business.

(II) Certain licensed businesses not excluded

For purposes of subclause (II) of clause (ii), the provision of radio, television, cable television, or similar services pursuant to a license or franchise granted by the Federal Communications Commission or any other Federal, State, or local authority shall not constitute an excluded business by reason of such subclause.

(F) Affiliated group treated as 1 taxpayer

For purposes of this paragraph—

(i) In general

Except as provided in subparagraph (G), the component members of an affiliated group of corporations shall be treated as a single taxpayer.

(ii) Affiliated group of corporations

The term "affiliated group of corporations" means an affiliated group (as defined in section 1504(a)) which files or is required to file consolidated income tax returns.

(iii) Component member

The term "component member" means an includible corporation (as defined in section 1504) which is a member of the affiliated group.

(G) Loss of 1 member of affiliated group may not offset income of personal holding company or personal service corporation

Nothing in this paragraph shall permit any loss of a member of an affiliated group to be used as an offset against the income of any other member of such group which is a personal holding company (as defined in section 542(a)) or a personal service corporation (as defined in section 269A(b) but determined by substituting "5 percent" for "10 percent" in section 269A(b)(2)).

[See main edition for text of (d) and (e)]

(As amended Pub. L. 98-369, div. A, title IV, § 432(a)-(c), title VII, § 721(x)(2), July 18, 1984, 98 Stat. 811, 814, 971.)

AMENDMENTS

1984—Subsec. (a)(1)(B). Pub. L. 98-369, § 721(x)(2), substituted "a C corporation" for "a corporation".

Subsec. (b)(3). Pub. L. 98-369, § 432(c), designated existing provisions as subpar. (A), in subpar. (A) as so designated struck out subpar. designations "(A)" and "(B)" and substituted provisions that, except as provided by regulation, amounts borrowed shall not be considered to be at risk if such amounts are borrowed from any person who has an interest in the activity or from a related person to a person (other than the taxpayer) having such an interest for provision that such amounts would not be considered to be at risk if borrowed from a person who had an interest (other than as a creditor) in such activity or who had a relationship to the taxpayer specified in section 267(b) of this title, and added subpars. (B) and (C).

Subsec. (c)(2). Pub. L. 98-369, § 432(b), designated existing provisions as subpar. (A), in subpar. (A) as so designated, redesignated former subpars. (A) to (E) as cls. (i) to (v), respectively, struck out provision that a partner's interest in a partnership or a shareholder's interest in an S corporation had to be treated as a single activity to the extent that the partnership or the S corporation was engaged in activities described in any subparagraph of this paragraph, and added subpar. (B).

Subsec. (c)(7). Pub. L. 98-369, § 432(a), added par. (7).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 432(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1983; except that any loss from an activity described in section 465(c)(7)(A) of the Internal Revenue Code of 1954 (as amended by this section) which (but for the amendments made by this section) would have been treated as a deduction for the taxpayer's first taxable year beginning after December 31, 1983, under section 465(a)(2) of such Code shall be allowed as a deduction for such first taxable year notwithstanding such amendments."

Amendment by section 721(x)(2) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 48, 1256, 6621, 6659 of this title.

§ 466. Qualified discount coupons redeemed after close of taxable year

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 461 of this title.

§ 467. Certain payments for the use of property or services

(a) Accrual method on present value basis

In the case of the lessor or lessee under any section 467 rental agreement, there shall be taken into account for purposes of this title for any taxable year the sum of—

(1) the amount of the rent which accrues during such taxable year as determined under subsection (b), and

(2) interest for the year on the amounts which were taken into account under this subsection for prior taxable years and which are unpaid.

(b) Accrual of rental payments

(1) Allocation follows agreement

Except as provided in paragraph (2), the determination of the amount of the rent under any section 467 rental agreement which accrues during any taxable year shall be made—

(A) by allocating rents in accordance with the agreement, and

(B) by taking into account any rent to be paid after the close of the period in an amount determined under regulations which shall be based on present value concepts.

(2) Constant rental accrual in case of certain tax avoidance transactions, etc.

In the case of any section 467 rental agreement to which this paragraph applies, the portion of the rent which accrues during any taxable year shall be that portion of the constant rental amount with respect to such agreement which is allocable to such taxable year.

(3) Agreements to which paragraph (2) applies

Paragraph (2) applies to any rental payment agreement if—

(A) such agreement is a disqualified leaseback or long-term agreement, or

(B) such agreement does not provide for the allocation referred to in paragraph (1)(A).

(4) Disqualified leaseback or long-term agreement

For purposes of this subsection, the term "disqualified leaseback or long-term agreement" means any section 467 rental agreement if—

(A) such agreement is part of a leaseback transaction or such agreement is for a term in excess of 75 percent of the statutory recover [4] period for the property, and

(B) a principal purpose for providing increasing rents under the agreement is the avoidance of tax imposed by this subtitle.

(5) Exceptions to disqualification in certain cases

The Secretary shall prescribe regulations setting forth circumstances under which agreements will not be treated as disqualified leaseback or long-term agreements, including circumstances relating to—

(A) changes in amounts paid determined by reference to price indices,

(B) rents based on a fixed percentage of lessee receipts or similar amounts,

(C) reasonable rent holidays, or

(D) changes in amounts paid to unrelated 3rd parties.

(c) Recapture of prior understated inclusions under leaseback or long-term agreements

(1) In general

If—

(A) the lessor under any section 467 rental agreement disposes of any property subject to such agreement during the term of such agreement, and

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[4] So in original. Probably should be "recovery".

(B) such agreement is a leaseback or long-term agreement to which paragraph (2) of subsection (b) did not apply,

the recapture amount shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Recapture amount

For purposes of paragraph (1), the term "recapture amount" means the lesser of—

(A) the prior understated inclusions, or

(B) the excess of the amount realized (or in the case of a disposition other than a sale, exchange, or involuntary conversion, the fair market value of the property) over the adjusted basis of such property.

The amount determined under subparagraph (B) shall be reduced by the amount of any gain treated as ordinary income on the disposition under any other provision of this subtitle.

(3) Prior understated inclusions

For purposes of this subsection, the term "prior understated inclusion" means the excess (if any) of—

(A) the amount which would have been taken into account by the lessor under subsection (a) for periods before the disposition if subsection (b)(2) had applied to the agreement, over

(B) the amount taken into account under subsection (a) by the lessor for periods before the disposition.

(4) Leaseback or long-term agreement

For purposes of this subsection, the term "leaseback or long-term agreement" means any agreement described in subsection (b)(3)(A).

(5) Special rules

Under regulations prescribed by the Secretary—

(A) exceptions similar to the exceptions applicable under section 1245 or 1250 (whichever is appropriate) shall apply for purposes of this subsection,

(B) any transferee in a disposition excepted by reason of subparagraph (A) who has a transferred basis in the property shall be treated in the same manner as the transferor, and

(C) for purposes of sections 163(d), 170(e), 341(e)(12), 453B(d)(2), and 751(c), amounts treated as ordinary income under this section shall be treated in the same manner as amounts treated as ordinary income under section 1245 or 1250.

(d) Section 467 rental agreements

(1) In general

Except as otherwise provided in this subsection, the term "section 467 rental agreements" means any rental agreement for the use of tangible property under which—

(A) there is at least one amount allocable to the use of property during a calendar year which is to be paid after the close of the calendar year following the calendar year in which such use occurs, or

(B) there are increases in the amount to be paid as rent under the agreement.

(2) Section not to apply to agreements involving payments of $250,000 or less

This section shall not apply to any amount to be paid for the use of property if the sum of the following amounts does not exceed $250,000—

(A) the aggregate amount of payments received as consideration for such use of property, and

(B) the aggregate value of any other consideration to be received for such use of property.

For purposes of the preceding sentence, rules similar to the rules of clauses (ii) and (iii) of section 1274(c)(2)(C) shall apply.

(e) Definitions

For purposes of this section—

(1) Constant rental amount

The term "constant rental amount" means, with respect to any section 467 rental agreement, the amount which, if paid as of the close of each lease period under the agreement, would result in an aggregate present value equal to the present value of the aggregate payments required under the agreement.

(2) Leaseback transaction

A transaction is a leaseback transaction if it involves a leaseback to any person who had an interest in such property at any time within 2 years before such leaseback (or to a related person).

(3) Statutory recovery period

(A) In general

In the case of property which is:	The statutory recovery period is:
3-year property	3 years
5-year property	5 years
10-year property	10 years
Low-income housing	15 years
15-year public utility property	15 years
18-year real property	18 years

(B) Special rule for property which is not recovery property

In the case of any property which is not recovery property, subparagraph (A) shall be applied as if such property were recovery property.

(4) Discount and interest rate

For purposes of computing present value and interest under subsection (a)(2), the rate used shall be equal to 110 percent of the applicable Federal rate determined under section 1274(d) (compounded semiannually) which is in effect at the time the agreement is entered into with respect to debt instruments having a maturity equal to the term of the agreement.

(5) Related person

The term "related person" has the meaning given to such term by section 168(d)(4)(D).

(6) Certain options of lessee to renew not taken into account

Except as provided in regulations prescribed by the Secretary, there shall not be taken into account in computing the term of any agreement for purposes of this section any extension which is solely at the option of the lessee.

(f) Comparable rules where agreement for decreasing payments

Under regulations prescribed by the Secretary, rules comparable to the rules of this section shall also apply in the case of any agreement where the amount paid under the agreement for the use of property decreases during the term of the agreement.

(g) Comparable rules for services

Under regulations prescribed by the Secretary, rules comparable to the rules of subsection (a)(2) shall also apply in the case of payments for services which meet requirements comparable to the requirements of subsection (d).

(h) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of contingent payments.

(Added Pub. L. 98–369, div. A, title I, § 92(a), July 18, 1984, 98 Stat. 609.)

EFFECTIVE DATE

Section 92(c) of Pub. L. 98–369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section] shall apply with respect to agreements entered into after June 8, 1984.

"(2) EXCEPTIONS.—The amendments made by this section shall not apply—

"(A) to any agreement entered into pursuant to a written agreement which was binding on June 8, 1984, and at all times thereafter,

"(B) subject to the provisions of paragraph (3), to any agreement to lease property if—

"(i) there was in effect a firm plan, evidenced by a board of directors' resolution, memorandum of agreement, or letter of intent on March 15, 1984, to enter into such an agreement, and

"(ii) construction of the property was commenced (but such property was not placed in service) on or before March 15, 1984, and

"(C) to any agreement to lease property if—

"(i) the lessee of such property adopted a firm plan to lease the property, evidenced by a resolution of the Finance Committee of the Board of Directors of such lessee, on February 10, 1984,

"(ii) the sum of the present values of the rents payable by the lessee under the lease at the inception thereof equals at least $91,223,034, assuming for purposes of this clause—

"(I) the annual discount rate is 12.6 percent,

"(II) the initial payment of rent occurs 12 months after the commencement of the lease, and

"(III) subsequent payments of rents occur on the anniversary date of the initial payment, and

"(iii) during—

"(I) the first 5 years of the lease, at least 9 percent of the rents payable by the lessee under the agreement are paid, and

"(II) the second 5 years of the lease, at least 16.25 percent of the rents payable by the lessee under the agreement are paid.

Paragraph (3)(B)(ii)(II) shall apply for purposes of clauses (ii) and (iii) of subparagraph (C), as if, as of the beginning of the last stage, the separate agreements were treated as 1 single agreement relating to all property covered by the agreements, including any property placed in service before the property to which the agreement for the last stage relates. If the lessor under the agreement described in subparagraph (C) leases the property from another person, this exception shall also apply to any agreement between the lessor and such person which is integrally related to, and entered into at the same time as, such agreement, and which calls for comparable payments of rent over the primary term of the agreement.

"(3) SCHEDULE OF DEEMED RENTAL PAYMENTS.—

"(A) IN GENERAL.—In any case to which paragraph (2)(B) applies, for purposes of the Internal Revenue Code of 1954, the lessor shall be treated as having received or accrued (and the lessee shall be treated as having paid or incurred) rents equal to the greater of—

"(i) the amount of rents actually paid under the agreement during the taxable year, or

"(ii) the amount of rents determined in accordance with the schedule under subparagraph (B) for such taxable year.

"(B) SCHEDULE.—

"(i) IN GENERAL.—The schedule under this subparagraph is as follows:

Portion of lease term:	Cumulative percentage of total rent deemed paid
1st ⅕	10
2nd ⅕	25
3rd ⅕	45
4th ⅕	70
Last ⅕	100.

"(ii) OPERATING RULES.—For purposes of this schedule—

"(I) the rent allocable to each taxable year within any portion of a lease term described in such schedule shall be a level pro rata amount properly allocable to such taxable year, and

"(II) any agreement relating to property which is to be placed in service in 2 or more stages shall be treated as 2 or more separate agreements.

"(C) PARAGRAPH NOT TO APPLY.—This paragraph shall not apply to any agreement if the sum of the present values of all payments under the agreement is greater than the sum of the present value of all the payments deemed to be paid or received under the schedule under subparagraph (B). For purposes of computing any present value under this subparagraph, the annual discount rate shall be equal to 12 percent, compounded semiannually."

§ 468. Special rules for mining and solid waste reclamation and closing costs

(a) Establishment of reserves for reclamation and closing costs

(1) Allowance of deduction

If a taxpayer elects the application of this subsection with respect to any mining or solid waste disposal property, the amount of any deduction for qualified reclamation or closing costs for any taxable year to which such election applies shall be equal to the current reclamation or closing costs allocable to—

(A) in the case of qualified reclamation costs, the portion of the reserve property which was disturbed during such taxable year, and

(B) in the case of qualified closing costs, the production from the reserve property during such taxable year.

(2) Opening balance and adjustments to reserve

(A) Opening balance

The opening balance of any reserve for its first taxable year shall be zero.

(B) Increase for interest

(i) In general

A reserve shall be increased each taxable year by an amount equal to the amount of interest which would be earned during such taxable year on the opening balance of such reserve for such taxable year if such interest were computed—

(I) at the Federal short-term rate or rates (determined under section 1274) in effect, and

(II) by compounding semiannually.

(ii) Phase-in of interest rate

In the case of taxable years ending before 1987, the rate determined under clause (i)(I) shall be equal to the following percentage of such rate (determined without regard to this clause):

"In the case of taxable years ending in:	The percentage is:
1984 or 1985	70
1986	85.

(C) Reserve to be charged for amounts paid

Any amount paid by the taxpayer during any taxable year for qualified reclamation or closing costs allocable to portions of the reserve property for which the election under paragraph (1) was in effect shall be charged t[illegible] appropriate reserve as of the close of the taxable year.

(3) Allowance of deduction for excess amounts paid

There shall be allowed as a deduction for any taxable year the excess of—

(A) the amounts described in paragraph (2)(C) paid during such taxable year, over

(B) the closing balance of the reserve for such taxable year (determined without regard to paragraph (2)(C)).

(4) Limitation on balance as of the close of any taxable year

(A) Reclamation reserves

In the case of any reserve for qualified reclamation costs, there shall be included in gross income for any taxable year an amount equal to the excess of—

(i) the closing balance of the reserve for such taxable year, over

(ii) the current reclamation costs of the taxpayer for all portions of the reserve property disturbed during any taxable year to which the election under paragraph (1) applies.

(B) Closing costs reserves

In the case of any reserve for qualified closing costs, there shall be included in gross income for any taxable year an amount equal to the excess of—

(i) the closing balance of the reserve for such taxable year, over

(ii) the current closing cost of the taxpayer with respect to the reserve property, determined as if all production with respect to the reserve property for any taxable year to which the election under paragraph (1) applies had occurred in such taxable year.

(C) Order of application

This paragraph shall be applied after all adjustments to the reserve have been made for the taxable year.

(5) Income inclusions on completion or disposition

Proper inclusion in income shall be made upon—

(A) the revocation of an election under paragraph (1), or

(B) completion of the closing, or disposition of any portion, of a reserve property.

(b) Allocation for property where election not in effect for all taxable years

If the election under subsection (a)(1) is not in effect for 1 or more taxable years in which the reserved property is disturbed (or production occurs), items with respect to the reserve property shall be allocated to the reserve in such manner as the Secretary may prescribe by regulations.

(c) Revocation of election; separate reserves

(1) Revocation of election

(A) In general

The taxpayer may revoke an election under subsection (a)(1) with respect to any property. Such revocation, once made, shall be irrevocable.

(B) Time and manner of revocation

Any revocation under subparagraph (A) shall be made at such time and in such manner as the Secretary may prescribe.

(2) Separate reserves required

If a taxpayer makes an election under subsection (a)(1), the taxpayer shall establish with respect to the property for which the election was made—

(A) a separate reserve for qualified reclamation costs, and

(B) a separate reserve for qualified closing costs.

(d) Definitions and special rules relating to reclamation and closing costs

For purposes of this section—

(1) Current reclamation and closing costs

(A) Current reclamation costs

The term "current reclamation costs" means the amount which the taxpayer would be required to pay for qualified reclamation costs if the reclamation activities were performed currently.

(B) Current closing costs

(i) In general

The term "current closing costs" means the amount which the taxpayer would be required to pay for qualified closing costs if the closing activities were performed currently.

(ii) Costs computed on unit-of-production or capacity method

Estimated closing costs shall—

(I) in the case of the closing of any mine site, be computed on the unit-of-production method of accounting, and

(II) in the case of the closing of any solid waste disposal site, be computed on the unit-of-capacity method.

(2) Qualified reclamation or closing costs

The term "qualified reclamation or closing costs" means any of the following expenses:

(A) Mining reclamation and closing costs

Any expenses incurred for any land reclamation or closing activity which is conducted in accordance with a reclamation plan (including an amendment or modification thereof)—

(i) which—

(I) is submitted pursuant to the provisions of section 511 or 528 of the Surface Mining Control and Reclamation Act of 1977 (as in effect on January 1, 1984), and

(II) is part of a surface mining and reclamation permit granted under the provisions of title V of such Act (as so in effect), or

(ii) which is submitted pursuant to any other Federal or State law which imposes surface mining reclamation and permit requirements substantially similar to the requirements imposed by title V of such Act (as so in effect).

(B) Solid waste disposal and closing costs

(i) In general

Any expenses incurred for any land reclamation or closing activity in connection with any solid waste disposal site which is conducted in accordance with any permit issued pursuant to—

(I) any provision of the Solid Waste Disposal Act (as in effect on January 1, 1984) requiring such activity, or

(II) any other Federal, State, or local law which imposes requirements substantially similar to the requirements imposed by the Solid Waste Disposal Act (as so in effect).

(ii) Exception for certain hazardous waste sites

Clause (i) shall not apply to that portion of any property which is disturbed after the property is listed in the national contingency plan established under section 105 of the Comprehensive Environmental, Compensation, and Liability Act of 1980.

(3) Property

The term "property" has the meaning given such term by section 614.

(4) Reserve property

The term "reserve property" means any property with respect to which a reserve is established under subsection (a)(1).

(Added Pub. L. 98-369, div. A, title I, § 91(b)(1), July 18, 1984, 98 Stat. 601.)

REFERENCES IN TEXT

The Surface Mining Control and Reclamation Act of 1977, referred to in subsec. (d)(2)(A), is Pub. L. 95-87, Aug. 3, 1977, 91 Stat. 445, as amended. Title V of that Act is classified generally to subchapter V (§ 1251 et seq.) of chapter 25 of Title 30, Mineral Lands and Mining. Sections 511 and 528 of that Act are classified to sections 1261 and 1278, respectively, of Title 30. For complete classification of this Act to the Code, see Short Title note set out under section 1201 of Title 30 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (d)(2)(B)(i), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of Title 42 and Tables.

Section 105 of the Comprehensive Environmental, Compensation, and Liability Act of 1980, referred to in subsec. (d)(2)(B)(ii), probably means section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, which is classified to section 9605 of Title 42.

EFFECTIVE DATE

Section applicable to amounts with respect to which a deduction would be allowable under chapter 1 of this title after Mar. 31, 1984, or July 18, 1984, see section 91(g) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 461 of this title.

§ 468A. Special rules for nuclear decommissioning costs

(a) In general

If the taxpayer elects the application of this subsection, there shall be allowed as a deduction for any taxable year the amount of payments made by the taxpayer to a Nuclear Decommissioning Reserve Fund (hereinafter referred to as the "Fund") during such taxable year.

(b) Limitation on amounts paid into Fund

The amount which a taxpayer may pay into the Fund for any taxable year shall not exceed the lesser of—

(1) the amount of nuclear decommissioning costs allocable to the Fund which is included in the taxpayer's cost of service for ratemaking purposes for such taxable year, or

(2) the ruling amount applicable to such taxable year.

(c) Income and deductions of the taxpayer

(1) Inclusion of amounts distributed

There shall be includible in the gross income of the taxpayer for any taxable year—

(A) any amount distributed from the Fund during such taxable year, other than any amount distributed to pay costs described in subsection (e)(2)(B), and

(B) except to the extent provided in regulations, amounts properly includible in gross income in the case of any deemed distribution under subsection (e)(6), any termination under subsection (e)(7), or the disposition of any interest in the nuclear powerplant.

(2) Deduction when economic performance occurs

In addition to any deduction under subsection (a), there shall be allowable as a deduction for any taxable year the amount of the nuclear decommissioning costs with respect to which economic performance (within the meaning of section 461(h)(2)) occurs during such taxable year.

(d) Ruling amount

For purposes of this subsection—

(1) Request required

No deduction shall be allowed for any payment to the Fund unless the taxpayer requests, and receives, from the Secretary a schedule of ruling amounts.

(2) Ruling amount

The term "ruling amount" means, with respect to any taxable year, the amount which the Secretary determines under paragraph (1) to be necessary to—

(A) fund that portion of the nuclear decommissioning costs of the taxpayer with respect to the nuclear powerplant which bears the same ratio to the total nuclear decommissioning costs with respect to such nuclear powerplant as the period for which the Fund is in effect bears to the estimated useful life of such nuclear powerplant, and

(B) prevent any excessive funding of such costs or the funding of such costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate.

(3) Review of amount

The Secretary shall at least once during the useful life of the nuclear powerplant (or, more frequently, upon the request of the taxpayer) review, and revise if necessary, the schedule of ruling amounts determined under paragraph (1).

(e) Nuclear Decommissioning Trust Fund

(1) In general

Each taxpayer who elects the application of this subsection shall establish a Nuclear Decommissioning Trust Fund with respect to each nuclear powerplant to which such election applies.

(2) Taxation of fund

There is imposed on the gross income of the Fund for any taxable year a tax at a rate equal to the maximum rate in effect under section 11(b), except that—

(A) there shall not be included in the gross income of the Fund any payment to the Fund with respect to which a deduction is allowable under subsection (a), and

(B) there shall be allowed as a deduction any amount paid by the Fund described in paragraph (4)(B) (other than to the taxpayer).

(3) Contributions to Fund

The Fund shall not accept any payments (or other amounts) other than payments with respect to which a deduction is allowable under subsection (a).

(4) Use of Fund

The Fund shall be used exclusively for—

(A) satisfying, in whole or in part, any liability of any person contributing to the Fund for the decommissioning of a nuclear powerplant (or unit thereof), and

(B) to pay administrative costs (including taxes) and other incidental expenses of the Fund (including legal, accounting, actuarial, and trustee expenses) in connection with the operation of the Fund.

(5) Prohibitions against self-dealing

Under regulations prescribed by the Secretary, for purposes of section 4951 (and so much of this title as relates to such section), the Fund shall be treated in the same manner as a trust described in section 501(c)(21).

(6) Disqualification of Fund

In any case in which the Fund violates any provision of this subsection or section 4951, the Secretary may disqualify such Fund from the application of this subsection. In any case to which this subparagraph applies, the Fund shall be treated as having distributed all of its funds on the date such determination takes effect.

(7) Termination upon completion

Upon substantial completion of the nuclear decommissioning of the nuclear powerplant with respect to which a Fund relates, the taxpayer shall terminate such Fund.

(f) Nuclear powerplant

The term "nuclear powerplant" includes any unit thereof.

(Added Pub. L. 98-369, div. A, title I, § 91(c)(1), July 18, 1984, 98 Stat. 604.)

EFFECTIVE DATE

Section applicable to amounts with respect to which a deduction would be allowable under chapter 1 of this title after Mar. 31, 1984, or July 18, 1984, see section 91(g) of Pub. L. 98-369 set out as an Effective Date of 1984 Amendment note under section 461 of this title.

SUBPART D—INVENTORIES

§ 472. Last-in, first-out inventories

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Conformity rules applied on controlled group basis

(1) In general

Except as otherwise provided in regulations, all members of the same group of financially related corporations shall be treated as 1 taxpayer for purposes of subsections (c) and (e)(2).

(2) Group of financially related corporations

For purposes of paragraph (1), the term "group of financially related corporations" means—

(A) any affiliated group as defined in section 1504 determined by substituting "50 percent" for "80 percent" each place it appears in section 1504(a) and without regard to section 1504(b), and

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(B) any other group of corporations which consolidate or combine for purposes of financial statements.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 95(a), 98 Stat. 616.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-369 added subsec. (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 95(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [adding subsec. (g) of this section] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984]."

PART III—ADJUSTMENTS

§ 481. Adjustments required by changes in method of accounting

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 404A, 447, 458, 463, 466 of this title; title 42 section 401.

§ 482. Allocation of income and deductions among taxpayers

REVISION OF REGULATIONS

For requirement that, not later than 180 days after July 18, 1984, the Secretary of the Treasury modify the safe harbor interest rates applicable under the regulations prescribed under this section so that such rates are consistent with the rates applicable under section 483 of this title by reason of the amendments made by Pub. L. 98-369, see section 44(b)(2) of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 845, 925, 927, 936, 994, 1505 of this title.

§ 483. Interest on certain deferred payments

(a) Amount constituting interest

For purposes of this title, in the case of any payment—

(1) under any contract for the sale or exchange of any property, and

(2) to which this section applies,

there shall be treated as interest that portion of the total unstated interest under such contract which, as determined in a manner consistent with the method of computing interest under section 1272(a), is properly allocable to such payment.

(b) Total unstated interest

For purposes of this section, the term "total unstated interest" means, with respect to a contract for the sale or exchange of property, an amount equal to the excess of—

(1) the sum of the payments to which this section applies which are due under the contract, over

(2) the sum of the present values of such payments and the present values of any interest payments due under the contract.

For purposes of the preceding sentence, the present value of a payment shall be determined under the rules of section 1274(b)(2) using a discount rate equal to 120 percent of the applicable Federal rate determined under section 1274(d).

(c) Payments to which subsection (a) applies

(1) In general

Except as provided in subsection (d), this section shall apply to any payment on account of the sale or exchange of property which constitutes part or all of the sales price and which is due more than 6 months after the date of such sale or exchange under a contract—

(A) under which some or all of the payments are due more than 1 year after the date of such sale or exchange, and

(B) under which, using a discount rate equal to 110 percent of the applicable Federal rate determined under section 1274(d), there is total unstated interest.

(2) Treatment of other debt instruments

For purposes of this section, a debt instrument of the purchaser which is given in consideration for the sale or exchange of property shall not be treated as a payment, and any payment due under such debt instrument shall be treated as due under the contract for the sale or exchange.

(3) Debt instrument defined

For purposes of this subsection, the term "debt instrument" has the meaning given such term by section 1275(a)(1).

(d) Exceptions and limitations

(1) Coordination with original issue discount rules

This section shall not apply to any debt instrument to which section 1272 applies.

(2) Sales prices of $3,000 or less

This section shall not apply to any payment on account of the sale or exchange of property if it can be determined at the time of such sale or exchange that the sales price cannot exceed $3,000.

(3) Carrying charges

In the case of the purchaser, the tax treatment of amounts paid on account of the sale or exchange of property shall be made without regard to this section if any such amounts are treated under section 163(b) as if they included interest.

(4) Certain sales of patents

In the case of any transfer described in section 1235(a) (relating to sale or exchange of patents), this section shall not apply to any amount contingent on the productivity, use, or disposition of the property transferred.

(e) Interest rates in case of sales of principal residences or farm lands

(1) In general

In the case of any debt instrument arising from a sale or exchange to which this subsection applies, subsections (b) and (c)(1)(B) shall be applied by using, in lieu of the discount rates determined under such subsections, discount rates determined under subsections (b) and (c)(1), respectively, of this section as it was in effect before the amendments made by the Tax Reform Act of 1984.

(2) Sales or exchanges to which subsection applies

This subsection shall apply—

(A) to any sale or exchange by an individual of his principal residence (within the meaning of section 1034), and

(B) to any sale or exchange by a person of land used by such person as a farm (within the meaning of section 6420(c)(2)).

(3) Limitation

Paragraph (1) shall apply to any sale or exchange by an individual of his principal residence (within the meaning of section 1034), only to the extent the purchase price of such residence does not exceed $250,000. For purposes of the preceding sentence, the purchase price of a residence shall be determined without regard to this section.

(f) Maximum rate of interest on certain transfers of land between related parties

(1) In general

In the case of any qualified sale, the discount rate used in determining the total unstated interest rate under subsection (b) shall not exceed 7 percent, compounded semiannually.

(2) Qualified sale

For purposes of this subsection, the term "qualified sale" means any sale or exchange of land by an individual to a member of such individual's family (within the meaning of section 267(c)(4)).

(3) $500,000 limitation

Paragraph (1) shall not apply to any qualified sale between individuals made during any calendar year to the extent that the sales price for such sale (when added to the aggregate sales price for prior qualified sales between such individuals during the calendar year) exceeds $500,000.

(4) Nonresident alien individuals

Paragraph (1) shall not apply to any sale or exchange if any party to such sale or exchange is a nonresident alien individual.

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section including regulations providing for the application of this section in the case of—

(1) any contract for the sale or exchange of property under which the liability for, or the amount or due date of, a payment cannot be determined at the time of the sale or exchange, or

(2) any change in the liability for, or the amount or due date of, any payment (including interest) under a contract for the sale or exchange of property.

(h) Cross reference

For special rules in the case of the borrower under certain loans for personal use, see section 1275(b).

(As amended Pub. L. 98-369, div. A, title I, §41(b), July 18, 1984, 98 Stat. 553.)

REFERENCES IN TEXT

The Tax Reform Act of 1984, referred to in subsec. (e)(1), is division A [§§ 5 to 1082] of Pub. L. 98-369, July 18, 1984, 98 Stat. 494. See 1984 Amendment note below for amendments to this section by that Act.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 amended subsec. (a) generally, substituting "For purposes of this title, in the case of any payment (1) under any contract for the sale or exchange of any property, and (2) to which this section applies, there shall be treated as interest that portion of the total unstated interest under such contract which, as determined in a manner consistent with the method of computing interest under section 1272(a), is properly allocable to such payment" for "For purposes of this title, in the case of any contract for the sale or exchange of property there shall be treated as interest that part of a payment to which this section applies which bears the same ratio to the amount of such payment as the total unstated interest under such contract bears to the total of the payments to which this section applies which are due under such contract".

Subsec. (b). Pub. L. 98-369 amended subsec. (b) generally, substituting provisions directing that the present value of a payment be determined under the rules of section 1274(b)(2) using a discount rate equal to 120 percent of the applicable Federal rate determined under section 1274(d) for provisions which had directed that the present value of a payment be determined, as of the date of the sale or exchange, by discounting such payment at the rate, and in the manner, provided in regulations prescribed by the Secretary and that such regulations provide for discounting on the basis of 6-month brackets and provide that the present value of any interest payment due not more than 6 months after the date of the sale or exchange was to have been an amount equal to 100 percent of such payment.

Subsec. (c). Pub. L. 98-369 substituted "subsection (a) applies" for "section applies" in heading.

Subsec. (c)(1). Pub. L. 98-369 substituted "under which, using a discount rate equal to 110 percent of the applicable Federal rate determined under section 1274(d), there is total unstated interest" for "under which, using a rate provided by regulations prescribed by the Secretary for purposes of this subparagraph, there is total unstated interest", in subpar. (B), and struck out provision formerly set out following subpar. (B) which had directed that any rate prescribed for determining whether there was total unstated interest for purposes of subpar. (B) be at least one percentage point lower than the rate prescribed for purposes of subsec. (b)(2).

Subsec. (c)(2). Pub. L. 98-369 substituted "Treatment of other debt instruments" for "Treatment of other evidence of indebtedness" in heading and, in text, substituted "a debt instrument of the purchaser which is given in consideration for the sale or exchange of property shall not be treated as a payment, and any payment due under such debt instrument" for "an evidence of indebtedness of the purchaser given in consideration for the sale or exchange of property shall not be considered a payment, and any payment due under such evidence of indebtedness".

Subsec. (c)(3). Pub. L. 98-369 added par. (3).

Subsec. (d). Pub. L. 98-369 amended subsec. (d) generally, substituting provisions relating to exceptions and limitations for provisions which related to payments indefinite as to time, liability, or amount.

Subsec. (e). Pub. L. 98-369 amended subsec. (e) generally, substituting provisions relating to interest rates in case of sale of principal residence or farm land for provision relating to changes in terms of contract.

Subsec. (f). Pub. L. 98-369 amended subsec. (f) generally, substituting provisions relating to maximum rate of interest on certain transfers of land between related parties for provisions which related to exceptions and limitations now covered in subsec. (d) of this section.

Subsec. (g). Pub. L. 98-369 amended subsec. (g) generally, substituting provisions which related to calling for the promulgation of regulations by the Secretary for provisions which related to the maximum rate of interest on certain transfers of land between related parties now covered in subsec. (f) of this section.

Subsec. (h). Pub. L. 98-369 added subsec. (h).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, and applicable to sales or exchanges after Dec. 31, 1984, but not applicable to any sale or exchange pursuant to a written contract which was binding on Mar. 1, 1984, and at all times thereafter before the sale or exchange, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

TRANSITIONAL RULE FOR PURPOSES OF IMPUTED INTEREST RULES

Provisions, respecting treatment of debt instruments received in exchange for property, relating to special rules for sales before July 1, 1985, general rule for assumptions of loans, exception for assumptions of loans made on or before Oct. 15, 1984, and exception for assumptions of loans with respect to certain property, see section 44(b)(4)-(7) of Pub. L. 98-369, as amended, set out as an Effective Date note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1274, 1275, 1288, 4942, 7872 of this title.

Subchapter F—Exempt Organizations

PART I—GENERAL RULE

Sec.	
505.	Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c).

AMENDMENTS

1984—Pub. L. 98-369, div. A, title V, § 513(b), July 18, 1984, 98 Stat. 865, added item 505.

§ 501. Exemption from tax on corporations, certain trusts, etc.

[*See main edition for text of (a) and (b)*]

(c) List of exempt organizations

The following organizations are referred to in subsection (a):

(1) any corporation organized under Act of Congress which is an instrumentality of the United States but only if such corporation—

(A) is exempt from Federal income taxes—

(i) under such Act as amended and supplemented before the date of the enactment of the Tax Reform Act of 1984, or

(ii) under this title without regard to any provision of law which is not contained in this title and which is not contained in a revenue Act, or

(B) is described in subsection (*l*).

[*See main edition for text of (2) to (23); (d) to (j)*]

(k) Treatment of certain organizations providing child care

For purposes of subsection (c)(3) of this section and sections 170(c)(2), 2055(a)(2), and 2522(a)(2), the term "educational purposes" includes the providing of care of children away from their homes if—

(1) substantially all of the care provided by the organization is for purposes of enabling individuals to be gainfully employed, and

(2) the services provided by the organization are available to the general public.

(*l*) Government corporations exempt under subsection (c)(1)

The organization described in this subsection is the Central Liquidity Facility established under title III of the Federal Credit Union Act (12 U.S.C. 1795 et seq.).

(m) Cross reference

For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, §§ 1032(a), 1079, div. B, title VIII, § 2813(b), 98 Stat. 1033, 1056, 1206.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (c)(1)(A)(i), is the date of enactment of division A of Pub. L. 98-369, which was approved July 18, 1984.

The Federal Credit Union Act, referred to in subsec. (*l*), is act June 26, 1934, ch. 750, 48 Stat. 1216, as amended. Title III of the Federal Credit Union Act is classified generally to subchapter III (§ 1795 et seq.) of chapter 14 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1751 of Title 12 and Tables.

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-369, § 2813(b)(2), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(1)(A). Pub. L. 98-369, § 1079, substituted provisions referring to corporations exempt from Federal income taxes under any Act of Congress as amended and supplemented before July 18, 1984, or under this title without regard to any provision of law not contained in this title and not contained in a revenue Act for provisions referring to corporations exempt from Federal income taxes under any Act of Congress as amended and supplemented.

Subsec. (k). Pub. L. 98-369, § 1032(a), added subsec. (k). Former subsec. (k) redesignated (*l*).

Subsec. (*l*). Pub. L. 98-369, § 2813(b)(1), added subsec. (*l*). Former subsec. (*l*) redesignated (m).

Pub. L. 98-369, § 1032(a), redesignated former subsec. (k) as (*l*).

Subsec. (m). Pub. L. 98-369, § 2813(b)(1), redesignated former subsec. (*l*) as (m).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1032 of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98-369, set out as a note under section 170 of this title.

Amendment by section 2813(b) of Pub. L. 98-369 effective Oct. 1, 1979, see section 2813(c) of Pub. L. 98-369, set out as an Effective Date note under section 1795k of Title 12, Banks and Banking.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30, 51, 62, 72, 101, 103, 104, 108, 116, 117, 120, 131, 151, 168, 170, 192, 194A, 219, 246, 267, 274, 318, 382, 401, 402, 403, 404, 408, 410, 411, 412, 414, 415, 419, 419A, 447, 457, 468A, 502, 503, 504, 505, 507, 508, 509, 511, 512, 513, 514, 527, 542, 642, 681, 818, 821, 871, 992, 1504, 1563, 2039, 2055, 2517, 2522, 3121, 3303, 3306, 3401, 4041, 4221, 4251, 4253, 4294, 4421, 4911, 4940, 4941, 4942, 4945, 4947, 4948, 4951, 4952, 4953, 4975, 5214, 6033, 6043, 6047, 6049, 6072, 6104, 6110, 6420, 6421, 6427, 6501, 7428, 7430, 7454, 7609, 7611, 7701, 7802, 9012, 9501 of this title; title 2 section 806; title 5 sections 3102, 4111, 7342; title 12 sections 1843, 3051; title 15 sections 77c, 1291; title 16 sections 284d, 539f, 2708; title 18 sections 207, 209, 1511, 1955; title 20 sections 76m, 1077, 1078, 1087dd, 1681, 4101; title 28 section 2412; title 29 sections 169, 706, 795, 1002, 1051, 1052, 1081, 1082, 1086, 1103, 1321, 1403; title 35 section 201; title 40 sections 483, 484; title 42 sections 300e-9, 300n, 409, 1301, 1397a, 1760, 1784, 2000e, 2996b, 3056, 6371, 6372, 8143, 10702; title 43 section 390ss; title 46 section 2101; title 47 section 396; title 49 App. section 1359; title 50 section 790.

§ 505. Additional requirements for organizations described in paragraph (9), (17), or (20) of section 501(c)

(a) Certain requirements must be met in the case of organizations described in paragraph (9) or (20) of section 501(c)

(1) Voluntary employees' beneficiary associations, etc.

An organization described in paragraph (9) or (20) of subsection (c) of section 501 which is part of a plan of an employer shall not be exempt from tax under section 501(a) unless such plan meets the requirements of subsection (b) of this section.

(2) Exception for collective bargaining agreements

Paragraph (1) shall not apply to any organization which is part of a plan maintained pursuant to 1 or more collective bargaining agreements between 1 or more employee organizations and 1 or more employers.

(b) Nondiscrimination requirements

(1) In general

Except as provided in paragraph (2), a plan meets the requirements of this subsection only if—

(A) each class of benefits under the plan is provided under a classification of employees which is set forth in the plan and which is found by the Secretary not to be discriminatory in favor of employees who are highly compensated individuals, and

(B) in the case of each class of benefits, such benefits do not discriminate in favor of employees who are highly compensated employees.

A life insurance, disability, severance pay, or supplemental unemployment compensation benefit shall not be considered to fail to meet the requirements of subparagraph (B) merely because the benefits available bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of employees covered by the plan.

(2) Exclusion of certain employees

For purposes of paragraph (1), there may be excluded from consideration—

(A) employees who have not completed 3 years of service,

(B) employees who have not attained age 21,

(C) seasonal employees or less than half-time employees,

(D) employees not included in the plan who are included in a unit of employees covered by an agreement between employee representatives and 1 or more employers which the Secretary finds to be a collective bargaining agreement if the class of benefits involved was the subject of good faith bargaining between such employee representatives and such employer or employers, and

(E) employees who are nonresident aliens and who receive no earned income (within the meaning of section 911(d)(2)) from the employer which constitutes income from sources within the United States (within the meaning of section 861(a)(3)).

(3) Application of subsection where other nondiscrimination rules provided

In the case of any benefit for which a provision of this chapter other than this subsection provides nondiscrimination rules, paragraph (1) shall not apply but the requirements of this subsection shall be met only if the nondiscrimination rules so provided are satisfied with respect to such benefit.

(4) Aggregation rules

For purposes of this subsection—

(A) Aggregation of plans

At the election of the employer, 2 or more plans of such employer may be treated as 1 plan.

(B) Treatment of related employers

Rules similar to the rules of subsections (b), (c), (m), and (n) of section 414 shall apply. For purposes of the preceding sentence, section 414(n) shall be applied without regard to paragraph (5).

(5) Highly compensated individual

For purposes of this subsection, the term "highly compensated individual" has the meaning given such term by section 105(h)(5). For purposes of the preceding sentence, section 105(h)(5) shall be applied by substituting "10 percent" for "25 percent".

(c) Requirement that organization notify Secretary that it is applying for tax-exempt status

(1) In general

An organization shall not be treated as an organization described in paragraph (9), (17), or (20) of section 501(c)—

(A) unless it has given notice to the Secretary, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of such status, or

(B) for any period before the giving of such notice, if such notice is given after the time prescribed by the Secretary by regulations for giving notice under this subsection.

(2) Special rule for existing organizations

In the case of any organization in existence on the date of the enactment of the Tax Reform Act of 1984, the time for giving notice under paragraph (1) shall not expire before the date 1 year after such date of the enactment.

(Added Pub. L. 98-369, div. A, title V, § 513(a), July 18, 1984, 98 Stat. 863.)

References in Text

The date of enactment of the Tax Reform Act of 1984, referred to in subsec. (c)(2), is the date of enactment of division A of Pub. L. 98-369, which was approved July 18, 1984.

Effective Date

Section 513(c) of Pub. L. 98-369 provided that:

"(1) In general.—The amendments made by this section [enacting this section] shall apply to years beginning after December 31, 1984.

"(2) Treatment of certain benefits in pay status as of January 1, 1985.—For purposes of determining whether a plan meets the requirements of section 505(b) of the Internal Revenue Code of 1954 (as added by subsection (a)), there may (at the election of the employer) be excluded from consideration all disability or severance payments payable to individuals who are in pay status as of January 1, 1985. The preceding sentence shall not apply to any payment to the extent such payment is increased by any plan amendment adopted after June 22, 1984."

Section Referred to in Other Sections

This section is referred to in sections 419A, 4976 of this title.

PART II—PRIVATE FOUNDATIONS

§ 507. Termination of private foundation status

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Aggregate tax benefit

[*See main edition for text of* (*1*)]

(2) Substantial contributor

[*See main edition for text of* (*A*) *and* (*B*)]

(C) Person ceases to be substantial contributor in certain cases

(i) In general

A person shall cease to be treated as a substantial contributor with respect to any private foundation as of the close of any taxable year of such foundation if—

(I) during the 10-year period ending at the close of such taxable year such person (and all related persons) have not made any contribution to such private foundation,

(II) at no time during such 10-year period was such person (or any related person) a foundation manager of such private foundation, and

(III) the aggregate contributions made by such person (and related persons) are determined by the Secretary to be insignificant when compared to the aggregate amount of contributions to such foundation by one other person.

For purposes of subclause (III), appreciation on contributions while held by the foundation shall be taken into account.

(ii) Related person

For purposes of clause (i), the term "related person" means, with respect to any person, any other person who would be a disqualified person (within the meaning of section 4946) by reason of his relationship to such person. In the case of a contributor which is a corporation, the term also includes any officer or director of such corporation.

[*See main edition for text of* (*3*); (*e*) *to* (*g*)]

(As amended Pub. L. 98-369, div. A, title III, § 313(a), July 18, 1984, 98 Stat. 786.)

Amendments

1984—Subsec. (d)(2)(C). Pub. L. 98-369 added subpar. (C).

Effective Date of 1984 Amendment

Section 313(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (d)(2)(C) of this section] shall apply to taxable years beginning after December 31, 1984."

Section Referred to in Other Sections

This section is referred to in sections 508, 509, 4940, 4946, 4947, 4948, 6104, 6214, 6501, 6503 of this title.

§ 509. Private foundation defined

Section Referred to in Other Sections

This section is referred to in sections 170, 501, 507, 508, 514, 527, 542, 2055, 3121, 4940, 4942, 4945, 4947, 4994, 6033, 6043, 6104, 6111, 7428 of this title; title 42 sections 300*l*-1, 410.

PART III—TAXATION OF BUSINESS INCOME OF CERTAIN EXEMPT ORGANIZATIONS

Part Referred to in Other Sections

This part is referred to in sections 501, 664 of this title.

§ 511. Imposition of tax on unrelated business income of charitable, etc., organizations

Section Referred to in Other Sections

This section is referred to in sections 11, 12, 48, 168, 408, 509, 512, 513, 514, 515, 527, 1201, 1245, 1250, 1443, 1563, 2611, 4940, 7611, 7871 of this title; title 47 section 396.

§ 512. Unrelated business taxable income

Amendment of Subsection (a)(3)

Pub. L. 98-369, div. A, title V, § 511(b), (e), July 18, 1984, 98 Stat. 860, 862, provided that, applicable to contributions paid or accrued after Dec. 31, 1985, in taxable years ending after such date, subject to certain exceptions, subsection (a)(3) of this section is amended by substituting "paragraph (7), (9), (17), or (20) of section 501(c)" for "section 501(c)(7) or (9)" wherever appearing, including the paragraph heading, by substituting in subpar. (B)(ii) "paragraph (9), (17), or (20) of section 501(c)" for "section

501(c)(9)", and by adding at the end thereof a subpar. (E) to read as follows:

(E) Limitation on amount of setaside in the case of organizations described in paragraph (9), (17), or (20) of section 501(c)

(i) In general

In the case of any organization described in paragraph (9), (17), or (20) of section 501(c), a set-aside for any purpose specified in clause (ii) of subparagraph (B) may be taken into account under subparagraph (B) only to the extent that such set-aside does not result in an amount of assets set aside for such purpose in excess of the account limit determined under section 419A(c) for the taxable year (not taking into account any reserve described in section 419A(c)(2)(A) for post-retirement medical benefits).

(ii) No set aside for facilities

No set aside for assets used in the provision of benefits described in clause (ii) of subparagraph (B) shall be taken into account.

(iii) Treatment of existing reserves for post-retirement medical or life insurance benefits

(I) Clause (i) shall not apply to any income attributable to a[1] *existing reserve for post-retirement medical or life insurance benefits.*

(II) For purposes of subclause (I), the term "existing reserve or post-retirement medical or life insurance benefit" means the amount of assets set aside as of the close of the last plan year ending before the date of the enactment of the Tax Reform Act of 1984 for purposes of post-retirement medical benefits or life insurance benefits to be provided to covered employees.

(III) All payments during plan years ending on or after the date of the enactment of the Tax Reform Act of 1984 of post-retirement medical benefits or life insurance benefits shall be charged against the reserve referred to in subclause (II). Except to the extent provided in regulations prescribed by the Secretary, all plans of an employer shall be treated as 1 plan for purposes of the preceding sentence.

(iv) Treatment of tax exempt organizations

This paragraph shall not apply to any organization if substantially all of the contributions to such organization are made by employers who were exempt from tax under this chapter throughout the 5-taxable year period ending with the taxable year in which the contributions are made.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 419A, 502, 509, 511, 513, 514, 664, 681, 878, 851, 1443, 4943, 4940 of this title; title 47 section 396.

§ 513. Unrelated trade or business

CONDUCTING OF CERTAIN GAMES OF CHANCE NOT TREATED AS UNRELATED TRADE OR BUSINESS

Pub. L. 98-369, div. A, title III, § 311, July 18, 1984, 98 Stat. 786, provided that:

"(a) GENERAL RULE.—For purposes of section 513 of the Internal Revenue Code of 1954 (defining unrelated trade or business), the term 'unrelated trade or business' does not include any trade or business which consists of conducting any game of chance if—

"(1) such game of chance is conducted by a nonprofit organization,

"(2) the conducting of such game by such organization does not violate any State or local law, and

"(3) as of October 5, 1983—

"(A) there was a State law in effect which permitted the conducting of such game of chance by such nonprofit organization, but

"(B) the conducting of such game of chance by organizations which were not nonprofit organizations would have violated such law.

"(b) EFFECTIVE DATE.—Subsection (a) shall apply to games of chance conducted after June 30, 1981, in taxable years ending after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 168, 414, 509, 512, 514, 527, 1245, 1250, 3121, 4942, 7611 of this title; title 16 section 2708; title 29 section 1002; title 42 section 410.

§ 514. Unrelated debt-financed income

[*See main edition for text of (a) and (b)*]

(c) Acquisition indebtedness

[*See main edition for text of (1) to (8)*]

(9) Real property acquired by a qualified organization

(A) In general

Except as provided in subparagraph (B), the term "acquisition indebtedness" does not, for purposes of this section, include indebtedness incurred by a qualified organization in acquiring or improving any real property.

(B) Exceptions

The provisions of subparagraph (A) shall not apply in any case in which—

(i) the price for the acquisition or improvement is not a fixed amount determined as of the date of the acquisition or the completion of the improvement;

(ii) the amount of any indebtedness or any other amount payable with respect to such indebtedness, or the time for making any payment of any such amount, is dependent, in whole or in part, upon any revenue, income, or profits derived from such real property;

(iii) the real property is at any time after the acquisition leased by the qualified organization to the person selling such property to such organization or to any person who bears a relationship described in section 267(b) or 707(b) to such person;

(iv) the real property is acquired by a qualified trust from, or is at any time after the acquisition leased by such trust to, any person who—

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[1] So in original. Probably should be "an".

(I) bears a relationship which is described in subparagraph (C), (E), or (G) of section 4975(e)(2) to any plan with respect to which such trust was formed, or

(II) bears a relationship which is described in subparagraph (F) or (H) of section 4975(e)(2) to any person described in subclause (I);

(v) any person described in clause (iii) or (iv) provides the qualified organization with financing in connection with the acquisition or improvement; or

(vi) the real property is held by a partnership unless the partnership meets the requirements of clauses (i) through (v) and unless—

(I) all of the partners of the partnership are qualified organizations, or

(II) each allocation to a partner of the partnership which is a qualified organization is a qualified allocation (within the meaning of section 168(j)(9)).

For purposes of clause (vi)(I), an organization shall not be treated as a qualified organization if any income of such organization would be unrelated business taxable income (determined without regard to this paragraph).

(C) Qualified organization

For purposes of this paragraph, the term "qualified organization" means—

(i) an organization described in section 170(b)(1)(A)(ii) and its affiliated support organizations described in section 509(a); or

(ii) any trust which constitutes a qualified trust under section 401.

(D) Other pass-thru entities; tiered entities

Rules similar to the rules of subparagraph (B)(vi) shall also apply in the case of any pass-thru entity other than a partnership and in the case of tiered partnerships and other entities.

[*See main edition for text of* (*d*) *to* (*f*)]

(g) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including regulations to prevent the circumvention of any provision of this section through the use of segregated asset accounts.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 174(b)(5)(B), title X, § 1034(a), (b), 98 Stat. 707, 1039, 1040.)

AMENDMENTS

1984—Subsec. (c)(9). Pub. L. 98-369, § 1034(a), amended par. (9) generally, substituting provisions relating to real property acquired by a qualified organization for provisions relating to real property acquired by a qualified trust, with "qualified organization" expanded to include trusts constituting qualified trusts under section 401 of this title as well as organizations described in section 170(b)(1)(A)(ii) of this title and their affiliated support organizations described in section 509(a) of this title.

Subsec. (c)(9)(B)(iii). Pub. L. 98-369, § 174(b)(5)(B), added reference to section 707(b).

Subsec. (g). Pub. L. 98-369, § 1034(b), added subsec. (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(B) of Pub. L. 98-369, applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98-369, set out as a note under section 267 of this title.

Section 1034(c) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to indebtedness incurred after the date of the enactment of this Act [July 18, 1984].

"(2) EXCEPTION FOR INDEBTEDNESS ON CERTAIN PROPERTY ACQUIRED BEFORE JANUARY 1, 1985.—

"(A) The amendment made by subsection (a) [amending subsec. (c)(9) of this section] shall not apply to any indebtedness incurred before January 1, 1985, by a partnership described in subparagraph (B) if such indebtedness is incurred with respect to property acquired (directly or indirectly) by such partnership before such date.

"(B) A partnership is described in this subparagraph if—

"(i) before October 21, 1983, the partnership was organized, a request for exemption with respect to such partnership was filed with the Department of Labor, and a private placement memorandum stating the maximum number of units in the partnership that would be offered had been circulated,

"(ii) the interest in the property to be acquired, directly or indirectly (including through acquiring an interest in another partnership) by such partnership was described in such private placement memorandum, and

"(iii) the marketing of partnership interests in such partnership is completed not later than 2 years after the later of the date of enactment of this Act [July 18, 1984] or the date of publication in the Federal Register of such exemption by the Department of Labor and the aggregate number of units in such partnership sold does not exceed the amount described in clause (i).

"(3) EXCEPTION FOR INDEBTEDNESS ON CERTAIN PROPERTY ACQUIRED BEFORE JANUARY 1, 1986.—

"(A) The amendment made by subsection (a) [amending subsec. (c)(9) of this section] shall not apply to any indebtedness incurred before January 1, 1986, by a partnership described in subparagraph (B) if such indebtedness is incurred with respect to property acquired (directly or indirectly) by such partnership before such date.

"(B) A partnership is described in this paragraph if—

"(i) before March 6, 1984, the partnership was organized and publicly announced, the maximum amount of interests which would be sold in such partnership, and

"(ii) the marketing of partnership interests in such partnership is completed not later than the 90th day after the date of the enactment of this Act [July 18, 1984] and the aggregate amount of interests in such partnership sold does not exceed the maximum amount described in clause (i).

For purposes of clause (i), the maximum amount taken into account shall be the greatest of the amounts shown in the registration statement, prospectus, or partnership agreement.

"(C) BINDING CONTRACTS.—For purposes of this paragraph, property shall be deemed to have been acquired before January 1, 1986, if such property is acquired pursuant to a written contract which, on January 1, 1986, and at all times thereafter, required the acquisition of such property and such property is placed in service not later than 6 months after the date such contract was entered into."

PART IV—FARMERS' COOPERATIVES

§ 521. Exemption of farmers' cooperatives from tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 52, 116, 168, 246, 1245, 1250, 1381, 3306, 4421, 6044 of this title; title 15 section 77c.

PART VI—POLITICAL ORGANIZATIONS

§ 527. Political organizations

[See main edition for text of (a) to (f)]

(g) Treatment of newsletter funds

(1) In general

For purposes of this section, a fund established and maintained by an individual who holds, has been elected to, or is a candidate (within the meaning of section 24(c)(2)) for nomination or election to, any Federal, State, or local elective public office, for use by such individual exclusively for the preparation and circulation of such individual's newsletter shall, except as provided in paragraph (2), be treated as if such fund constituted a political organization.

[See main edition for text of (2)]

(h) Special rule for principal campaign committees

[See main edition for text of (1)]

(2) Principal campaign committee defined

[See main edition for text of (A)]

(B) Designation

A candidate may have only 1 designation in effect under subparagraph (A)(ii) at any time and such designation—

(i) shall be made at such time and in such manner as the Secretary may prescribed by regulations, and

(ii) once made, may be revoked only with the consent of the Secretary.

Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate.

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(16), title VII, § 722(c), July 18, 1984, 98 Stat. 843, 973.)

AMENDMENTS

1984—Subsec. (g)(1). Pub. L. 98-369, § 474(r)(16), substituted "section 24(c)(2)" for "section 41(c)(2)".

Subsec. (h)(2)(B). Pub. L. 98-369, § 722(c), added "Nothing in this subsection shall be construed to require any designation where there is only one political committee with respect to a candidate."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(16) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 722(c) of Pub. L. 98-369 provided in part that the amendment of subsec. (h)(2)(B) of this section by Pub. L. 98-369 is effective for taxable years beginning after Dec. 31, 1981.

PART VII—CERTAIN HOMEOWNERS ASSOCIATIONS

§ 528. Certain homeowners associations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23, 6012 of this title.

Subchapter G—Corporations Used to Avoid Income Tax on Shareholders

PART I—CORPORATIONS IMPROPERLY ACCUMULATING SURPLUS

§ 531. Imposition of accumulated earnings tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 26, 56, 111, 532, 534, 535, 536, 545, 556, 563, 936 of this title; title 46 App. section 1177.

§ 532. Corporations subject to accumulated earnings tax

[See main edition for text of (a) and (b)]

(c) Application determined without regard to number of shareholders

The application of this part to a corporation shall be determined without regard to the number of shareholders of such corporation.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 58(a), 98 Stat. 574.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 58(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 532 and 535 of this title] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984]."

CROSS REFERENCES

Construction reserve fund deposits under Merchant Marine Act of 1936 as not constituting accumulation of earnings or profits, see section 1161 of Title 46, Appendix, Shipping.

§ 535. Accumulated taxable income

[See main edition for text of (a)]

(b) Adjustments to taxable income

For purposes of subsection (a), taxable income shall be adjusted as follows:

[See main edition for text of (1) to (4)]

(5) Capital losses

(A) In general

Except as provided in subparagraph (B), there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A)).

(B) Recapture of previous deductions for capital gains

The aggregate amount allowable as a deduction under subparagraph (A) for any taxable year shall be reduced by the lesser of—

(i) the nonrecaptured capital gains deductions, or

(ii) the amount of the accumulated earnings and profits of the corporation as of the close of the preceding taxable year.

(C) Nonrecaptured capital gains deductions

For purposes of subparagraph (B), the term "nonrecaptured capital gains deductions" means the excess of—

(i) the aggregate amount allowable as a deduction under paragraph (6) for preceding taxable years beginning after the date of the enactment of the Tax Reform Act of 1984, over

(ii) the aggregate of the reductions under subparagraph (B) for preceding taxable years.

(6) Net capital gains

(A) In general

There shall be allowed as a deduction—

(i) the net capital gain for the taxable year (determined with the application of paragraph (7)), reduced by

(ii) the taxes attributable to such net capital gain.

(B) Attributable taxes

For purposes of subparagraph (A), the taxes attributable to the net capital gain shall be an amount equal to the difference between—

(i) the taxes imposed by this subtitle (except the tax imposed by this part) for the taxable year, and

(ii) such taxes computed for such year without including in taxable income the net capital gain for the taxable year (determined without the application of paragraph (7)).

(7) Capital loss carryovers

(A) Unlimited carryforward

The net capital loss for any taxable year shall be treated as a short-term capital loss in the next taxable year.

(B) Section 1212 inapplicable

No allowance shall be made for the capital loss carryback or carryforward provided in section 1212.

(8) Special rules for mere holding or investment companies

In the case of a mere holding or investment company—

(A) Capital loss deduction, etc., not allowed

Paragraphs (5) and (7)(A) shall not apply.

(B) Deduction for certain offsets

There shall be allowed as a deduction the net short-term capital gain for the taxable year to the extent such gain does not exceed the amount of any capital loss carryover to such taxable year under section 1212 (determined without regard to paragraph (7)(B)).

(C) Earnings and profits

For purposes of subchapter C, the accumulated earnings and profits at any time shall not be less than they would be if this subsection had applied to the computation of earnings and profits for all taxable years beginning after the date of the enactment of the Tax Reform Act of 1984.

[See main edition for text of (c)]

(d) Income distributed to United States-owned foreign corporation retains United States connection

(1) In general

For purposes of this part, if 10 percent or more of the earnings and profits of any foreign corporation for any taxable year—

(A) is derived from sources within the United States, or

(B) is effectively connected with the conduct of a trade or business within the United States,

any distribution out of such earnings and profits (and any interest payment) received (directly or through 1 or more other entities) by a United States-owned foreign corporation shall be treated as derived by such corporation from sources within the United States.

(2) United States-owned foreign corporation

The term "United States-owned foreign corporation" has the meaning given to such term by section 904(g)(6).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 58(b), 125(a), 98 Stat. 575, 647.)

References in Text

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (b)(5)(C)(i), (8)(C), is the date of enactment of division A of Pub. L. 98-369, which was approved July 18, 1984.

Amendments

1984—Subsec. (b)(5). Pub. L. 98-369, § 58(b), designated existing provisions as subpar. (A), substituted "Except as provided in subparagraph (B), there shall be allowed as a deduction an amount equal to the net capital loss for the taxable year (determined without regard to paragraph (7)(A)" for "There shall be allowed as deductions losses from sales or exchanges of capital assets during the taxable year which are disallowed as deductions under section 1211(a) in subpar. (A) as so redesignated, and added subpars. (B) and (C).

Subsec. (b)(6). Pub. L. 98-369, § 58(b), divided existing par. (6) into subpars. (A) and (B) and substituted references to the application of paragraph (7) for references to capital loss carryback and carryover provided in section 1212.

Subsec. (b)(7). Pub. L. 98-369, § 58(b), substituted "Capital loss carryovers" for "Capital loss" in heading, redesignated existing provisions as subpar. (B), and added subpar. (A).

Subsec. (b)(8). Pub. L. 98-369, § 58(b), added par. (8).

Subsec. (d). Pub. L. 98-369, § 125(a), added subsec. (d).

Effective Date of 1984 Amendment

Amendment of subsec. (b) by section 58(b) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 58(c) of Pub. L. 98-369, set out as a note under section 532 of this title.

Section 125(b) of Pub. L. 98-369 provided that:

"(1) In general.—Except as provided in paragraph (2), the amendment made by subsection (a) [enacting subsec. (d) of this section] shall apply to distributions and interest payments received by a United States-owned foreign corporation (within the meaning of section 535(d) of the Internal Revenue Code of 1954) on or after May 23, 1983, in taxable years ending on or after such date.

"(2) Corporations in existence on May 23, 1983.—In the case of a United States-owned foreign corporation (as so defined) in existence on May 23, 1983, the amendment made by subsection (a) shall apply to taxable years beginning after December 31, 1984."

PART II—PERSONAL HOLDING COMPANIES

§ 541. Imposition of personal holding company tax

Section Referred to in Other Sections

This section is referred to in sections 26, 56, 111, 535, 542, 545, 546, 547, 556, 563, 882, 936, 992, 6683 of this title.

§ 542. Definition of personal holding company

[See main edition for text of (a)]

(b) Corporations filing consolidated returns

[See main edition for text of (1) to (4)]

(5) Certain dividend income received from a non-includible life insurance company

In the case of an affiliated group of corporations filing or required to file a consolidated return under section 1501 for any taxable year, there shall be excluded from consolidated personal holding company income and consolidated adjusted ordinary gross income for purposes of this part dividends received by a member of the affiliated group from a life insurance company taxable under section 801 that is not a member of the affiliated group solely by reason of the application of paragraph (2) of subsection (b) of section 1504.

[See main edition for text of (c) and (d)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title II, § 211(b)(7), 98 Stat. 755.)

Amendments

1984—Subsec. (b)(5). Pub. L. 98-369 substituted "section 801" for "section 802".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Section Referred to in Other Sections

This section is referred to in sections 57, 168, 170, 280, 316, 447, 465, 532, 541, 544, 545, 562, 852, 856, 864, 992, 1362, 1504, 6661 of this title; title 43 section 1620.

§ 543. Personal holding company income

(a) General rule

For purposes of this subtitle, the term "personal holding company income" means the portion of the adjusted ordinary gross income which consists of:

(1) Dividends, etc.

Dividends, interest, royalties (other than mineral, oil, or gas royalties or copyright royalties), and annuities. This paragraph shall not apply to—

(A) interest constituting rent (as defined in subsection (b)(3)), and

(B) interest on amounts set aside in a reserve fund under section 511 or 607 of the Merchant Marine Act, 1936 (46 U.S.C. 1161 or 1177).

[See main edition for text of (2) to (8); (b) and (c)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 712(i)(3), 98 Stat. 948.)

References in Text

Sections 511 and 607 of the Merchant Marine Act, 1936, referred to in subsec. (a)(1)(B), are classified to sections 1161 and 1177 of Title 46, Appendix, Shipping.

Amendments

1984—Subsec. (a)(1)(C). Pub. L. 98-369 struck out subpar. (C) providing for nonapplication of par. (1) to dividends to which section 302(b)(4) would apply if the corporation were an individual.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

PART III—FOREIGN PERSONAL HOLDING COMPANIES

Part Referred to in Other Sections

This part is referred to in section 864 of this title.

§ 551. Foreign personal holding company income taxed to United States shareholders

[See main edition for text of (a) to (e)]

(f) Stock held through foreign entity

For purposes of this section, stock of a foreign personal holding company owned (directly or through the application of this subsection) by—

(1) a partnership, estate, or trust which is not a United States shareholder, or

(2) a foreign corporation which is not a foreign personal holding company,

shall be considered as being owned proportionately by its partners, beneficiaries, or shareholders. In any case to which the preceding sentence applies, the Secretary may by regulations provide for such adjustments in the application of this part as may be necessary to carry out the purposes of the preceding sentence.

(g) Cross references

(1) For basis of stock or securities in a foreign personal holding company acquired from a decedent, see section 1014(b)(5).

(2) For period of limitation on assessment and collection without assessment, in case of failure to include in gross income the amount properly includible therein under subsection (b), see section 6501.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 132(b), 98 Stat. 666.)

Amendments

1984—Subsecs. (f), (g). Pub. L. 98-369 added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 132(d)(1) of Pub. L. 98-369 provided that:

"(A) IN GENERAL.—Except as provided in subparagraph (B), the amendments made by subsections (a) [enacting section 554(c) of this title] and (b) [enacting subsec. (f) of this section and redesignating former subsec. (f) as (g)] shall apply to taxable years of foreign corporations beginning after December 31, 1983.

"(B) 1-YEAR EXTENSION FOR CERTAIN TRUSTS CREATED BEFORE JUNE 30, 1953.—

"(i) IN GENERAL.—The amendment made by subsection (b) shall apply to taxable years of a foreign corporation beginning after December 31, 1984, with respect to stock of such corporation which is held (directly or indirectly, within the meaning of section 554 of the Internal Revenue Code of 1954) by a trust created before June 30, 1953, if—

"(I) none of the beneficiaries of such trust was a citizen or resident of the United States at the time of its creation or within 5 years thereafter, and

"(II) such trust does not, after July 1, 1983, acquire (directly or indirectly) stock of any foreign personal holding company other than a company described in clause (ii).

"(ii) DESCRIPTION OF COMPANY.—A company is described in this clause if—

"(I) substantially all of the assets of such company are stock or assets previously held by such trust, or

"(II) such company ceases to be a foreign personal holding company before January 1, 1985."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 904, 951, 1016, 6103, 6501 of this title.

§ 552. Definition of foreign personal holding company

[*See main edition for text of* (a) *and* (b)]

(c) Certain dividends and interest not taken into account

For purposes of subsection (a)(1) and section 553(a)(1), gross income and foreign personal holding company income shall not include any dividends and interest which—

(1) are described in subparagraph (A) of section 954(c)(4), and

(2) are received from a related person which is not a foreign personal holding company (determined without regard to this subsection).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 132(c)(2), 98 Stat. 666.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 132(d)(2)(B) of Pub. L. 98-369 provided that: "The amendment made by paragraph (2) of subsection (c) [enacting subsec. (c) of this section] shall apply to taxable years of foreign corporations beginning after March 15, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 171, 280, 312, 465, 532, 542, 551, 553, 554, 555, 562, 1212, 6035, 6103 of this title.

§ 554. Stock ownership

[*See main edition for text of* (a) *and* (b)]

(c) Special rules for application of subsection (a)(2)

For purposes of the stock ownership requirement provided in section 552(a)(2)—

(1) stock owned by a nonresident alien individual (other than a foreign trust or foreign estate) shall not be considered by reason of so much of subsection (a)(2) as relates to attribution through family membership as owned by a citizen or by a resident alien individual who is not the spouse of the nonresident individual and who does not otherwise own stock in such corporation (determined after the application of subsection (a), other than attribution through family membership), and

(2) stock of a corporation owned by any foreign person shall not be considered by reason of so much of subsection (a)(2) as relates to attribution through partners as owned by a citizen or resident of the United States who does not otherwise own stock in such corporation (determined after application of subsection (a) and paragraph (1), other than attribution through partners).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 132(a), 98 Stat. 665.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years of foreign corporations beginning after Dec. 31, 1983, see section 132(d)(1) of Pub. L. 98-369, set out as a note under section 551 of this title.

Subchapter H—Banking Institutions

PART I—RULES OF GENERAL APPLICATION TO BANKING INSTITUTIONS

§ 581. Definition of bank

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 128, 133, 246A, 271, 279, 408, 409, 465, 501, 542, 585, 586, 593, 992, 1256, 1281, 6032, 6323, 6695, 7512, 7609 of this title.

§ 582. Bad debts, losses, and gains with respect to securities held by financial institutions

[*See main edition for text of* (a) *and* (b)]

(c) Bond, etc., losses and gains of financial institutions

[*See main edition for text of* (1)]

(2) Transitional rule for banks

In the case of a bank, if the net long-term capital gains of the taxable year from sales or exchanges of qualifying securities exceed the net short-term capital losses of the taxable year from such sales or exchanges, such excess shall be considered as gain from the sale of a capital asset held for more than 6 months to the extent it does not exceed the net gain on sales and exchanges described in paragraph (1).

[*See main edition for text of* (3) *and* (4)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1001(b)(6), 98 Stat. 1011.)

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-369 substituted "6 months" for "1 year".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

§ 584. Common trust funds

[See main edition for text of (a) and (b)]

(c) Income of participants in fund

(1) Inclusions in taxable income

Each participant in the common trust fund in computing its taxable income shall include, whether or not distributed and whether or not distributable—

(A) as part of its gains and losses from sales or exchanges of capital assets held for not more than 6 months, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for not more than 6 months;

(B) as part of its gains and losses from sales or exchanges of capital assets held for more than 1 year, its proportionate share of the gains and losses of the common trust fund from sales or exchanges of capital assets held for more than 6 months;

[See main edition for text of (C), (2); (d) to (g)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1001(b)(7), 98 Stat. 1011.)

Amendments

1984—Subsec. (c)(1)(A), (B). Pub. L. 98-369 substituted "6 months" for "1 year", wherever appearing.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

Section Referred to in Other Sections

This section is referred to in sections 58, 170, 171, 581, 851, 6049 of this title.

§ 585. Reserves for losses on loans of banks

Section Referred to in Other Sections

This section is referred to in sections 57, 166, 172, 291, 368, 582, 593, 856, 1277, 1361 of this title.

PART II—MUTUAL SAVINGS BANKS, ETC.

§ 591. Deduction for dividends paid on deposits

Section Referred to in Other Sections

This section is referred to in sections 116, 243, 465, 593, 861, 6323 of this title.

§ 593. Reserves for losses on loans

Section Referred to in Other Sections

This section is referred to in sections 46, 52, 57, 166, 172, 291, 368, 582, 585, 595, 596, 856, 992, 1038, 1277, 1361 of this title.

§ 594. Alternative tax for mutual savings banks conducting life insurance business

[See main edition for text of (a)]

(b) Limitations of section

Subsection (a) shall apply only if the life insurance department would, if it were treated as a separate corporation, qualify as a life insurance company under section 816.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title II, § 211(b)(8), 98 Stat. 755.)

Amendments

1984—Subsec. (b). Pub. L. 98-369 substituted "section 816" for "section 801".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Section Referred to in Other Sections

This section is referred to in section 11 of this title.

Subchapter I—Natural Resources

PART I—DEDUCTIONS

§ 611. Allowance of deduction for depletion

Section Referred to in Other Sections

This section is referred to in sections 57, 62, 163, 167, 174, 291, 613, 613A, 616, 617, 642, 691, 703, 822, 901, 1082, 4940 of this title.

§ 613. Percentage depletion

Section Referred to in Other Sections

This section is referred to in sections 23, 48, 57, 163, 168, 263, 291, 381, 465, 611, 613A, 614, 617, 631, 636, 901, 903, 1082, 4612, 4940, 4988 of this title.

§ 613A. Limitations on percentage depletion in case of oil and gas wells

[See main edition for text of (a) and (b)]

(c) Exemption for independent producers and royalty owners

[See main edition for text of (1)]

(2) Average daily production

For purposes of paragraph (1)—

(A) the taxpayer's average daily production of domestic crude oil or natural gas for any taxable year, shall be determined by dividing his aggregate production of domestic crude oil or natural gas, as the case may be, during the taxable year by the number of days in such taxable year, and

(B) in the case of a taxpayer holding a partial interest in the production from any property (including an interest held in a partnership) such taxpayer's production shall be considered to be that amount of such production determined by multiplying the total production of such property by the taxpayer's percentage participation in the revenues from such property.

(3) Depletable oil quantity

(A) In general

For purposes of paragraph (1), the taxpayer's depletable oil quantity shall be equal to—

(i) the tentative quantity determined under the table contained in subparagraph (B), reduced (but not below zero) by

(ii) the taxpayer's average daily secondary or tertiary production for the taxable year.

Clause (ii) shall not apply after December 31, 1983.

[*See main edition for text of* (*B*), (*4*) *to* (*6*)]

(7) Special rules

[*See main edition for text of* (*A*) *to* (*C*)]

(D) Partnerships

In the case of a partnership, the depletion allowance shall be computed separately by the partners and not by the partnership. The partnership shall allocate to each partner his proportionate share of the adjusted basis of each partnership oil or gas property. The allocation is to be made as of the later of the date of acquisition of the oil or gas property by the partnership, or January 1, 1975. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital or income and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. Each partner shall separately keep records of his share of the adjusted basis in each oil and gas property of the partnership, adjust such share of the adjusted basis for any depletion taken on such property, and use such adjusted basis each year in the computation of his cost depletion or in the computation of his gain or loss on the disposition of such property by the partnership. For purposes of section 732 (relating to basis of distributed property other than money), the partnership's adjusted basis in mineral property shall be an amount equal to the sum of the partners' adjusted basis in such property as determined under this paragraph.

(E) Secondary or tertiary production

If the taxpayer has production from secondary or tertiary recovery processes during the taxable year, this paragraph (under regulations prescribed by the Secretary) shall be applied separately with respect to such production. This subparagraph shall not apply after December 31, 1983.

[*See main edition for text of* (*8*)]

(9) Transfer of oil or gas property

(A) in the case of a transfer (including the subleasing of a lease) after December 31, 1974 of an interest (including an interest in a partnership or trust) in any proven oil or gas property, this subsection shall not apply to the transferee (or sublessee) with respect to production of crude oil or natural gas attributable to such interest, and such production shall not be taken into account for any computation by the transferee (or sublessee) under this subsection. A property shall be treated as a proven oil or gas property if at the time of the transfer the principal value of the property has been demonstrated by prospecting or exploration or discovery work.

[*See main edition for text of* (*B*), (*10*) *to* (*13*); (*d*) *and* (*e*)]

(As amended Pub. L. 98-369, div. A, title I, §§ 25(b), 71(b), July 18, 1984, 98 Stat. 506, 589.)

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-369, § 25(b)(1), struck out last sentence providing that in applying this paragraph, there shall not be taken into account any production of crude oil or natural gas resulting from secondary or tertiary processes (as defined in regulations prescribed by the Secretary).

Subsec. (c)(3)(A). Pub. L. 98-369, § 25(b)(2), added "Clause (ii) shall not apply after December 31, 1983."

Subsec. (c)(7)(D). Pub. L. 98-369, § 71(b), substituted "property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share" for "an agreement described in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account" in fourth sentence.

Subsec. (c)(7)(E). Pub. L. 98-369, § 25(b)(3), added "This subparagraph shall not apply after December 31, 1983."

Subsec. (c)(9)(A). Pub. L. 98-369, § 25(b)(4), substituted "this subsection" for "paragraph (1)".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 25(c)(2) of Pub. L. 98-369 provided that: "The amendments made by subsection (b) [amending subsec. (c) of this section] shall take effect on January 1, 1984."

Amendment by section 71(b) of Pub. L. 98-369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98-369, set out as a note under section 704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 168, 613, 705, 954, 993, 1367, 4988, 4992, 4994, 4995, 6429, 6430 of this title.

§ 614. Definition of property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 291, 465, 468, 617, 636, 1016, 4992, 6429, 6430 of this title.

§ 616. Development expenditures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 58, 263, 291, 312, 381, 1016 of this title.

§ 617. Deduction and recapture of certain mining exploration expenditures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 58, 170, 263, 291, 312, 381, 453B, 703, 751, 1363 of this title.

PART III—SALES AND EXCHANGES

§ 631. Gain or loss in the case of timber, coal, or domestic iron ore

(a) Election to consider cutting as sale or exchange

If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpayer who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right on the first day of such year and for a period of more than 6 months before such cutting) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such cut timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary. For purposes of this subsection and subsection (b), the term "timber" includes evergreen trees which are more than 6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) Disposal of timber with a retained economic interest

In the case of the disposal of timber held for more than 6 months before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner retains an economic interest in such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. The date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term "owner" means any person who owns an interest in such timber, including a sublessor and a holder of a contract to cut timber.

(c) Disposal of coal or domestic iron ore with a retained economic interest

In the case of the disposal of coal (including lignite), or iron ore mined in the United States, held for more than 6 months before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. Such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, and the word "owner" means any person who owns an economic interest in coal or iron ore in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the deductions under section 535(b)(6) or section 545(b)(5)). This subsection shall not apply to any disposal of iron ore—

[*See main edition for text of (1) and (2)*]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1001(c), 98 Stat. 1012.)

AMENDMENT OF SUBSECTION (c)

Pub. L. 98-369, div. A, title I, § 178, July 18, 1984, 98 Stat. 712, provided that the last sentence of subsec. (c) of this section is amended by inserting "or coal" after "iron ore", applicable to dispositions after Sept. 30, 1985, and subject to a special rule for fixed contracts as contained in section 178(b)(2) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note below.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 1001(c)(1), substituted "on the first day of such year and for a period of more than 6 months before such cutting" for "for a period of more than 1 year".

Subsec. (b), (c). Pub. L. 98-369, § 1001(c)(2), substituted "6 months" for "1 year".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 178(b) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending subsec. (c) of this section] shall apply to dispositions after September 30, 1985.

"(2) SPECIAL RULE FOR FIXED CONTRACTS.—

"(A) IN GENERAL.—The amendment made by subsection (a) shall not apply to any disposition of an interest in coal by a person to a related person if such coal is subsequently sold before January 1, 1990, by either such person—

"(i) to a person who is not a related person with respect to either such person, and

"(ii) pursuant to a qualified fixed contract.

"(B) ALLOCATION WHERE MORE THAN 1 CONTRACT.—If, for any taxable year, there is a disposition described in subparagraph (A) which is not specifically allocable to a qualified fixed contract or to a contract which is not a qualified fixed contract, such disposition shall be treated as first allocable to the qualified fixed contract.

"(C) QUALIFIED FIXED CONTRACT DEFINED.—The term 'qualified fixed contract' means any contract for the sale of coal which—

"(i) was entered into before June 12, 1984,

"(ii) is binding at all times thereafter, and

"(iii) cannot be adjusted to reflect to any extent the increase in liabilities of the person disposing of the coal for tax under chapter 1 of the Internal Revenue Code of 1954 by reason of the amendment made by subsection (a).

"(D) RELATED PERSON.—For purposes of this paragraph, the term 'related person' means a person who bears a relationship to another person described in the last sentence of section 631(c)."

Amendment by section 1001 of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

PART V—CONTINENTAL SHELF AREAS

§ 638. Continental shelf areas

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29, 1441, 4121, 4612, 4996 of this title.

Subchapter J—Estates, Trusts, Beneficiaries, and Decedents

PART I—ESTATES, TRUSTS, AND BENEFICIARIES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 543, 553, 927 of this title.

SUBPART A—GENERAL RULES FOR TAXATION OF ESTATES AND TRUSTS

§ 642. Special rules for credits and deductions

(a) Credits against tax

[*See main edition for text of* (*1*)]

(2) Political contributions

An estate or trust shall not be allowed the credit against tax for political contributions provided by section 24.

[*See main edition for text of* (*b*)]

(c) Deduction for amounts paid or permanently set aside for a charitable purpose

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Pooled income funds

In the case of a pooled income fund (as defined in paragraph (5)), there shall also be allowed as a deduction in computing its taxable income any amount of the gross income attributable to gain from the sale of a capital asset held for more than 6 months, without limitation, which pursuant to the terms of the governing instrument is, during the taxable year, permanently set aside for a purpose specified in section 170(c).

(4) Adjustments

To the extent that the amount otherwise allowable as a deduction under this subsection consists of gain from the sale or exchange of capital assets held for more than 6 months, proper adjustment shall be made for any deduction allowable to the estate or trust under section 1202 (relating to deduction for excess of capital gains over capital losses). In the case of a trust, the deduction allowed by this subsection shall be subject to section 681 (relating to unrelated business income).

[*See main edition for text of* (*5*) *and* (*6*); (*d*) *to* (*j*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(17), title X, § 1001(b)(8), 98 Stat. 843, 1011.)

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-369, § 474(r)(17), substituted "section 24" for "section 41".

Subsec. (c)(3), (4). Pub. L. 98-369, § 1001(b)(8), substituted "6 months" for "1 year".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(17) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 1001(b)(8) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24, 55, 153, 170, 507, 508, 542, 643, 644, 651, 661, 662, 663, 681, 683, 901, 904, 2055, 2522, 4947, 4948, 6034 of this title.

§ 643. Definitions applicable to subparts A, B, C, and D

[*See main edition for text of* (*a*) *to* (*c*)]

(d) [1] Coordination with back-up withholding

Except to the extent otherwise provided in regulations, this subchapter shall be applied with respect to payments subject to withholding under section 3406—

(1) by allocating between the estate or trust and its beneficiaries any credit allowable under section 31(c) (on the basis of their respective shares of any such payment taken into account under this subchapter),

(2) by treating each beneficiary to whom such credit is allocated as if an amount equal to such credit has been paid to him by the estate or trust, and

(3) by allowing the estate or trust a deduction in an amount equal to the credit so allocated to beneficiaries.

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[1] So in original. There are two subsecs. designated "(d)".

(d) [2] Treatment of property distributed in kind

(1) Basis of beneficiary

The basis of any property received by a beneficiary in a distribution from an estate or trust shall be—

(A) the adjusted basis of such property in the hands of the estate or trust immediately before the distribution, adjusted for

(B) any gain or loss recognized to the estate or trust on the distribution.

(2) Amount of distribution

In the case of any distribution of property (other than cash), the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the lesser of—

(A) the basis of such property in the hands of the beneficiary (as determined under paragraph (1)), or

(B) the fair market value of such property.

(3) Election to recognize gain

(A) In general

In the case of any distribution of property (other than cash) to which an election under this paragraph applies—

(i) paragraph (2) shall not apply,

(ii) gain or loss shall be recognized by the estate or trust in the same manner as if such property had been sold to the distributee at its fair market value, and

(iii) the amount taken into account under sections 661(a)(2) and 662(a)(2) shall be the fair market value of such property.

(B) Election

Any election under this paragraph shall be made by the estate or trust on its return for the taxable year for which the distribution was made.

Any such election, once made, may be revoked only with the consent of the Secretary.

(4) Exception for distributions described in section 663(a)

This subsection shall not apply to any distribution described in section 663(a).

(e) Treatment of multiple trusts

For purposes of this subchapter, under regulations prescribed by the Secretary, 2 or more trusts shall be treated as 1 trust if—

(1) such trusts have substantially the same grantor or grantors and substantially the same primary beneficiary or beneficiaries, and

(2) a principal purpose of such trusts is the avoidance of the tax imposed by this chapter.

For purposes of the preceding sentence, a husband and wife shall be treated as 1 person.

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369; July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 81(a), 82(a), title VII, § 722(h)(3), 98 Stat. 597, 598, 975.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369, § 81(a), added the subsec. (d) relating to treatment of property distributed in kind.

Pub. L. 98-369, § 722(h)(3), added the subsec. (d) relating to coordination with back-up withholding.

Subsec. (e). Pub. L. 98-369, § 82(a), added subsec. (e).

1983—Subsec. (a)(7). Pub. L. 97-448 substituted "section 116 (relating to partial exclusion of dividends) or section 128 (relating to certain interest)" for "section 116 (relating to partial exclusion of dividends or interest received) or section 128 (relating to interest on certain savings certificates)".

Subsec. (d). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 81(b) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [enacting subsec. (d) of this section] shall apply to distributions after June 1, 1984, in taxable years ending after such date.

"(2) TIME FOR MAKING ELECTION.—In the case of any distribution before the date of the enactment of this Act [July 18, 1984]—

"(A) the time for making an election under section 643(d)(3) of the Internal Revenue Code of 1954 (as added by this section) shall not expire before January 1, 1985, and

"(B) the requirement that such election be made on the return of the estate or trust shall not apply."

Section 82(b) of Pub. L. 98-369, provided that: "The amendment made by subsection (a) [enacting subsec. (e) of this section] shall apply to taxable years beginning after March 1, 1984."

Section 722(h)(5) of Pub. L. 98-369 provided that:

"(A) Except as provided in this paragraph, the amendments made by this subsection [amending sections 643, 3405, 3406, and 6041 of this title] shall apply as if included in the amendments made by the Interest and Dividend Tax Compliance Act of 1983 [Pub. L. 98-67].

"(B) The amendments made by paragraph (4) [amending sections 3405 and 6041 of this title] shall apply to payments or distributions after December 31, 1984, unless the payor elects to have such amendments apply to payments or distributions before January 1, 1985."

SUBPART C—ESTATES AND TRUSTS WHICH MAY ACCUMULATE INCOME OR WHICH DISTRIBUTE CORPUS

§ 661. Deduction for estates and trusts accumulating income or distributing corpus

[See main edition for text]

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

§ 662. Inclusion of amounts in gross income of beneficiaries of estates and trusts accumulating income or distributing corpus

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 116, 642, 643, 663, 667, 677, 678, 1202 of this title.

§ 663. Special rules applicable to sections 661 and 662

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 643 of this title.

§ 664. Charitable remainder trusts

[See main edition for text of (a) to (e)]

(f) Certain contingencies permitted

(1) General rule

If a trust would, but for a qualified contingency, meet the requirements of paragraph (1)(A) or (2)(A) of subsection (d), such trust shall be treated as meeting such requirements.

(2) Value determined without regard to qualified contingency

For purposes of determining the amount of any charitable contribution (or the actuarial value of any interest), a qualified contingency shall not be taken into account.

(3) Qualified contingency

For purposes of this subsection, the term "qualified contingency" means any provision of a trust which provides that, upon the happening of a contingency, the payments described in paragraph (1)(A) or (2)(A) of subsection (d) (as the case may be) will terminate not later than such payments would otherwise terminate under the trust.

(As amended Pub. L. 98-369, div. A, title X, § 1022(d), July 18, 1984, 98 Stat. 1029.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-369 added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Enactment of subsec. (f) by Pub. L. 98-369, applicable to transfers after Dec. 31, 1978, see section 1022(e)(2) of Pub. L. 98-369, set out as a note under section 2055 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 644, 2055, 2056, 2522, 6049 of this title.

SUBPART E—GRANTORS AND OTHERS TREATED AS SUBSTANTIAL OWNERS

§ 671. Trust income, deductions, and credits attributable to grantors and others as substantial owners

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 678, 1445 of this title.

SUBPART F—MISCELLANEOUS

§ 682. Income of an estate or trust in case of divorce, etc.

[*See main edition for text of* (*a*)]

(b) Wife considered a beneficiary

For purposes of computing the taxable income of the estate or trust and the taxable income of a wife to whom subsection (a) applies, such wife shall be considered as the beneficiary specified in this part.

[*See main edition for text of* (*c*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 422(d)(2), 98 Stat. 798.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 deleted "or section 71" after "subsection (a)" and deleted provision that a periodic payment under section 71 to any portion of which this part applied shall be included in the gross income of the beneficiary in the taxable year in which under this part such portion is required to be included.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98-369, set out as a note under section 71 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 152, 215, 7701 of this title.

PART II—INCOME IN RESPECT OF DECEDENTS

§ 691. Recipients of income in respect of decedents

[*See main edition for text of* (*a*)]

(b) Allowance of deductions and credit

The amount of any deduction specified in section 162, 163, 164, 212, or 611 (relating to deductions for expenses, interest, taxes, and depletion) or credit specified in section 27 (relating to foreign tax credit), in respect of a decedent which is not properly allowable to the decedent in respect of the taxable period in which falls the date of his death, or a prior period, shall be allowed:

(1) Expenses, interest, and taxes

In the case of a deduction specified in sections 162, 163, 164, or 212 and a credit specified in section 27, in the taxable year when paid—

[*See main edition for text of* (*A*) *and* (*B*), (*2*); (*c*) *to* (*e*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(18), 98 Stat. 843.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted "section 27" for "section 33" in provisions preceding par. (1) and in provisions of par. (1) preceding subpar. (A).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(18) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 223, 421, 453B, 753, 1014, 1038, 1245, 1250 of this title.

§ 692. Income taxes on members of Armed Forces on death

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Certain military or civilian employees of the United States dying as a result of injuries sustained overseas

(1) In general

In the case of any individual who dies while a military or civilian employee of the United States, if such death occurs as a result of wounds or injury which was incurred while the individual was a military or civilian employee of the United States and which was incurred outside the United States in a terroristic or military action, any tax imposed by this subtitle shall not apply—

(A) with respect to the taxable year in which falls the date of his death, and

(B) with respect to any prior taxable year in the period beginning with the last taxable year ending before the taxable year in which the wounds or injury were incurred.

(2) Terroristic or military action

For purposes of paragraph (1), the term "terroristic or military action" means—

(A) any terroristic activity which a preponderance of the evidence indicates was directed against the United States or any of its allies, and

(B) any military action involving the Armed Forces of the United States and resulting from violence or aggression against the United States or any of its allies (or threat thereof).

For purposes of the preceding sentence, the term "military action" does not include training exercises.

(3) Treatment of multinational forces

For purposes of paragraph (2), any multinational force in which the United States is participating shall be treated as an ally of the United States.

(As amended Apr. 10, 1984, Pub. L. 98-259, § 1(a), 98 Stat. 142; July 18, 1984, Pub. L. 98-369, div. A, title VII, § 722(g)(2), (3), 98 Stat. 974.)

Amendments

1984—Subsec. (c). Pub. L. 98-259 added subsec. (c).

Subsec. (c)(1). Pub. L. 98-369, § 722(g)(2), which directed the amendment of par. (1) of this section by substituting "as a result of wounds or injury which was incurred while the individual was a military or civilian employee of the United States and which was incurred" for "as a result of wounds or injury incurred" was executed to par. (1) of subsec. (c) to reflect the probable intent of Congress.

Subsec. (c)(2)(A). Pub. L. 98-369, § 722(g)(3), inserted "which a preponderance of the evidence indicates was".

Effective Date of 1984 Amendments

Section 722(g)(5) of Pub. L. 98-369 provided that:

"(A) In general.—The amendments made by this subsection [amending subsec. (c)(1), (2)(A) of this section and enacting and amending provisions set out as notes under this section] shall take effect as if they were included in the amendments made by section 1 of Public Law 98-259 [enacting subsec. (c) of this section and enacting provisions set out as a note under this section].

"(B) Statute of limitations waived.—Notwithstanding section 6511 of the Internal Revenue Code of 1954, the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendments made by this subsection shall not expire before the date 1 year after the date of the enactment of this Act [July 18, 1984]."

Section 1(b) of Pub. L. 98-259 as amended by Pub. L. 98-369, div. A, title VII, § 722(g)(1), July 18, 1984, 98 Stat. 974, provided that:

"(1) In general.—The amendment made by subsection (a) [enacting subsec. (c) of this section] shall apply with respect to all taxable years (whether beginning before, on, or after the date of enactment of this Act [Apr. 10, 1984]) of individuals dying after November 17, 1978, as a result of wounds or injuries incurred after such date.

"(2) Statute of limitations waived.—Notwithstanding section 6511 of the Internal Revenue Code of 1954, the time for filing a claim for credit or refund of any overpayment of tax resulting from the amendment made by subsection (a) shall not expire before the date 1 year after the date of the enactment of this Act."

Treatment of Director General of Multinational Force in Sinai

Section 722(g)(4) of Pub. L. 98-369 provided that: "For purposes of section 692(c) of the Internal Revenue Code of 1954, the Director General of the Multinational Force and Observers in the Sinai who died on February 15, 1984, shall be treated as if he were a civilian employee of the United States while he served as such Director General."

Subchapter K—Partners and Partnerships

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1011, 1012 of this title; title 42 section 411; title 46 App. section 1177.

PART I—DETERMINATION OF TAX LIABILITY

§ 702. Income and credits of partner

(a) General rule

In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(1) gains and losses from sales or exchanges of capital assets held for not more than 6 months,

(2) gains and losses from sales or exchanges of capital assets held for more than 6 months,

[See main edition for text of (3) to (8); (b) to (d)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1001(b)(9), 98 Stat. 1011.)

Amendments

1984—Subsec. (a)(1), (2). Pub. L. 98-369 substituted "6 months" for "1 year".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

Section Referred to in Other Sections

This section is referred to in sections 170, 703, 706, 1366, 1402 of this title; title 42 sections 403, 411.

§ 704. Partner's distributive share

[See main edition for text of (a) and (b)]

(c) Contributed property

Under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner shall be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution. Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items.

[*See main edition for text of* (*d*) *to* (*f*)]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title I, § 71(a), 98 Stat. 589.)

Amendments

1984—Subsec. (c). Pub. L. 98–369, amended subsec. (c) generally, substituting provisions directing that, under regulations prescribed by the Secretary, income, gain, loss, and deduction with respect to property contributed to the partnership by a partner be shared among partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution, and that similar rules apply to contributions by a partner (using the cash receipts and disbursements method of accounting) of accounts payable and other accrued but unpaid items for provisions which had directed that, if the partnership agreement so provided, depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner would under regulations prescribed by the Secretary, be shared among the partners so as to take account of the variation between the basis of the property to the partnership and its fair market value at the time of contribution, and struck out provisions which had directed that in determining a partner's distributive share of items described in section 702(a), depreciation, depletion, or gain or loss with respect to property contributed to the partnership by a partner would, except to the extent otherwise provided, be allocated among the partners in the same manner as if such property had been purchased by the partnership and that if the partnership agreement did not provide otherwise, depreciation, depletion, or gain or loss with respect to undivided interests in property contributed to a partnership would be determined as though such undivided interests had not been contributed to the partnership.

Effective Date of 1984 Amendment

Section 71(c) of Pub. L. 98–369 provided that: "The amendments made by this section [amending sections 613A, 704, and 743 of this title] shall apply with respect to property contributed to the partnership after March 31, 1984, in taxable years ending after such date."

Section Referred to in Other Sections

This section is referred to in sections 168, 461, 613A, 743, 761, 1366 of this title.

§ 705. Determination of basis of partner's interest

(a) General rule

The adjusted basis of a partner's interest in a partnership shall, except as provided in subsection (b), be the basis of such interest determined under section 722 (relating to contributions to a partnership) or section 742 (relating to transfers of partnership interests)—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) decreased (but not below zero) by the amount of the partner's deduction for depletion for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D).

[*See main edition for text of* (*b*)]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title VII, § 722(e)(1), 98 Stat. 974.)

Amendments

1984—Subsec. (a)(3). Pub. L. 98–369 substituted "for any partnership oil and gas property to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such partner under section 613A(c)(7)(D)" for "under section 611 with respect to oil and gas wells".

Effective Date of 1984 Amendment

Section 722(e)(3)(A) of Pub. L. 98–369 provided that: "The amendment made by paragraph (1) [amending subsec. (a)(3) of this section] shall take effect on January 1, 1975."

§ 706. Taxable years of partner and partnership

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Closing of partnership year

[*See main edition for text of* (*1*)]

(2) Partner who retires or sells interest in partnership

(A) Disposition of entire interest

The taxable year of a partnership shall close—

(i) with respect to a partner who sells or exchanges his entire interest in a partnership, and

(ii) with respect to a partner whose interest is liquidated, except that the taxable year of a partnership with respect to a partner who dies shall not close prior to the end of the partnership's taxable year.

(B) Disposition of less than entire interest

The taxable year of a partnership shall not close (other than at the end of a partnership's taxable year as determined under subsection (b)(1)) with respect to a partner who sells or exchanges less than his entire interest in the partnership or with respect to a partner whose interest is reduced (whether by entry of a new partner, partial liquidation of a partner's interest, gift, or otherwise).

(d) Determination of distributive share when partner's interest changes

(1) In general

Except as provided in paragraphs (2) and (3), if during any taxable year of the partnership there is a change in any partner's interest in the partnership, each partner's distributive share of any item of income, gain, loss, deduction, or credit of the partnership for such taxable year shall be determined by the use of any method prescribed by the Secretary by regulations which takes into account the varying interests of the partners in the partnership during such taxable year.

(2) Certain cash basis items prorated over period to which attributable

(A) In general

If during any taxable year of the partnership there is a change in any partner's interest in the partnership, then (except to the extent provided in regulations) each partner's distributive share of any allocable cash basis item shall be determined—

(i) by assigning the appropriate portion of each such item to each day in the period to which it is attributable, and

(ii) by allocating the portion assigned to any such day among the partners in proportion to their interests in the partnership at the close of such day.

(B) Allocable cash basis item

For purposes of this paragraph, the term "allocable cash basis item" means any of the following items which are described in paragraph (1) and with respect to which the partnership uses the cash receipts and disbursements method of accounting:

(i) Interest.

(ii) Taxes.

(iii) Payments for services or for the use of property.

(iv) Any other item of a kind specified in regulations prescribed by the Secretary as being an item with respect to which the application of this paragraph is appropriate to avoid significant misstatements of the income of the partners.

(C) Items attributable to periods not within taxable year

If any portion of any allocable cash basis item is attributable to—

(i) any period before the beginning of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the first day of such taxable year, or

(ii) any period after the close of the taxable year, such portion shall be assigned under subparagraph (A)(i) to the last day of the taxable year.

(D) Treatment of deductible items attributable to prior periods

If any portion of a deductible cash basis item is assigned under subparagraph (C)(i) to the first day of any taxable year—

(i) such portion shall be allocated among persons who are partners in the partnership during the period to which such portion is attributable in accordance with their varying interests in the partnership during such period, and

(ii) any amount allocated under clause (i) to a person who is not a partner in the partnership on such first day shall be capitalized by the partnership and treated in the manner provided for in section 755.

(3) Items attributable to interest in lower tier partnership prorated over entire taxable year

If—

(A) during any taxable year of the partnership there is a change in any partner's interest in the partnership (hereinafter in this paragraph referred to as the "upper tier partnership"), and

(B) such partnership is a partner in another partnership (hereinafter in this paragraph referred to as the "lower tier partnership"),

then (except to the extent provided in regulations) each partner's distributive share of any item of the upper tier partnership attributable to the lower tier partnership shall be determined by assigning the appropriate portion (determined by applying principles similar to the principles of subparagraphs (C) and (D) of paragraph (2)) of each such item to the appropriate days during which the upper tier partnership is a partner in the lower tier partnership and by allocating the portion assigned to any such day among the partners in proportion to their interests in the upper tier partnership at the close of such day.

(4) Taxable year determined without regard to subsection (c)(2)(A)

For purposes of this subsection, the taxable year of a partnership shall be determined without regard to subsection (c)(2)(A).

(As amended July 18, 1984, Pub. L. 98–369, div. A, title I, § 72(a), (b), 98 Stat. 589, 591.)

AMENDMENTS

1984—Subsec. (c)(2)(A). Pub. L. 98–369, § 72(b)(1), struck out last sentence providing that such partner's distributive share of item described in section 702(a) for such year shall be determined, under regulations prescribed by the Secretary, for the period ending with such sale, exchange, or liquidation.

Subsec. (c)(2)(B). Pub. L. 98–369, § 72(b)(2), struck out ", but such partner's distributive share of items described in section 702(a) shall be determined by taking into account his varying interests in the partnership during the taxable year" after "otherwise)".

Subsec. (d). Pub. L. 98–369, § 72(a), added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 72(c) of Pub. L. 98–369 provided that: "The amendments made by this section [amending this section] shall apply—

"(1) in the case of items described in section 706(d)(2) of the Internal Revenue Code of 1954 (as added by subsection (a)), to amounts attributable to periods after March 31, 1984, and

"(2) in the case of items described in section 706(d)(3) of such Code (as added by subsection (a)), to amounts paid or accrued by the other partnership after March 31, 1984."

§ 707. Transactions between partner and partnership

(a) Partner not acting in capacity as partner

(1) In general

If a partner engages in a transaction with a partnership other than in his capacity as a member of such partnership, the transaction shall, except as otherwise provided in this section, be considered as occurring between the partnership and one who is not a partner.

(2) Treatment of payments to partners for property or services

Under regulations prescribed by the Secretary—

(A) Treatment of certain services and transfers of property

If—

(i) a partner performs services for a partnership or transfers property to a partnership,

(ii) there is a related direct or indirect allocation and distribution to such partner, and

(iii) the performance of such services (or such transfer) and the allocation and distribution, when viewed together, are properly characterized as a transaction occurring between the partnership and a partner acting other than in his capacity as a member of the partnership,

such allocation and distribution shall be treated as a transaction described in paragraph (1).

(B) Treatment of certain property transfers

If—

(i) there is a direct or indirect transfer of money or other property by a partner to a partnership,

(ii) there is a related direct or indirect transfer of money or other property by the partnership to such partner (or another partner), and

(iii) the transfers described in clauses (i) and (ii), when viewed together, are properly characterized as a sale of property,

such transfers shall be treated either as a transaction described in paragraph (1) or as a transaction between 2 or more partners acting other than in their capacity as members of the partnership.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 73(a), 98 Stat. 591.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 73(b) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending subsec. (a) of this section] shall apply—

"(A) in the case of arrangements described in section 707(a)(2)(A) of the Internal Revenue Code of 1954 (as amended by subsection (a)), to services performed or property transferred after February 29, 1984, and

"(B) in the case of transfers described in section 707(a)(2)(B) of such Code (as so amended), to property transferred after March 31, 1984.

"(2) BINDING CONTRACT EXCEPTION.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) if such transfer is pursuant to a binding contract in effect on March 31, 1984, and at all times thereafter before the transfer.

"(3) EXCEPTION FOR CERTAIN TRANSFERS.—The amendment made by subsection (a) shall not apply to a transfer of property described in section 707(a)(2)(B)(i) that is made before December 31, 1984, if—

"(A) such transfer was proposed in a written private offering memorandum circulated before February 28, 1984;

"(B) the out-of-pocket costs incurred with respect to such offering exceeded $250,000 as of February 28, 1984;

"(C) the encumbrances placed on such property in anticipation of such transfer all constitute obligations for which neither the partnership nor any partner is liable; and

"(D) the transferor of such property is the sole general partner of the partnership."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 103, 168, 170, 179, 267, 514, 613A, 631, 706, 736, 936, 1235, 1402 of this title, title 42 section 411.

§ 708. Continuation of partnership

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 168, 761 of this title.

PART II—CONTRIBUTIONS, DISTRIBUTIONS, AND TRANSFERS

SUBPART A—CONTRIBUTIONS TO A PARTNERSHIP

Sec.
724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, § 74(c), July 18, 1984, 98 Stat. 593, added item 724.

§ 721. Nonrecognition of gain or loss on contribution

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 168, 447, 722, 723, 1245, 1250 of this title.

§ 722. Basis of contributing partner's interest

The basis of an interest in a partnership acquired by a contribution of property, including money, to the partnership shall be the amount of such money and the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 722(f)(1), 98 Stat. 974.)

AMENDMENTS

1984—Pub. L. 98-369 inserted "under section 721(b)" after "gain recognized".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 722(f)(2) of Pub. L. 98-369 provided that: "The amendments made by paragraph (1) [amending sections 722 and 723 of this title] shall take effect as if included in the amendments made by section 2131 of the Tax Reform Act of 1976 [Pub. L. 94-455]."

§ 723. Basis of property contributed to partnership

The basis of property contributed to a partnership by a partner shall be the adjusted basis of such property to the contributing partner at the time of the contribution increased by the amount (if any) of gain recognized under section 721(b) to the contributing partner at such time.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 722(f)(1), 98 Stat. 974.)

AMENDMENTS

1984—Pub. L. 98-369 inserted "under section 721(b)" after "gain recognized".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in amendments made by section 2131 of the Tax Reform Act of 1976, Pub. L. 94-455, see section 722(f)(2) of Pub. L. 98-369, set out as a note under section 722 of this title.

§ 724. Character of gain or loss on contributed unrealized receivables, inventory items, and capital loss property

(a) Contributions of unrealized receivables

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an unrealized receivable in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property shall be treated as ordinary income or ordinary loss, as the case may be.

(b) Contributions of inventory items

In the case of any property which—

(1) was contributed to the partnership by a partner, and

(2) was an inventory item in the hands of such partner immediately before such contribution,

any gain or loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as ordinary income or ordinary loss, as the case may be.

(c) Contributions of capital loss property

In the case of any property which—

(1) was contributed by a partner to the partnership, and

(2) was a capital asset in the hands of such partner immediately before such contribution,

any loss recognized by the partnership on the disposition of such property during the 5-year period beginning on the date of such contribution shall be treated as a loss from the sale of a capital asset to the extent that, immediately before such contribution, the adjusted basis of such property in the hands of the partner exceeded the fair market value of such property.

(d) Definitions

For purposes of this section—

(1) Unrealized receivable

The term "unrealized receivable" has the meaning given such term by section 751(c) (determined by treating any reference to the partnership as referring to the partner).

(2) Inventory item

The term "inventory item" has the meaning given such term by section 751(d)(2) (determined by treating any reference to the partnership as referring to the partner and by applying section 1231 without regard to any holding period therein provided).

(3) Substituted basis property

(A) In general

If any property described in subsection (a), (b), or (c) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of non-recognition transactions.

(B) Exception for stock in C corporation

Subparagaph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(Added Pub. L. 98-369, div. A, title I, § 74(a), July 18, 1984, 98 Stat. 592.)

EFFECTIVE DATE

Section 74(d)(1) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting this section] shall apply to property contributed to a partnership after March 31, 1984, in taxable years ending after such date."

SUBPART B—DISTRIBUTIONS BY A PARTNERSHIP

§ 732. Basis of distributed property other than money

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 613A, 731, 733, 734, 1276 of this title.

§ 734. Optional adjustment to basis of undistributed partnership property

[*See main edition for text of* (*a*)]

(b) Method of adjustment

In the case of a distribution of property to a partner, a partnership, with respect to which the election provided in section 754 is in effect, shall—

[*See main edition for text of* (*1*) *and* (*2*)]

Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect.

[*See main edition for text of* (c)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 78(a), 98 Stat. 597.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 added following par. (2) "Paragraph (1)(B) shall not apply to any distributed property which is an interest in another partnership with respect to which the election provided in section 754 is not in effect."

EFFECTIVE DATE OF 1984 AMENDMENT

Section 78(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (b) of this section] shall apply to distributions after March 1, 1984, in taxable years ending after such date."

§ 735. Character of gain or loss on disposition of distributed property

[See main edition for text of (a) and (b)]

(c) Special rules

(1) Waiver of holding periods contained in section 1231

For purposes of this section, section 751(d)(2) (defining inventory item) shall be applied without regard to any holding period in section 1231(b).

(2) Substituted basis property

(A) In general

If any property described in subsection (a) is disposed of in a nonrecognition transaction, the tax treatment which applies to such property under such subsection shall also apply to any substituted basis property resulting from such transaction. A similar rule shall also apply in the case of a series of nonrecognition transactions.

(B) Exception for stock in C corporation

Subparagraph (A) shall not apply to any stock in a C corporation received in an exchange described in section 351.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 74(b), 98 Stat. 593.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 74(d)(2) of Pub. L. 98-369 provided that: "The amendment made by subsection (b) [enacting subsec. (c) of this section] shall apply to property distributed after March 31, 1984, in taxable years ending after such date."

SUBPART C—TRANSFERS OF INTERESTS IN A PARTNERSHIP

§ 743. Optional adjustment to basis of partnership property

[See main edition for text of (a)]

(b) Adjustment to basis of partnership property

In the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which the election provided in section 754 is in effect shall—

[See main edition for text of (1) and (2)]

Under regulations prescribed by the Secretary, such increase or decrease shall constitute an adjustment to the basis of partnership property with respect to the transferee partner only. A partner's proportionate share of the adjusted basis of partnership property shall be determined in accordance with his interest in partnership capital and, in the case of property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share. In the case of an adjustment under this subsection to the basis of partnership property subject to depletion, any depletion allowable shall be determined separately for the transferee partner with respect to his interest in such property.

[See main edition for text of (c)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 71(b), 98 Stat. 589.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted in provisions following par. (2) "property contributed to the partnership by a partner, section 704(c) (relating to contributed property) shall apply in determining such share" for "an agreement deescribed in section 704(c)(2) (relating to effect of partnership agreement on contributed property), such share shall be determined by taking such agreement into account".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to property contributed to the partnership after Mar. 31, 1984, in taxable years ending after such date, see section 71(c) of Pub. L. 98-369, set out as a note under section 704 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 732, 754, 755, 761 of this title.

SUBPART D—PROVISIONS COMMON TO OTHER SUBPARTS

§ 751. Unrealized receivables and inventory items

[See main edition for text of (a) and (b)]

(c) Unrealized receivables

For purposes of this subchapter, the term "unrealized receivables" includes, to the extent not previously includible in income under the method of accounting used by the partnership, any rights (contractual or otherwise) to payment for—

[See main edition for text of (1) and (2)]

For purposes of this section and sections 731, 736, and 741, such term also includes mining property (as defined in section 617(f)(2) [1], stock in a DISC (as described in section 992(a)), section 1245 property (as defined in section 1245(a)(3)), section 1245 recovery property (as defined in section 1245(a)(5)), stock in certain foreign corporations (as described in section 1248), section 1250 property (as defined in section 1250(c)), farm land (as defined in section 1252(a)), franchises, trademarks, or trade names (referred to in section 1253(a)), and an oil, gas, or geothermal property (described in section 1254) but only to the extent of the amount which would be treated as gain to which section 617(d)(1), 995(c), 1245(a), 1248(a), 1250(a), 1252(a), 1253(a), or 1254(a) would apply if (at the time of the transaction described in this section or sections 731, 736, or 741, as the case may be) such property had been sold by the partnership at its fair market value. For purposes of this section and sections 731, 736, and 741, such term also includes any market discount bond (as defined in section 1278) and any short-term obligation (as defined in section 1283) but only to the extent of the amount which would be treated as ordinary income if

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[1] So in original. Probably should be followed by a closing parenthesis.

(at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership.

[*See main edition for text of* (*d*) *and* (*e*)]

(f) Special rules in the case of tiered partnerships, etc.

In determining whether property of a partnership is—

(1) an unrealized receivable, or

(2) an inventory item,

such partnership shall be treated as owning its proportionate share of the property of any other partnership in which it is a partner. Under regulations, rules similar to the rules of the preceding sentence shall also apply in the case of interests in trusts.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 43(c)(3), 76(a), title IV, § 492(b)(4), 98 Stat. 558, 595, 854.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 492(b)(4), struck out in provision after par. (2) "farm recapture property (as defined in section 1251(e)(1))," before "farm land", and "1251(c)," after "1250(a),".

Pub. L. 98-369, § 43(c)(3), added at the end thereof: "For purposes of this section and sections 731, 736, and 741, such term also includes any market discount bond (as defined in section 1278) and any short-term obligation (as defined in section 1283) but only to the extent of the amount which would be treated as ordinary income if (at the time of the transaction described in this section or section 731, 736, or 741, as the case may be) such property had been sold by the partnership."

Subsec. (f). Pub. L. 98-369, § 76(a), added subsec. (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 492(b)(4) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98-369, set out as a note under section 170 of this title.

Section 76(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (f) of this section] shall apply to distributions, sales, and exchanges made after March 31, 1984, in taxable years ending after such date."

Amendment by section 43(c)(3) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 467, 617, 724, 731, 732, 735, 736, 741, 1245, 1250, 1255, 6050K of this title.

§ 752. Treatment of certain liabilities

OVERRULING OF RAPHAN CASE

Pub. L. 98-369, div. A, title I, § 79, July 18, 1984, 98 Stat. 597, provided that:

"(a) GENERAL RULE.—Section 752 of the Internal Revenue Code of 1954 (and the regulations prescribed thereunder) shall be applied without regard to the result reached in the case of Raphan vs the United States, 3 Cl. Ct. 457 (1983).

"(b) REGULATIONS.—In amending the regulations prescribed under section 752 of such Code to reflect subsection (a), the Secretary of the Treasury or his delegate shall prescribe regulations relating to liabilities, including the treatment of guarantees, assumptions, indemnity agreements, and similar arrangements."

§ 755. Rules for allocation of basis

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 734, 743 of this title.

PART III—DEFINITIONS

§ 761. Terms defined

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Distributions treated as exchanges

For purposes of—

(1) section 708 (relating to continuation of partnership),

(2) section 743 (relating to optional adjustment to basis of partnership property), and

(3) any other provision of this subchapter specified in regulations prescribed by the Secretary,

any distribution (not otherwise treated as an exchange) shall be treated as an exchange.

(f) Cross reference

For rules in the case of the sale, exchange, liquidation, or reduction of a partner's interest, see sections 704(b) and 706(c)(2).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 75(b), 98 Stat. 594.)

AMENDMENTS

1984—Subsecs. (e), (f). Pub. L. 98-369 added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to distributions, sales, and exchanges made after Mar. 31, 1984, in taxable years ending after such date, see section 75(e) of Pub. L. 98-369, set out as an Effective Date note under section 386 of this title.

Subchapter L—Insurance Companies

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 133, 594, 817, 953, 1035, 1275, 1361, 1381, 6154, 6425, 6655 of this title.

PART I—LIFE INSURANCE COMPANIES

Subpart
A. Tax imposed.
B. Life insurance gross income.
C. Life insurance deductions.
D. Accounting, allocation, and foreign provisions.
E. Definitions and special rules.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 842, 844, 864, 1016 of this title.

SUBPART A—TAX IMPOSED

Sec.
801. Tax imposed.

§ 801. Tax imposed

(a) Tax imposed

(1) In general

A tax is hereby imposed for each taxable year on the life insurance company taxable income of every life insurance company. Such tax shall consist of a tax computed as provided in section 11 as though the life insurance company taxable income were the taxable income referred to in section 11.

(2) Alternative tax in case of capital gains

(A) In general

If a life insurance company has a net capital gain for the taxable year, then (in lieu of the tax imposed by paragraph (1)), there is hereby imposed a tax (if such tax is less than the tax imposed by paragraph (1)).

(B) Amount of tax

The amount of the tax imposed by this paragraph shall be the sum of—

(i) a partial tax, computed as provided by paragraph (1), on the life insurance company taxable income reduced by the amount of the net capital gain, and

(ii) an amount determined as provided in section 1201(a) on such net capital gain.

(C) Net capital gain not taken into account in determining special life insurance company deduction and small life insurance company deduction

For purposes of subparagraph (B)(i), the amounts allowable as deductions under paragraphs (2) and (3) of section 804 shall be determined by reducing the tentative LICTI by the amount of the net capital gain (determined without regard to items attributable to noninsurance businesses).

(b) Life insurance company taxable income

For purposes of this part, the term "life insurance company taxable income" means—

(1) life insurance gross income, reduced by

(2) life insurance deductions.

(c) Taxation of distributions from pre-1984 policyholders surplus account

For provision taxing distributions to shareholders from pre-1984 policyholders surplus account, see section 815.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 720.)

Prior Provisions

A prior section 801, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 112, and amended Pub. L. 87–858, § 3(a), Oct. 23, 1962, 76 Stat. 1134; Pub. L. 91–172, title I, § 121(b)(5)(B), Dec. 30, 1969, 83 Stat. 541; Pub. L. 93–406, title II, § 2002(g)(11), Sept. 2, 1974, 88 Stat. 970; Pub. L. 94–455, title XV, § 1505(a), title XIX, §§ 1901(c)(6), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1738, 1803, 1834; Pub. L. 95–600, title VII, § 703(j)(4), Nov. 6, 1978, 92 Stat. 2941, defined "life insurance company" and related terms, prior to the general revision of this part by Pub. L. 98–369, § 211(a). See section 816 of this title.

Another prior section 801, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36, contained provisions similar to this section, prior to the the general revision of this part by Pub. L. 86–69, § 2(a).

A prior section 802, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 115, and amended Pub. L. 87–858, § 3(b)(1), Oct. 23, 1962, 76 Stat. 1136; Pub. L. 88–272, title II, § 235(c)(1), Feb. 26, 1964, 78 Stat. 126; Pub. L. 91–172, title V, § 511(c)(1), Dec. 30, 1969, 83 Stat. 637; Pub. L. 94–455, title XIX, § 1901(a)(95), (b)(33)(E), Oct. 4, 1976, 90 Stat. 1780, 1801; Pub. L. 95–600, title III, § 301(b)(8), Nov. 6, 1978, 92 Stat. 2821, contained provisions similar to this section, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

Another prior section 802, acts Aug. 16, 1954, ch. 736, 68A Stat. 255; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36; July 24, 1956, ch. 696, §§ 1, 2(b), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85–345, §§ 1, 2(a), 72 Stat. 36, contained provision similar to this section, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

Effective Date

Section 215 of Pub. L. 98–369 provided that: "The amendments made by this subtitle [subtitle A, § 211 to 219 of title II of div. A of Pub. L. 98–369, amending this part and enacting section 845 of this title, amending sections 72, 80, 243, 381, 401, 453B, 542, 594, 832, 841, 844, 891, 953, 1016, 1035, 1201, 1232A, 1351, 1503, 1504, 1561, 1563, 4371, 6501, 6511, 6601, and 6611 of this title, and enacting provisions set out as notes under sections 453B, 801, 806, 807, 809, 814, 816, 845, and 6655 of this title] shall apply to taxable years beginning after December 31, 1983."

Reserves Computed on New Basis; Fresh Start

Section 216 of Pub. L. 98–369 provided that:

"(a) Recomputation of Reserves.—

"(1) In general.—As of the beginning of the first taxable year beginning after December 31, 1983, for purposes of subchapter L of the Internal Revenue Code of 1954 (other than section 816 thereof), the reserve for any contract shall be recomputed as if the amendments made by this subtitle [see Effective Date note above] had applied to such contract when it was issued.

"(2) Premiums earned.—For the first taxable year beginning after December 31, 1983, in determining 'premiums earned on insurance contracts during the taxable year' as provided in section 832(b)(4) of the Internal Revenue Code of 1954, life insurance reserves which are included in unearned premiums on outstanding business at the end of the preceding taxable year shall be determined as provided in section 807 of the Internal Revenue Code of 1954, as amended by this subtitle, as though section 807 was applicable to such reserves in such preceding taxable year.

"(3) Issuance date for group contracts.—For purposes of this subsection, the issuance date of any group contract shall be determined under section 807(e)(2) of the Internal Revenue Code of 1954 (as added by this subtitle), except that if such issuance date cannot be determined, the issuance date shall be determined on the basis prescribed by the Secretary of the Treasury or his delegate for purposes of this subsection.

"(b) Fresh Start.—

"(1) In general.—Except as provided in paragraph (2), in the case of any insurance company, any change in the method of accounting (and any change in the method of computing reserves) between such company's first taxable year beginning after December 31, 1983, and the preceding taxable year which is required solely by the amendments made by this subtitle [see Effective Date note above] shall be treated as not being a change in the method of accounting (or change in the method of computing reserves) for purposes of the Internal Revenue Code of 1954.

"(2) Treatment of adjustments from years before 1984.—

"(A) Adjustments attributable to decreases in reserves.—No adjustment under section 810(d) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) attributable to any decrease in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in any taxable year beginning after 1983.

"(B) Adjustments attributable to increases in reserves.—

"(i) In general.—Any adjustment under section 810(d) of the Internal Revenue Code of 1954 (as so in effect) attributable to an increase in reserves as a result of a change in a taxable year beginning before 1984 shall be taken into account in taxable years beginning after 1983 to the extent that—

"(I) the amount of the adjustments which would be taken into account under such section in taxable years beginning after 1983 without regard to this subparagraph, exceeds

"(II) the amount of any fresh start adjustment attributable to contracts for which there was such an increase in reserves as a result of such change.

"(ii) Fresh start adjustment.—For purposes of clause (i), the fresh start adjustment with respect to any contract is the excess (if any) of—

"(I) the reserve attributable to such contract as of the close of the taxpayer's last taxable year beginning before January 1, 1984, over

"(II) the reserve for such contract as of the beginning of the taxpayer's first taxable year beginning after 1983 as recomputed under subsection (a) of this section.

"(C) Related income inclusions not taken into account to the extent deduction disallowed under subparagraph (b).—No premium shall be included in income to the extent such premium is directly related to an increase in a reserve for which a deduction is disallowed by subparagraph (B).

"(3) Reinsurance transactions, and reserve strengthening, after September 27, 1983.—

"(A) In general.—Paragraph (1) shall not apply (and section 807(f) of the Internal Revenue Code of 1954 as amended by this subtitle shall apply)—

"(i) to any reserve transferred pursuant to—

"(I) a reinsurance agreement entered into after September 27, 1983, and before January 1, 1984, or

"(II) a modification of a reinsurance agreement made after September 27, 1983, and before January 1, 1984, and

"(ii) to any reserve strengthening reported for Federal income tax purposes after September 27, 1983, for a taxable year ending before January 1, 1984.

Clause (ii) shall not apply to the computation of reserves on any contract issued if such computation employs the reserve practice used for purposes of the most recent annual statement filed before September 27, 1983, for the type of contract with respect to which such reserves are set up.

"(B) Treatment of reserve attributable to section 818(c) election.—In the case of any reserve described in subparagraph (A), for purposes of section 807(f) of the Internal Revenue Code of 1954, any change in the treatment of any contract to which an election under section 818(c) of such Code (as in effect on the day before the date of the enactment of this Act) applied shall be treated as a change in the basis for determining the amount of any reserve.

"(C) 10-year spread inapplicable where no 10-year spread under prior law.—In the case of any item to which section 807(f) of such Code applies by reason of subparagraph (A) or (B), such item shall be taken into account for the first taxable year beginning after December 31, 1983 (in lieu of over the 10-year period otherwise provided in such section) unless the item was required to have been taken into account over a period of 10 taxable years under section 810(d) of such Code (as in effect on the day before the date of the enactment of this Act).

"(D) Disallowance of special life insurance company deduction and small life insurance company deduction.—Any amount included in income under section 807(f) of such Code by reason of subparagraph (A) or (B) (and any income attributable to expenses transferred in connection with the transfer of reserves described in subparagraph (A)) shall not be taken into account for purposes of determining the amount of special life insurance company deduction and the small life insurance company deduction.

"(E) Disallowance of deductions under section 809(d).—No deduction shall be allowed under paragraph (5) or (6) of section 809(d) of such Code (as in effect before the amendments made by this subtitle) with respect to any amount described in either such paragraph which is transferred in connection with the transfer of reserves described in subparagraph (A).

"(4) Elections under section 818(c) after September 27, 1983, not to take effect.—

"(A) In general.—Except as provided in subparagraph (B), any election after September 27, 1983, under section 818(c) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) shall not take effect.

"(B) Exception for certain contracts issued under plan of insurance first filed after March 1, 1982, and before September 28, 1983.—Subparagraph (A) shall not apply to any election under such section 818(c) if more than 95 percent of the reserves computed in accordance with such election are attributable to risks under life insurance contracts issued by the taxpayer under a plan of insurance first filed after March 1, 1982, and before September 28, 1983.

"(5) Recapture of reinsurance after December 31, 1983.—If (A) insurance or annuity contracts in force on December 31, 1983, are subject to a conventional coinsurance agreement entered into after December 31, 1981, and before January 1, 1984, and (B) such contracts are recaptured by the reinsured in any taxable year beginning after December 31, 1983, then—

"(i) if the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, that the reinsurer would have taken into account under section 810(c) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act) exceeds the amount of the reserves with respect to the recaptured contracts, computed at the date of recapture, taken into account by the reinsurer under section 807(c) of the Internal Revenue Code of 1954 (as amended by this subtitle), such excess (but not greater than the amount of such excess if computed on January 1, 1984) shall be taken into account by the reinsurer under the method described in section 807(f)(1)(B)(ii) of the Internal Revenue Code of 1954 (as amended by this subtitle) commencing with the taxable year of recapture, and

"(ii) the amount, if any, taken into account by the reinsurer under clause (i) for purposes of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1954 shall be taken into account by the reinsured under the method described in section 807(f)(1)(B)(i) of the Internal Revenue Code of 1954 (as amended by this subtitle) commencing with the taxable year of recapture.

The excess described in clause (i) shall be reduced by any portion of such excess to which section 807(f) of the Internal Revenue Code of 1954 applies by reason of paragraph (3) of this subsection. For purposes of this paragraph, the term 'reinsurer' refers to the taxpayer that held reserves with respect to the recaptured contracts as of the end of the taxable year preceding the first taxable year beginning after December 31, 1983, and the term 'reinsured' refers to the taxpayer to which such reserves are ultimately transferred upon termination.

"(c) Election Not To Have Reserves Recomputed.—

"(1) In general.—If a qualified life insurance company makes an election under this paragraph—

"(A) subsection (a) shall not apply to such company, and

"(B) as of the beginning of the first taxable year beginning after December 31, 1983, and thereafter, the reserve for any contract issued before the first day of such taxable year by such company shall be the statutory reserve for such contract (within the meaning of section 809(b)(4)(B)(i) of the Internal Revenue Code of 1954).

"(2) Election with respect to contracts issued after 1983 and before 1989.—

"(A) In general.—If—

"(i) a qualified life insurance company makes an election under paragraph (1), and

"(ii) the tentative LICTI (within the meaning of section 806(c) of such Code) of such company for its first taxable year beginning after December 31, 1983, does not exceed $3,000,000,

such company may elect under this paragraph to have the reserve for any contract issued on or after the first day of such first taxable year and before January 1, 1989, be equal to the statutory reserve for such contract, adjusted as provided in subparagraph (B).

"(B) Adjustment to reserves.—If this paragraph applies to any contract, the statutory reserves for such contract shall be adjusted as provided under section 805(c)(1) of such Code (as in effect for taxable years beginning in 1982 and 1983), except that section 805(c)(1)(B)(ii) of such Code (as so in effect) shall be applied by substituting—

"(i) the prevailing State assumed interest rate (within the meaning of section 807(c)(4) of such Code), for

"(ii) the adjusted reserves rate.

"(3) Qualified life insurance company.—For purposes of this subsection, the term 'qualified life insurance company' means any life insurance company which, as of December 31, 1983, had assets of less than $100,000,000 (determined in the same manner as under section 806(b)(3) of such Code).

"(4) Special rules for controlled groups.—For purposes of applying the dollar limitations of paragraphs (2) and (3), rules similar to the rules of section 806(d) of such Code shall apply.

"(5) Elections.—Any election under paragraph (1) or (2)—

"(A) shall be made at such time and in such manner as the Secretary of the Treasury may prescribe, and

"(B) once made, shall be irrevocable."

Treatment of Certain Companies Operating Both as Stock and Mutual Company

Section 217(e) of Pub. L. 98-369 provided that: "If, during the 10-year period ending on December 31, 1983, a company has, as authorized by the law of the State in which the company is domiciled, been operating as a mutual life insurance company with shareholders, such company shall be treated as a stock life insurance company."

Treatment of Reinsurance Agreements Required by National Association of Insurance Commissioners

Section 217(g) of Pub. L. 98-369 provided that: "Effective for taxable years beginning after December 31, 1981, and before January 1, 1984, subsections (c)(1)(F) and (d)(12) of section 809 of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) shall not apply to dividends to policyholders reimbursed to the taxpayer by a reinsurer in respect of accident and health policies reinsured under a reinsurance agreement entered into before June 30, 1955, pursuant to the direction of the National Association of Insurance Commissioners and approved by the State insurance commissioner of the taxpayer's State of domicile. For purposes of subchapter L of chapter 1 of such Code (as in effect on the day before the date of the enactment of this Act) any such dividends shall be treated as dividends of the reinsurer and not the taxpayer."

Reports to Congress on Revenue, Segment Balance, Etc.

Section 231 of Pub. L. 98-369 provided that:

"(a) Revenue Reports.—Not later than July 1, 1985, and July 1 of each calendar year thereafter, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on—

"(1) the aggregate amount of revenue received under part I of subchapter L of chapter 1 of the Internal Revenue Code of 1954 for the most recent taxable years for which data are available,

"(2) a comparison between the amount of such revenue and the amount anticipated by reason of changes made by the Tax Equity and Fiscal Responsibility Act of 1982 [Pub. L. 97-248] or the Life Insurance Tax Act of 1984 [probably means title II of div. A of Pub. L. 98-369], and

"(3) the reasons for any difference between such aggregate revenues and anticipated revenues.

"(b) Report With Respect to Segment Balance, Etc.—

"(1) In general.—The Secretary of the Treasury (in consultation with the Joint Committee on Taxation, the Committee on Ways and Means of the House of Representatives, and the Committee on Finance of the Senate) shall conduct a full and complete study of the operation of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1954 during 1984, 1985, and 1986. Such study shall also include an analysis of life insurance products and the taxation thereof. Such study shall also include an analysis of whether part I of such subchapter L operates as a disincentive to growing companies.

"(2) Items to be included.—The study conducted under paragraph (1) shall include—

"(A) an analysis of the portion of the taxes paid by mutual life insurance companies and stock life insurance companies, and

"(B) any other data considered relevant by either stock life insurance companies or mutual life insurance companies in determining appropriate segment balance, such as the respective amounts of the following items held by each segment of the industry—

"(i) equity,

"(ii) life insurance reserves,

"(iii) other types of reserves,

"(iv) dividends paid to policyholders and shareholders,

"(v) pension business,

"(vi) total assets, and

"(vii) gross receipts.

Such report shall also include an analysis of the extent to which taxes paid by stockholders of life insurance companies shall be included in analyzing segment balance.

"(3) Reports.—

"(A) Interim reports.—The Secretary of the Treasury shall submit interim reports on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than July 1, 1986, 1987, and 1988.

"(B) Final report.—Not later than January 1, 1989, the Secretary of the Treasury shall submit a final report on the study conducted under this subsection to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

"(c) Authority To Require Data.—The Secretary of the Treasury shall have authority to require reporting of such data with respect to life insurance companies and their products as may be necessary to carry out the purposes of this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 80, 243, 542, 815, 841, 891, 1201, 1351, 1503, 1504, 1563 of this title.

SUBPART B—LIFE INSURANCE GROSS INCOME

Sec.
803. Life insurance gross income.

§ 803. Life insurance gross income

(a) In general

For purposes of this part, the term "life insurance gross income" means the sum of the following amounts:

(1) Premiums

(A) The gross amount of premiums and other consideration on insurance and annuity contracts, less

(B) return premiums, and premiums and other consideration arising out of indemnity reinsurance.

(2) Decreases in certain reserves

Each net decrease in reserves which is required by section 807(a) to be taken into account under this paragraph.

(3) Other amounts

All amounts not includible under paragraph (1) or (2) which under this subtitle are includible in gross income.

(b) Special rules for premiums

(1) Certain items included

For purposes of subsection (a)(1)(A), the term "gross amount of premiums and other consideration" includes—

(A) advance premiums,
(B) deposits,
(C) fees,
(D) assessments,
(E) consideration in respect of assuming liabilities under contracts not issued by the taxpayer, and
(F) the amount of policyholder dividends reimbursable to the taxpayer by a reinsurer in respect of reinsured policies,

on insurance and annuity contracts.

(2) Policyholder dividends excluded from return premiums

For purposes of subsection (a)(1)(B)—

(A) In general

Except as provided in subparagraph (B), the term "return premiums" does not include any policyholder dividends.

(B) Exception for indemnity reinsurance

Subparagraph (A) shall not apply to amounts of premiums or other consideration returned to another life insurance company in respect of indemnity reinsurance.

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 721.)

PRIOR PROVISIONS

A prior section 803, acts Aug. 16, 1954, ch. 736, 68A Stat. 256; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 39, related to income and deductions in the case of life insurance companies, prior to the general revision of this part by Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 112.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 807, 953 of this title.

SUBPART C—LIFE INSURANCE DEDUCTIONS

Sec.
804. Life insurance deductions.
805. General deductions.
806. Special deductions.
807. Rules for certain reserves.
808. Policyholder dividends deduction.
809. Reduction in certain deductions of mutual life insurance companies.
810. Operations loss deduction.

§ 804. Life insurance deductions

For purposes of this part, the term "life insurance deductions" means—

(1) the general deductions provided in section 805,

(2) the special life insurance company deduction determined under section 806(a), and

(3) the small life insurance company deduction (if any) determined under section 806(b).

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 722.)

PRIOR PROVISIONS

A prior section 804, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 115, and amended Pub. L. 87-858, § 3(b)(2), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-272, title II, § 214(b)(3), Feb. 26, 1964, 78 Stat. 55; Pub. L. 91-172, title IV, § 401(b)(2)(D), Dec. 30, 1969, 83 Stat. 602; Pub. L. 94-455, title XIX, § 1901(a)(96), (b)(1)(J)(i), (iii), (K), (M), (33)(F), Oct. 4, 1976, 90 Stat. 1780, 1791, 1801, defined the term "taxable investment income" and provided for the computation of such income prior to the general revision of this part by Pub. L. 98-369, § 211(a).

Another prior section 804, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 41, related to reserve and other policy liability deductions, prior to the general revision of this part by Pub. L. 86-69, § 2(a).

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 801, 806, 810, 1564 of this title.

§ 805. General deductions

(a) General rule

For purposes of this part, there shall be allowed the following deductions:

(1) Death benefits, etc.

All claims and benefits accrued, and all losses incurred (whether or not ascertained), during the taxable year on insurance and annuity contracts.

(2) Increases in certain reserves

The net increase in reserves which is required by section 807(b) to be taken into account under this paragraph.

(3) Policyholder dividends

The deduction for policyholder dividends (determined under section 808(c)).

(4) Dividends received by company

(A) In general

The deductions provided by sections 243, 244, and 245 (as modified by subparagraph (B))—

(i) for 100 percent dividends received, and

(ii) for the life insurance company's share of the dividends (other than 100 percent dividends) received.

(B) Application of section 246(b)

In applying section 246(b) (relating to limitation on aggregate amount of deductions for dividends received) for purposes of subparagraph (A), the limit on the aggregate amount of the deductions allowed by sections 243(a)(1), 244(a), and 245 shall be 85 percent of the life insurance company taxable income, computed without regard to—

(i) the special life insurance company deduction and the small life insurance company deduction,

(ii) the operations loss deduction provided by section 810,

(iii) the deductions allowed by sections 243(a)(1), 244(a), and 245, and

(iv) any capital loss carryback to the taxable year under section 1212(a)(1),

but such limit shall not apply for any taxable year for which there is a loss from operations.

(C) 100 percent dividend

For purposes of subparagraph (A), the term "100 percent dividend" means any dividend if the percentage used for purposes of determining the deduction allowable under section 243 or 244 is 100 percent. Such term does not include any dividend to the extent it is a distribution out of tax-exempt interest or out of dividends which are not 100 percent dividends (determined with the application of this sentence).

(D) Certain dividends received by foreign corporations

Subparagraph (A)(i) (and not subparagraph (A)(ii)) shall apply to any dividend received by a foreign corporation from a domestic corporation which would be a 100 percent dividend if section 1504(b)(3) did not apply for purposes of applying section 243(b)(5).

(5) Operations loss deduction

The operations loss deduction (determined under section 810).

(6) Assumption by another person of liabilities under insurance, etc., contracts

The consideration (other than consideration arising out of indemnity reinsurance) in respect of the assumption by another person of liabilities under insurance and annuity contracts.

(7) Reimbursable dividends

The amount of policyholder dividends which—

(A) are paid or accrued by another insurance company in respect of policies the taxpayer has reinsured, and

(B) are reimbursable by the taxpayer under the terms of the reinsurance contract.

(8) Other deductions

Subject to the modifications provided by subsection (b), all other deductions allowed under this subtitle for purposes of computing taxable income.

Except as provided in paragraph (3), no amount shall be allowed as a deduction under this part in respect of policyholder dividends.

(b) Modifications

The modifications referred to in subsection (a)(8) are as follows:

(1) Interest

In applying section 163 (relating to deduction for interest), no deduction shall be allowed for interest in respect of items described in section 807(c).

(2) Bad debts

Section 166(c) (relating to reserve for bad debts) shall not apply.

(3) Charitable, etc., contributions and gifts

In applying section 170—

(A) the limit on the total deductions under such section provided by section 170(b)(2) shall be 10 percent of the life insurance company taxable income computed without regard to—

(i) the deduction provided by section 170,

(ii) the deductions provided by paragraphs (3) and (4) of subsection (a),

(iii) the special life insurance company deduction and the small life insurance company deduction,

(iv) any operations loss carryback to the taxable year under section 810, and

(v) any capital loss carryback to the taxable year under section 1212(a)(1), and

(B) under regulations prescribed by the Secretary, a rule similar to the rule contained in section 170(d)(2)(B) (relating to special rule for net operating loss carryovers) shall be applied.

(4) Amortizable bond premium

(A) In general

Section 171 shall not apply.

(B) Cross reference

For rules relating to amortizable bond premium, see section 811(b).

(5) Net operating loss deduction

Except as provided by section 844, the deduction for net operating losses provided in section 172 shall not be allowed.

(6) Dividends received deduction

Except as provided in subsection (a)(4), the deductions for dividends received provided by sections 243, 244, and 245 shall not be allowed.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 722.)

Prior Provisions

A prior section 805, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 118, and amended Pub. L. 87–792, § 7(g), Oct. 10, 1962, 76 Stat. 829; Pub. L. 88–571, § 5(a), Sept. 2, 1964, 78 Stat. 860; Pub. L. 91–172, title IX, § 907(a)(1), Dec. 30, 1969, 83 Stat. 715; Pub. L. 93–406, title II, §§ 1016(a)(6), 2002(g)(9), 2004(c)(3), Sept. 2, 1974, 88 Stat. 929, 970, 986; Pub. L. 94–267, § (1)(c)(4), Apr. 15, 1976, 90 Stat. 367; Pub. L. 94–455, title XIX, § 1901(a)(97), Oct. 4, 1976, 90 Stat. 1780; Pub. L. 95–600, title I, §§ 141(f)(9), 155(a), Nov. 6, 1978, 92 Stat. 2795, 2801; Pub. L. 97–248, title II, §§ 257(a), 260(b), 261, 264(a)–(c)(1), Sept. 3, 1982, 96 Stat. 537, 540, 543, 544, related to policy and other contract liability requirements, prior to general revision of this part by Pub. L. 98–369, § 211(a).

Another prior section 805, acts Aug. 16, 1954, ch. 736, 68A Stat. 258; Mar. 13, 1956, ch. 83, § 2, 70 Stat. 43, authorized a special interest deduction, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

Effective Date

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

Section Referred to in Other Sections

This section is referred to in sections 805, 807, 810, 812, 815, 817, 818, 953 of this title.

§ 806. Special deductions

(a) Special life insurance company deduction

For purposes of section 804, the special life insurance company deduction for any taxable year is 20 percent of the excess of the tentative LICTI for such taxable year over the small life insurance company deduction (if any).

(b) Small life insurance company deduction

(1) In general

For purposes of section 804, the small life insurance company deduction for any taxable year is 60 percent of so much of the tentative LICTI for such taxable year as does not exceed $3,000,000.

(2) Phaseout between $3,000,000 and $15,000,000

The amount of the small life insurance company deduction determined under paragraph (1) for any taxable year shall be reduced (but not below zero) by 15 percent of so much of the tentative LICTI for such taxable year as exceeds $3,000,000.

(3) Small life insurance company deduction not allowable to company with assets of $500,000,000 or more

(A) In general

The small life insurance company deduction shall not be allowed for any taxable year to any life insurance company which, at the close of such taxable year, has assets equal to or greater than $500,000,000.

(B) Assets

For purposes of this paragraph, the term "assets" means all assets of the company.

(C) Valuation of assets

For purposes of this paragraph, the amount attributable to—

(i) real property and stock shall be the fair market value thereof, and

(ii) any other asset shall be the adjusted basis of such asset for purposes of determining gain on sale or other disposition.

(D) Special rule for interests in partnerships and trusts

For purposes of this paragraph—

(i) an interest in a partnership or trust shall not be treated as an asset of the company, but

(ii) the company shall be treated as actually owning its proportionate share of the assets held by the partnership or trust (as the case may be).

(c) Tentative LICTI

For purposes of this part—

(1) In general

The term "tentative LICTI" means life insurance company taxable income determined without regard to—

(A) the special life insurance company deduction, and

(B) the small life insurance company deduction.

(2) Exclusion of items attributable to noninsurance businesses

The amount of the tentative LICTI for any taxable year shall be determined without regard to all items attributable to noninsurance businesses.

(3) Noninsurance business

(A) In general

The term "noninsurance business" means any activity which is not an insurance business.

(B) Certain activities treated as insurance businesses

For purposes of subparagraph (A), any activity which is not an insurance business shall be treated as an insurance business if—

(i) it is of a type traditionally carried on by life insurance companies for investment purposes, but only if the carrying on of such activity (other than in the case of real estate) does not constitute the active conduct of a trade or business, or

(ii) it involves the performance of administrative services in connection with plans providing life insurance, pension, or accident and health benefits.

(C) Limitation on amount of loss from noninsurance business which may offset income from insurance business

In computing the life insurance company taxable income of any life insurance company, any loss from a noninsurance business shall be limited under the principles of section 1503(c).

(d) Special rule for controlled groups

(1) Special life insurance company deduction and small life insurance company deduction determined on controlled group basis

For purposes of subsections (a) and (b)—

(A) all life insurance companies which are members of the same controlled group shall be treated as 1 life insurance company, and

(B) any special life insurance company deduction and any small life insurance company deduction determined with respect to such group shall be allocated among the life insurance companies which are members of such group in proportion to their respective tentative LICTI's.

(2) Nonlife insurance members included for asset test

For purposes of subsection (b)(3), all members of the same controlled group (whether or not life insurance companies) shall be treated as 1 company.

(3) Controlled group

For purposes of this subsection, the term "controlled group" means any controlled group of corporations (as defined in section 1563(a)); except that subsections (a)(4) and (b)(2)(D) of section 1563 shall not apply.

(4) Election with respect to loss from operations of member of group

(A) In general

Any life insurance company which is a member of a controlled group may elect to have its loss from operations for any taxable year not taken into account for purposes of determining the amount of the special life insurance company deduction for the life insurance companies which are members of such group and which do not file a consolidated return with such life insurance company for the taxable year.

(B) Limitation on amount of loss which may offset nonlife income

In the case of that portion of any loss from operations for any taxable year of a life insurance company which (but for subparagraph (A)) would have reduced tentative LICTI of other life insurance companies for such taxable year—

(i) only 80 percent of such portion may be used to offset nonlife income, and

(ii) to the extent such portion is used to offset nonlife income, the loss shall be treated as used at a rate of $1 for each 80 cents of income so offset.

For purposes of the preceding sentence, any such portion shall be used before the remaining portion of the loss from the same year and shall be treated as first being offset against income which is not nonlife income.

(C) Nonlife income

(i) In general

The term "nonlife income" means the portion of the life insurance company's taxable income for which the special life insurance company deduction was not allowable and any income of a corporation not subject to tax under this part.

(ii) Special rule for taxable years beginning before January 1, 1984

In the case of a taxable year beginning before January 1, 1984, all life insurance company taxable income shall be treated as nonlife income.

(5) Adjustments to prevent excess detriment or benefit

Under regulations prescribed by the Secretary, proper adjustments shall be made in the application of this subsection to prevent any excess detriment or benefit (whether from year-to-year or otherwise) arising from the application of this subsection.

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 724.)

PRIOR PROVISIONS

A prior section 806, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 120, and amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to certain changes in reserves and assets, prior to the general revision of this part by Pub. L. 98-369, § 211(a).

Another prior section 806, act Aug. 16, 1954, ch. 736, 68A Stat. 258, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

DETERMINATION OF TENTATIVE LICTI WHERE CORPORATION MADE CERTAIN ACQUISITIONS IN 1980, 1981, 1982, AND 1983

Section 217(c) of Pub. L. 98-369 provided that: "If—

"(1) a corporation domiciled or having its principal place of business in Alabama, Arkansas, Oklahoma, or Texas acquired the assets of 1 or more insurance companies after 1979 and before April 1, 1983, and

"(2) the bases of such assets in the hands of the corporation were determined under section 334(b)(2) of the Internal Revenue Code of 1954 or such corporation made an election under section 338 of such Code with respect to such assets,

then the tentative LICTI of the corporation holding such assets for taxable years beginning after December 31, 1983, shall, for purposes of determining the amount of the special deductions under section 806 of such Code, be increased by the deduction allowable under chapter 1 of such Code for the amortization of the cost of insurance contracts acquired in such asset acquisition (and any portion of any operations loss deduction attributable to such amortization)."

DETERMINATION OF ASSETS OF CONTROLLED GROUP FOR PURPOSES OF SMALL LIFE INSURANCE COMPANY DEDUCTION FOR 1984

Section 217(h) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—For purposes of applying paragraph (2) of section 806(d) of the Internal Revenue Code of 1954 (relating to nonlife insurance members included for asset test) for the first taxable year beginning after December 31, 1983, the members of the controlled group referred to in such paragraph shall be treated as including only those members of such group which are described in paragraph (2) of this subsection if—

"(A) an election under section 1504(c)(2) of such Code is not in effect for the controlled group for such taxable year,

"(B) during such taxable year, the controlled group does not include a member which is taxable under part I of subchapter L of chapter 1 of such Code and which became a member of such group after September 27, 1983, and

"(C) the sum of the contributions to capital received by members of the controlled group which are taxable under such part I during such taxable year from the members of the controlled group which are not taxable under such part does not exceed the aggregate dividends paid during such taxable year by the members of such group which are taxable under such part I.

"(2) MEMBERS OF GROUP TAKEN INTO ACCOUNT.—For purposes of paragraph (1), the members of the controlled group which are described in this paragraph are—

"(A) any financial institution to which section 585 or 593 of such Code applies,

"(B) any lending or finance business (as defined by section 542(d)),

"(C) any insurance company subject to tax imposed by subchapter L of chapter 1 of such Code, and

"(D) any securities broker."

SPECIAL RULE FOR CERTAIN DEBT-FINANCED ACQUISITION OF STOCK

Section 217(k) of Pub. L. 98-369 provided that: "If—

"(1) a life insurance company owns the stock of another corporation through a partnership of which it is a partner,

"(2) the stock of the corporation was acquired on January 14, 1981, and

"(3) such stock was acquired by debt financing,

then, for purposes of determining the special deductions under section 806 of the Internal Revenue Code of 1954 (as amended by this subtitle), the amount of tentative LICTI of such life insurance company shall be computed without taking into account any income, gain, loss, or deduction attributable to the ownership of such stock."

TREATMENT OF LOSSES FROM CERTAIN GUARANTEED INTEREST CONTRACTS

Section 217(*l*) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—For purposes of determining the amount of the special deductions under section 806 of the Internal Revenue Code of 1954 (as amended by this subtitle [subtitle A (§§ 211-219) of title II of div. A of Pub. L. 98-369, see Tables for classification]), for any taxable year beginning before January 1, 1988, the amount of tentative LICTI of any qualified life insurance company shall be computed without taking into account any income, gain, loss, or deduction attributable to a qualified GIC.

"(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of this subsection, the term 'qualified life insurance company' means any life insurance company if—

"(A) the accrual of discount less amortization of premium for bonds and short-term investments (as shown in the first footnote to Exhibit 3 of its 1983 annual statement for life insurance companies approved by the National Association of Insurance Commissioners (but excluding separate accounts) filed in its State of domicile) exceeds $72,000,000 but does not exceed $73,000,000, and

"(B) such life insurance company makes an election under this subsection on its return for its first taxable year beginning after December 31, 1983.

"(3) QUALIFIED GIC.—The term 'qualified GIC' means any group contract—

"(A) which is issued before January 1, 1984,

"(B) which specifies the contract maturity or renewal date,

"(C) under which funds deposited by the contract holder plus interest guaranteed at the inception of the contract for the term of the contract and net of any specified expenses are paid as directed by the contract holder, and

"(D) which is a pension plan contract (as defined in section 818(a) of the Internal Revenue Code of 1954).

"(4) SCOPE OF ELECTION.—An election under this subsection shall apply to all qualified GIC's of a qualified life insurance company. Any such election, once made, shall be irrevocable.

"(5) INCOME ON UNDERLYING ASSETS TAKEN INTO ACCOUNT.—In determining the amount of any income attributable to a qualified GIC, income on any asset attributable to such contract (as determined in the manner provided by the Secretary of the Treasury or his delegate) shall be taken into account.

"(6) LIMITATION ON TAX BENEFIT.—The amount of any reduction in tax for any taxable year by reason of this subsection for any qualified life insurance company (or controlled group within the meaning of section 806(d)(3) of the Internal Revenue Code of 1954) shall not exceed the applicable amount set forth in the following table:

In the case of taxable years beginning in:	The reduction may not exceed:
1984	$4,500,000
1985	$4,500,000
1986	$3,000,000
1987	$2,000,000"

SPECIAL RULE FOR CERTAIN INTERESTS IN OIL AND GAS PROPERTIES

Section 217(m) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—For purposes of section 806 of the Internal Revenue Code of 1954, the ownership by a qualified life insurance company of any undivided interest in operating mineral interests with respect to any oil or gas properties held on December 31, 1983, shall be treated as an insurance business.

"(2) QUALIFIED LIFE INSURANCE COMPANY.—For purposes of paragraph (1), the term 'qualified life insurance company' means a mutual life insurance company which—

"(A) was originally incorporated in March of 1857, and

"(B) has a cost to such company (as of December 31, 1983) in the operating mineral interests described in paragraph (1) in excess of $250,000,000."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 453B, 465, 804, 813, 815 of this title.

§ 807. Rules for certain reserves

(a) Decrease treated as gross income

If for any taxable year—

(1) the opening balance for the items described in subsection (c), exceeds

(2)(A) the closing balance for such items, reduced by

(B) the sum of (i) the amount of the policyholders' share of tax-exempt interest, plus (ii) any excess described in section 809(a)(2) for the taxable year, such excess shall be included in gross income under section 803(a)(2).

(b) Increase treated as deduction

If for any taxable year—

(1)(A) the closing balance for the items described in subsection (c), reduced by

(B) the sum of (i) the amount of the policyholders' share of tax-exempt interest, plus (ii) any excess described in section 809(a)(2) for the taxable year, exceeds

(2) the opening balance for such items,

such excess shall be taken into account as a deduction under section 805(a)(2).

(c) Items taken into account

The items referred to in subsections (a) and (b) are as follows:

(1) The life insurance reserves (as defined in section 816(b)).

(2) The unearned premiums and unpaid losses included in total reserves under section 816(c)(2).

(3) The amounts (discounted at the appropriate rate of interest) necessary to satisfy the obligations under insurance and annuity contracts, but only if such obligations do not involve (at the time with respect to which the computation is made under this paragraph) life, accident, or health contingencies.

(4) Dividend accumulations, and other amounts, held at interest in connection with insurance and annuity contracts.

(5) Premiums received in advance, and liabilities for premium deposit funds.

(6) Reasonable special contingency reserves under contracts of group term life insurance or group accident and health insurance which are established and maintained for the provision of insurance on retired lives, for premium stabilization, or for a combination thereof.

For purposes of paragraph (3), the appropriate rate of interest for any obligation is the higher of the prevailing State assumed interest rate as of the time such obligation first did not involve life, accident, or health contingencies or the rate of interest assumed by the company (as of such time) in determining the guaranteed benefit.

(d) Method of computing reserves for purposes of determining income

(1) In general

For purposes of this part (other than section 816), the amount of the life insurance reserves for any contract shall be the greater of—

(A) the net surrender value of such contract, or

(B) the reserve determined under paragraph (2).

In no event shall the reserve determined under the preceding sentence for any contract as of any time exceed the amount which would be taken into account with respect to such contract as of such time in determining statutory reserves (as defined in section 809(b)(4)(B)).

(2) Amount of reserve

The amount of the reserve determined under this paragraph with respect to any contract shall be determined by using—

(A) the tax reserve method applicable to such contract,

(B) the prevailing State assumed interest rate, and

(C) the prevailing commissioners' standard tables for mortality and morbidity adjusted as appropriate to reflect the risks (such as substandard risks) incurred under the contract which are not otherwise taken into account.

(3) Tax reserve method

For purposes of this subsection—

(A) In general

The term "tax reserve method" means—

(i) Life insurance contracts

The CRVM in the case of a contract covered by the CRVM.

(ii) Annuity contracts

The CARVM in the case of a contract covered by the CARVM.

(iii) Noncancellable accident and health insurance contracts

In the case of any noncancellable accident and health insurance contract, a 2-year full preliminary term method.

(iv) Other contracts

In the case of any contract not described in clause (i), (ii), or (iii)—

(I) the reserve method prescribed by the National Association of Insurance Commissioners which covers such contract (as of the date of issuance), or

(II) if no reserve method has been prescribed by the National Association of Insurance Commissioners which covers such contract, a reserve method which is consistent with the reserve method required under clause (i), (ii), or (iii) or under subclause (I) of this clause as of the date of the issuance of such contract (whichever is most appropriate).

(B) Definition of CRVM and CARVM

For purposes of this paragraph—

(i) CRVM

The term "CRVM" means the Commissioners' Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract.

(ii) CARVM

The term "CARVM" means the Commissoners' Annuities Reserve Valuation Method prescribed by the National Association of Insurance Commissioners which is in effect on the date of the issuance of the contract.

(C) No additional reserve deduction allowed for deficiency reserves

Nothing in any reserve method described under this paragraph shall permit any increase in the reserve because the net premium (computed on the basis of assumptions required under this subsection) exceeds the actual premiums or other consideration charged for the benefit.

(4) Prevailing State assumed interest rate

For purposes of this subsection—

(A) In general

The term "prevailing State assumed interest rate" means, with respect to any contract, the highest assumed interest rate permitted to be used in computing life insurance reserves for insurance contracts or annuity contracts (as the case may be) under the insurance laws of at least 26 States. For purposes of the preceding sentence, the effect of the nonforfeiture laws of a State on interest rates for reserves shall not be taken into account.

(B) When rate determined

Except as provided in subparagraph (C), the prevailing State assumed rate with respect to any contract shall be determined as of the beginning of the calendar year in which the contract was issued.

(C) Election for nonannuity contracts

In the case of a contract other than an annuity contract, the issuer may elect (at such time and in such manner as the Secretary shall by regulations prescribe) to determine the prevailing State assumed rate as of the beginning of the calendar year preceding the calendar year in which the contract was issued.

(D) Rate for noncancellable accident and health insurance contracts

If there is no prevailing State assumed interest rate applicable under subparagraph (A) to any noncancellable accident and health insurance contract when it is issued, the prevailing State assumed interest rate for such contract shall be the prevailing State assumed interest rate which would be determined under subparagraph (A) for a whole life insurance contract issued on the date on which the noncancellable accident and health insurance contract is issued.

(5) Prevailing commissioners' standard tables

For purposes of this subsection—

(A) In general

The term "prevailing commissioners' standard tables" means, with respect to any contract, the most recent commissioners' standard tables prescribed by the National Association of Insurance Commissioners which are permitted to be used in computing reserves for that type of contract under the insurance laws of at least 26 States when the contract was issued.

(B) Insurer may use old tables for 3 years when tables change

If the prevailing commissioners' standard tables as of the beginning of any calendar year (hereinafter in this subparagraph referred to as the "year of change") is different from the prevailing commissioners' standard tables as of the beginning of the preceding calendar year, the issuer may use the prevailing commissioners' standard tables as of the beginning of the preceding calendar year with respect to any contract issued after the change and before the close of the 3-year period beginning on the first day of the year of change.

(C) Special rule for contracts for which there are no commissioners' standard tables

If there are no commissioners' standard tables applicable to any contract when it is issued, the mortality and morbidity tables used for purposes of paragraph (2)(C) shall be determined under regulations prescribed by the Secretary.

(D) Special rule for contracts issued before 1948

If—

(i) a contract was issued before 1948, and

(ii) there were no commissioners' standard tables applicable to such contract when it was issued,

the mortality and morbidity tables used in computing statutory reserves for such contracts shall be used for purposes of paragraph (2)(C).

(E) Special rule where more than 1 table or option applicable

If, with respect to any category of risks, there are 2 or more tables (or options under 1 or more tables) which meet the requirements of subparagraph (A) (or, where applicable, subparagraph (B) or (C)), the table (and option thereunder) which generally yields the lowest reserves shall be used for purposes of paragraph (2)(C).

(e) Special rules for computing reserves

(1) Net surrender value

For purposes of this section—

(A) In general

The net surrender value of any contract shall be determined—

(i) with regard to any penalty or charge which would be imposed on surrender, but

(ii) without regard to any market value adjustment on surrender.

(B) Special rule for pension plan contracts

In the case of a pension plan contract, the balance in the policyholder's fund shall be treated as the net surrender value of such contract. For purposes of the preceding sentence, such balance shall be determined with regard to any penalty or forfeiture which would be imposed on surrender but without regard to any market value adjustment.

(2) Issuance date in case of group contracts

For purposes of this section, in the case of a group contract, the date on which such contract is issued shall be the date as of which the master plan is issued (or, with respect to a benefit guaranteed to a participant after such date, the date as of which such benefit is guaranteed).

(3) Supplemental benefits

(A) Qualified supplemental benefits treated separately

For purposes of this part, the amount of the life insurance reserve for any qualified supplemental benefit—

(i) shall be computed separately as though such benefit were under a separate contract, and

(ii) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(B) Supplemental benefits which are not qualified supplemental benefits

In the case of any supplemental benefit described in subparagraph (D) which is not a qualified supplemental benefit, the amount of the reserve determined under paragraph (2) of subsection (d) shall, except to the extent otherwise provided in regulations, be the reserve taken into account for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(C) Qualified supplemental benefit

For purposes of this paragraph, the term "qualified supplemental benefit" means any supplemental benefit described in subparagraph (D) if—

(i) there is a separately identified premium or charge for such benefit, and

(ii) any net surrender value under the contract attributable to any other benefit is not available to fund such benefit.

(D) Supplemental benefits

For purposes of this paragraph, the supplemental benefits described in this subparagraph are any—

(i) guaranteed insurability,

(ii) accidental death or disability benefit,

(iii) convertibility,

(iv) disability waiver benefit, or

(v) other benefit prescribed by regulations,

which is supplemental to a contract for which there is a reserve described in subsection (c).

(4) Certain contracts issued by foreign branches of domestic life insurance companies

(A) In general

In the case of any qualified foreign contract, the amount of the reserve shall be not less than the minimum reserve required by the laws, regulations, or administrative guidance of the regulatory authority of the foreign country referred to in subparagraph (B) (but not to exceed the net level reserves for such contract).

(B) Qualified foreign contract

For purposes of subparagraph (A), the term "qualified foreign contract" means any contract issued by a foreign life insurance branch (which has its principal place of business in a foreign country) of a domestic life insurance company if—

(i) such contract is issued on the life or health of a resident of such country,

(ii) such domestic life insurance company was required by such foreign country (as of the time it began operations in such country) to operate in such country through a branch, and

(iii) such foreign country is not contiguous to the United States.

(5) Treatment of substandard risks

(A) Separate computation

Except to the extent provided in regulations, the amount of the life insurance reserve for any qualified substandard risk shall be computed separately under subsection (d)(1) from any other reserve under the contract.

(B) Qualified substandard risk

For purposes of subparagraph (A), the term "qualified substandard risk" means any substandard risk if—

(i) the insurance company maintains a separate reserve for such risk,

(ii) there is a separately identified premium or charge for such risk,

(iii) the amount of the net surrender value under the contract is not increased or decreased by reason of such risk, and

(iv) the net surrender value under the contract is not regularly used to pay premium charges for such risk.

(C) Limitation on amount of life insurance reserve

The amount of the life insurance reserve determined for any qualified substandard risk shall in no event exceed the sum of the separately identified premiums charged for such risk plus interest less mortality charges for such risk.

(D) Limitation on amount of contracts to which paragraph applies

The aggregate amount of insurance in force under contracts to which this paragraph applies shall not exceed 10 percent of the insurance in force (other than term insurance) under life insurance contracts of the company.

(6) Special rules for contracts issued before January 1, 1989, under existing plans of insurance, with term insurance or annuity benefits

For purposes of this part—

(A) In general

In the case of a life insurance contract issued before January 1, 1989, under an existing plan of insurance, the life insurance reserve for any benefit to which this paragraph applies shall be computed separately under subsection (d)(1) from any other reserve under the contract.

(B) Benefits to which this paragraph applies

This paragraph applies to any term insurance or annuity benefit with respect to which the requirements of clauses (i) and (ii) of paragraph (3)(C) are met.

(C) Existing plan of insurance

For purposes of this paragraph, the term "existing plan of insurance" means, with respect to any contract, any plan of insurance which was filed by the company using such contract in one or more States before January 1, 1984, and is on file in the appropriate State for such contract.

(f) Adjustment for change in computing reserves

(1) 10-year spread

(A) In general

For purposes of this part, if the basis for determining any item referred to in subsection (c) as of the close of any taxable year differs from the basis for such determination as of the close of the preceding taxable year, then so much of the difference between—

(i) the amount of the item at the close of the taxable year, computed on the new basis, and

(ii) the amount of the item at the close of the taxable year, computed on the old basis,

as is attributable to contracts issued before the taxable year shall be taken into account under the method provided in subparagraph (B).

(B) Method

The method provided in this subparagraph is as follows:

(i) if the amount determined under subparagraph (A)(i) exceeds the amount determined under subparagraph (A)(ii), $\frac{1}{10}$ of such excess shall be taken into account, for each of the succeeding 10 taxable years, as a deduction under section 805(a)(2); or

(ii) if the amount determined under subparagraph (A)(ii) exceeds the amount determined under subparagraph (A)(i), $\frac{1}{10}$ of such excess shall be included in gross income, for each of the 10 succeeding taxable years, under section 803(a)(2).

(2) Termination as life insurance company

Except as provided in section 381(c)(22) (relating to carryovers in certain corporate readjustments), if for any taxable year the taxpayer is not a life insurance company, the balance of any adjustments under this subsection shall be taken into account for the preceding taxable year.

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 726.)

Prior Provisions

A prior section 807, act Aug. 16, 1954, ch. 736, 68A Stat. 259, related to adjustment for certain reserves, prior to the general revision of this part by act Mar. 13, 1956, ch. 83, § 2, 70 Stat. 36.

Effective Date

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

Treatment of Certain Assessment Life Insurance Companies

Section 217(f) of subtitle A (§§ 211-219) of title II of div. A of Pub. L. 98-369 provided that:

"(1) Mortality and morbidity tables.—In the case of a contract issued by an assessment life insurance company, the mortality and morbidity tables used in computing statutory reserves for such contract shall be used for purposes of paragraph (2)(C) of section 807(d) of the Internal Revenue Code of 1954 (as amended by this subtitle) if such tables were—

"(A) in use since 1965, and

"(B) developed on the basis of the experience of assessment life insurance companies in the State in which such assessment life insurance company is domiciled.

"(2) Treatment of certain mutual assessment life insurance companies.—In the case of any contract issued by a mutual assessment life insurance company which—

"(A) has been in existence since 1965, and

"(B) operates under chapter 13 or 14 of the Texas Insurance Code,

for purposes of part I of subchapter L of chapter 1 of the Internal Revenue Code of 1954, the amount of the life insurance reserves for such contract shall be equal to the amount taken into account with respect to such contract in determining statutory reserves.

"(3) Statutory reserves.—For purposes of this subsection, the term 'statutory reserves' has the meaning given to such term by section 809(b)(4)(B) of such Code."

Special Rule for Companies Using Net Level Reserve Method for Noncancellable Accident and Health Insurance Contracts

Section 217(n) of Pub. L. 98-369 provided that: "A company shall be treated as meeting the requirement of section 807(d)(3)(A)(iii) of the Internal Revenue Code of 1954, as amended by this Act, with respect to any noncancellable accident and health insurance contract for any taxable year if such company—

"(1) uses the net level reserve method to compute its tax reserves under section 807 of such Code on such contracts for such taxable year,

"(2) was using the net level reserve method to compute its statutory reserves on such contracts as of December 31, 1982, and

"(3) has continuously used such method for computing such reserves on such contracts after December 31, 1982, and through such taxable year."

Section Referred to in Other Sections

This section is referred to in sections 803, 806, 809, 812, 813, 817, 818, 832, 1351 of this title.

§ 808. Policyholder dividends deduction

(a) Policyholder dividend defined

For purposes of this part, the term "policyholder dividend" means any dividend or similar distribution to policyholders in their capacity as such.

(b) Certain amounts included

For purposes of this part, the term "policyholder dividend" includes—

(1) any amount paid or credited (including as an increase in benefits) where the amount is not fixed in the contract but depends on

the experience of the company or the discretion of the management,

(2) excess interest,

(3) premium adjustments, and

(4) experience-rated refunds.

(c) Amount of deduction

(1) In general

Except as limited by paragraph (2), the deduction for policyholder dividends for any taxable year shall be an amount equal to the policyholder dividends paid or accrued during the taxable year.

(2) Reduction in case of mutual companies

In the case of a mutual life insurance company, the deduction for policyholder dividends for any taxable year shall be reduced by the amount determined under section 809.

(d) Definitions

For purposes of this section—

(1) Excess interest

The term "excess interest" means any amount in the nature of interest—

(A) paid or credited to a policyholder in his capacity as such, and

(B) determined at a rate in excess of the prevailing State assumed interest rate for such contract.

(2) Premium adjustment

The term "premium adjustment" means any reduction in the premium under an insurance or annuity contract which (but for the reduction) would have been required to be paid under the contract.

(3) Experience-rated refund

The term "experience-rated refund" means any refund or credit based on the experience of the contract or group involved.

(e) Treatment of policyholder dividends

For purposes of this part, any policyholder dividend which—

(1) increases the cash surrender value of the contract or other benefits payable under the contract, or

(2) reduces the premium otherwise required to be paid,

shall be treated as paid to the policyholder and returned by the policyholder to the company as a premium.

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 732.)

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 805, 809, 812, 818 of this title.

§ 809. Reduction in certain deductions of mutual life insurance companies

(a) General rule

(1) Policyholder dividends

In the case of any mutual life insurance company, the amount of the deduction allowed under section 808 shall be reduced (but not below zero) by the differential earnings amount.

(2) Reduction in reserve deduction in certain cases

In the case of any mutual life insurance company, if the differential earnings amount exceeds the amount allowable as a deduction under section 808 for the taxable year (determined without regard to this section), such excess shall be taken into account under subsections (a) and (b) of section 807.

(3) Differential earnings amount

For purposes of this section, the term "differential earnings amount" means, with respect to any taxable year, an amount equal to the product of—

(A) the life insurance company's average equity base for the taxable year, multiplied by

(B) the differential earnings rate for such taxable year.

(b) Average equity base

For purposes of this section—

(1) In general

The term "average equity base" means, with respect to any taxable year, the average of—

(A) the equity base determined as of the close of the taxable year, and

(B) the equity base determined as of the close of the preceding taxable year.

(2) Equity base

The term "equity base" means an amount determined in the manner prescribed by regulations equal to—

(A) the surplus and capital,

(B) adjusted as provided in paragraphs (3), (4), (5), and (6) of this subsection.

(3) Increase for nonadmitted financial assets

(A) In general

The amount of the surplus and capital shall be increased by the amount of the nonadmitted financial assets.

(B) Nonadmitted financial assets

For purposes of subparagraph (A), the term "nonadmitted financial asset" means any nonadmitted asset of the company which is—

(i) a bond,

(ii) stock,

(iii) real estate,

(iv) a mortgage loan on real estate, or

(v) any other invested asset.

(4) Increase where statutory reserves exceed tax reserves

(A) In general

If—

(i) the aggregate amount of statutory reserves, exceeds

(ii) the aggregate amount of tax reserves,

the amount of the surplus and capital shall be increased by the amount of such excess

(B) Definitions

For purposes of this paragraph—

(i) Statutory reserves

The term "statutory reserves" means the aggregate amount set forth in the annual statement with respect to items described in section 807(c). Such term shall not include any reserve attributable to a deferred and uncollected premium if the establishment of such reserve is not permitted under section 811(c).

(ii) Tax reserves

The term "tax reserves" means the aggregate of the items described in section 807(c) as determined for purposes of section 807.

(5) Increase by amount of certain other reserves

The amount of the surplus and capital shall be increased by the sum of—

(A) the amount of any mandatory securities valuation reserve,

(B) the amount of any deficiency reserve, and

(C) the amount of any voluntary reserve or similar liability not described in subparagraph (A) or (B).

(6) Adjustment for next year's policyholder dividends

The amount of the surplus and capital shall be increased by 50 percent of the amount of any provision for policyholder dividends (or other similar liability) payable in the following taxable year.

(c) Differential earnings rate

(1) In general

For purposes of this section, the differential earnings rate for any taxable year is the excess of—

(A) the imputed earnings rate for the taxable year, over

(B) the average mutual earnings rate for the second calendar year preceding the calendar year in which the taxable year begins.

(2) Transitional rule

The differential earnings rate—

(A) for any taxable year beginning in 1984, or

(B) for purposes of computing the amount of underpayment under section 6655 (including the application of section 6655(d)(3)) for any taxable year beginning in 1985,

shall be equal to 7.8 percent.

(d) Imputed earnings rate

(1) In general

For purposes of this section, the imputed earnings rate for any taxable year is—

(A) 16.5 percent in the case of taxable years beginning in 1984, and

(B) in the case of taxable years beginning after 1984, an amount which bears the same ratio to 16.5 percent as the current stock earnings rate for the taxable year bears to the base period stock earnings rate.

(2) Current stock earnings rate

For purposes of this subsection, the term "current stock earnings rate" means, with respect to any taxable year, the average of the stock earnings rates determined under paragraph (4) for the 3 calendar years preceding the calendar year in which the taxable year begins.

(3) Base period stock earnings rate

For purposes of this subsection, the base period stock earnings rate is the average of the stock earnings rates determined under paragraph (4) for calendar years 1981, 1982, and 1983.

(4) Stock earnings rate

(A) In general

For purposes of this subsection, the stock earnings rate for any calendar year is the numerical average of the earnings rates of the 50 largest stock companies.

(B) Earnings rate

For purposes of subparagraph (A), the earnings rate of any stock company is the percentage (determined by the Secretary) which—

(i) the statement gain or loss from operations for the calendar year of such company, is of

(ii) such company's average equity base for such year.

(C) 50 largest stock companies

For purposes of this paragraph, the term "50 largest stock companies" means a group (as determined by the Secretary) of stock life insurance companies which consists of the 50 largest stock life insurance companies which are subject to tax under this part. The Secretary may by regulations provide for exclusion from the group determined under the preceding sentence of any stock life insurance company if (i) the equity of such company is not great enough for such company to be 1 of the 50 largest stock life insurance companies if the determination were made on the basis of equity, and (ii) by reason of the small equity base of such company, it has an earnings rate which would seriously distort the stock earnings rate.

(D) Treatment of affiliated groups

For purposes of this paragraph, all stock life insurance companies which are members of the same affiliated group shall be treated as one stock life insurance company.

(e) Average mutual earnings rate

For purposes of this section, the average mutual earnings rate for any calendar year is the percentage (determined by the Secretary) which—

(1) the aggregate statement gain or loss from operations for such year of mutual life insurance companies, is of

(2) their aggregate average equity bases for such year.

(f) Recomputation in subsequent year

(1) Inclusion in income where recomputed amount greater

In the case of any mutual life insurance company, if—

(A) the recomputed differential earnings amount for any taxable year, exceeds

(B) the differential earnings amount determined under this section for such taxable year,

such excess shall be included in life insurance gross income for the succeeding taxable year.

(2) Deduction where recomputed amount smaller

In the case of any mutual life insurance company, if—

(A) the differential earnings amount determined under this section for any taxable year, exceeds

(B) the recomputed differential earnings amount for such taxable year,

such excess shall be allowed as a life insurance deduction for the succeeding taxable year.

(3) Recomputed differential earnings amount

For purposes of this subsection, the term "recomputed differential earnings amount" means, with respect to any taxable year, the amount which would be the differential earnings amount for such taxable year if the average mutual earnings rate taken into account under subsection (c)(2) were the average mutual earnings rate for the calendar year in which the taxable year begins.

(4) Special rule where company ceases to be mutual life insurance company

Except as provided in section 381(c)(22), if—

(A) a life insurance company is a mutual life insurance company for any taxable year, but

(B) such life insurance company is not a mutual life insurance company for the succeeding taxable year,

any adjustment under paragraph (1) or (2) by reason of the recomputed differential earnings amount for the first of such taxable years shall be taken into account for the first of such taxable years.

(g) Definitions and special rules

For purposes of this section—

(1) Statement gain or loss from operations

The term "statement gain or loss from operations" means the net gain or loss from operations required to be set forth in the annual statement—

(A) determined with regard to policyholder dividends (as defined in section 808) but without regard to Federal income taxes,

(B) determined on the basis of the tax reserves rather than statutory reserves, and

(C) properly adjusted for realized capital gains and losses and other relevant items.

(2) Other terms

Except as otherwise provided in this section, the terms used in this section shall have the same respective meanings as when used in the annual statement.

(3) Determinations based on amount set forth in annual statement

Except as otherwise provided in this section or in regulations, all determinations under this section shall be made on the basis of the amounts required to be set forth on the annual statement.

(4) Annual statement

The term "annual statement" means the annual statement for life insurance companies approved by the National Association of Insurance Commissioners.

(5) Reduction in equity base for portion of equity allocable to life insurance business in noncontiguous Western Hemisphere countries

The equity base of any mutual life insurance company shall be reduced by an amount equal to the portion of the equity base attributable to the life insurance business multiplied by a fraction—

(A) the numerator of which is the portion of the tax reserves which is allocable to life insurance contracts issued on the life of residents of countries in the Western Hemisphere which are not contiguous to the United States, and

(B) the denominator of which is the amount of the tax reserves allocable to life insurance contracts.

The preceding sentence shall not apply unless the fraction determined under the preceding sentence exceeds $\frac{1}{20}$.

(6) Special rule for certain contracts issued before January 1, 1985

In determining the amount of tax reserves of a subsidiary of a mutual insurance company for purposes of subsection (b)(4), section 811(d) shall not apply with respect to any life insurance contract issued before January 1, 1985, under a plan of life insurance in existence on July 1, 1983.

(h) Treatment of stock companies owned by mutual life insurance companies

(1) Treatment as mutual life insurance companies for purposes of determining stock earnings rates and mutual earnings rates

Solely for purposes of subsections (d) and (e), a stock life insurance company shall be treated as a mutual life insurance company if stock possessing—

(A) at least 80 percent of the total combined voting power of all classes of stock of such stock life insurance company entitled to vote, or

(B) at least 80 percent of the total value of shares of all classes of stock of such stock life insurance company,

is owned at any time during the calendar year directly (or through the application of section 318) by one or more mutual life insurance companies.

(2) Treatment of affiliated group which includes mutual parent and stock subsidiary

In the case of an affiliated group of corporations which includes a common parent which is a mutual life insurance company and one or more stock life insurance companies, for purposes of determining the average equity base of such common parent (and the statement gain or loss from operations)—

(A) stock in such stock life insurance companies held by such common parent (and dividends on such stock) shall not be taken into account, and

(B) such common parent and such stock life insurance companies shall be treated as though they were one mutual life insurance company.

(3) Adjustment where stock company not member of affiliated group

In the case of any stock life insurance company which is described in paragraph (1) but is not a member of an affiliated group described in paragraph (2), under regulations, proper adjustments shall be made in the average equity bases (and statement gains or losses from operations) of mutual life insurance companies owning stock in such company as may be necessary or appropriate to carry out the purposes of this section.

(i) Transitional rule for certain high surplus mutual life insurance companies

(1) In general

For purposes of subsection (a)(3), the average equity base of a high surplus mutual life insurance company for any taxable year shall not include the applicable percentage of the excess equity base of such company for such taxable year.

(2) Definitions

For purposes of this subsection—

(A) Excess equity base

The term "excess equity base" means the excess of—

(i) the average equity base of the company for the taxable year, over

(ii) the amount which would be its average equity base if its equity percentage equaled the following percentage:

For taxable years beginning in:	The percentage is:
1984	14.5
1985 or 1986	14
1987 or 1988	13.5

In no case shall the excess equity base for any taxable year be greater than the excess equity base for the company's first taxable year beginning in 1984.

(B) Applicable percentage

The term "applicable percentage" means the percentage determined in accordance with the following table:

For taxable years beginning in:	The applicable percentage is:
1984	100
1985	80
1986	60
1987	40
1988	20
1989 or thereafter	0.

(C) High surplus mutual life insurance company

The term "high surplus mutual life insurance company" means any mutual life insurance company if, for the taxable year beginning in 1984, its equity percentage exceeded 14.5 percent.

(D) Equity percentage

The term "equity percentage" means, with respect to any mutual life insurance company, the percentage which—

(i) the average equity base of such company (determined under this section without regard to this subsection) for a taxable year bears to

(ii) the average of—

(I) the assets of such company as of the close of the preceding taxable year, and

(II) the assets of such company as of the close of the taxable year.

For purposes of the preceding sentence, the assets of a company shall include all assets taken into account under this section in determining its equity base (after applying the principles of subsection (h)).

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 733.)

Prior Provisions

A prior section 809, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 121, and amended Pub. L. 87-59, § 2(a), (b), June 27, 1961, 75 Stat. 120; Pub. L. 87-790, § 3(a), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87-858, § 3(b)(3), (c), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-272, title II, §§ 214(b)(4), 228(a), Feb. 26, 1964, 78 Stat. 55, 98; Pub. L. 91-172, title II, § 201(a)(2)(C), title IX, § 907(c)(2)(B), Dec. 30, 1969, 83 Stat. 558, 717; Pub. L. 94-455, title XV, § 1508(a), title XIX, §§ 1901(a)(98), (b)(1)(J)(iv), (L)-(N), 33(G), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1741, 1781, 1791, 1801, 1834; Pub. L. 97-248, title II, §§ 255(b)(2)-(4), 259(a), 264(c)(2), (3), Sept. 3, 1982, 96 Stat. 534, 538, 544; Pub. L. 97-448, title I, § 102(m)(1), Jan. 12, 1983, 96 Stat. 2374, related to general provisions regarding gain and loss from operations, prior to the general revision of this part by Pub. L. 98-369, § 211(a).

Effective Date

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

Treatment of Reinsurance Agreements Required by National Association of Insurance Commissioners

For applicability of former provisions of subsecs. (c)(1)(F) and (d)(12) of this section to dividends to policyholders reimbursed to the taxpayer by a reinsurer in respect of accident and health policies reinsured under a reinsurance agreement entered into before June 30, 1955, pursuant to the direction of the National Association of Insurance Commissioners and approved by the State insurance commissioner of the taxpayer's State of domicile, see section 217(g) of Pub. L. 98-369, set out as a note under section 801 of this title.

Reduction in Equity Base for Mutual Successor of Fraternal Benefit Society

Section 217(j) of subtitle A (§§ 211-219) of title II of div. A of Pub. L. 98-369 provided that: "In the case of any mutual life insurance company which—

"(1) is the successor to a fraternal benefit society, and

"(2) which assumed the surplus of such fraternal benefit society in 1950 or in March of 1961,

for purposes of section 809 of the Internal Revenue Code of 1954 (as amended by this subtitle), the equity base of such mutual life insurance company shall be reduced by the amount of the surplus so assumed plus earnings thereon, (i) for taxable years before 1984, at a 7 percent interest rate, and (ii) for taxable years 1984 and following, at the average mutual earnings rate for such year."

CLARIFICATION OF AUTHORITY TO REQUIRE CERTAIN INFORMATION

Section 219 of title II of div. A of Pub. L. 98-369 provided that: "Nothing in any provision of law shall be construed to prevent the Secretary of the Treasury or his delegate from requiring (from time to time) life insurance companies to provide such data with respect to taxable years beginning before January 1, 1984, as may be necessary to carry out the provisions of section 809 of such Code (as added by this title)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 807, 808, 812, 813, 817, 1564 of this title.

§ 810. Operations loss deduction

(a) Deduction allowed

There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of—

(1) the operations loss carryovers to such year, plus

(2) the operations loss carrybacks to such year.

For purposes of this part, the term "operations loss deduction" means the deduction allowed by this subsection.

(b) Operations loss carrybacks and carryovers

(1) Years to which loss may be carried

The loss from operations for any taxable year (hereinafter in this section referred to as the "loss year") shall be—

(A) an operations loss carryback to each of the 3 taxable years preceding the loss year,

(B) an operations loss carryover to each of the 15 taxable years following the loss year, and

(C) if the life insurance company is a new company for the loss year, an operations loss carryover to each of the 3 taxable years following the 15 taxable years described in subparagraph (B).

(2) Amount of carrybacks and carryovers

The entire amount of the loss from operations for any loss year shall be carried to the earliest of the taxable years to which (by reason of paragraph (1)) such loss may be carried. The portion of such loss which shall be carried to each of the other taxable years shall be the excess (if any) of the amount of such loss over the sum of the offsets (as defined in subsection (d)) for each of the prior taxable years to which such loss may be carried.

(3) Election for operations loss carrybacks

In the case of a loss from operations for any taxable year, the taxpayer may elect to relinquish the entire carryback period for such loss. Such election shall be made by the due date (including extensions of time) for filing the return for the taxable year of the loss from operations for which the election is to be in effect, and, once made for any taxable year, such election shall be irrevocable for that taxable year.

(c) Computation of loss from operations

For purposes of this section—

(1) In general

The term "loss from operations" means the excess of the life insurance deductions for any taxable year over the life insurance gross income for such taxable year.

(2) Modifications

For purposes of paragraph (1)—

(A) the operations loss deduction shall not be allowed, and

(B) the deductions allowed by sections 243 (relating to dividends received by corporations), 244 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) as modified by section 805(a)(4).

(d) Offset defined

(1) In general

For purposes of subsection (b)(2), the term "offset" means, with respect to any taxable year, an amount equal to that increase in the operations loss deduction for the taxable year which reduces the life insurance company taxable income (computed without regard to paragraphs (2) and (3) of section 804) for such year to zero.

(2) Operations loss deduction

For purposes of paragraph (1), the operations loss deduction for any taxable year shall be computed without regard to the loss from operations for the loss year or for any taxable year thereafter.

(e) New company defined

For purposes of this part, a life insurance company is a new company for any taxable year only if such taxable year begins not more than 5 years after the first day on which it (or any predecessor, if section 381(c)(22) applies) was authorized to do business as an insurance company.

(f) Application of subtitles A and F in respect of operation losses

Except as provided in section 805(b)(5), subtitles A and F shall apply in respect of operation loss carrybacks, operation loss carryovers, and the operations loss deduction under this part, in the same manner and to the same extent as such subtitles apply in respect of net operating loss carrybacks, net operating loss carryovers, and the net operating loss deduction.

(g) Transitional rule

For purposes of this section and section 812 (as in effect before the enactment of the Life

Insurance Tax Act of 1984), this section shall be treated as a continuation of such section 812.

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 738.)

REFERENCES IN TEXT

The Life Insurance Tax Act of 1984, referred to in subsec. (g), probably means title II of div. A of Pub. L. 98-369, which amended this part generally and was approved July 18, 1984.

PRIOR PROVISIONS

A prior section 810, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 125, and amended Pub. L. 91-172, title I, § 121(b)(5)(B), title IX, § 907(a)(2), Dec. 30, 1969, 83 Stat. 541, 715, related to rules for certain reserves, prior to the general revision of this part by Pub. L. 98-369, § 211(a).

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 381, 805, 844, 1351 of this title.

SUBPART D—ACCOUNTING, ALLOCATION, AND FOREIGN PROVISIONS

Sec.
811. Accounting provisions.
812. Definition of company's share and policyholders' share.
813. Foreign life insurance companies.
814. Contiguous country branches of domestic life insurance companies.
815. Distributions to shareholders from pre-1984 policyholders surplus account.

§ 811. Accounting provisions

(a) Method of accounting

All computations entering into the determination of the taxes imposed by this part shall be made—

(1) under an accrual method of accounting, or

(2) to the extent permitted under regulations prescribed by the Secretary, under a combination of an accrual method of accounting with any other method permitted by this chapter (other than the cash receipts and disbursements method).

To the extent not inconsistent with the preceding sentence or any other provision of this part, all such computations shall be made in a manner consistent with the manner required for purposes of the annual statement approved by the National Association of Insurance Commissioners.

(b) Amortization of premium and accrual of discount

(1) In general

The appropriate items of income, deductions, and adjustments under this part shall be adjusted to reflect the appropriate amortization of premium and the appropriate accrual of discount attributable to the taxable year on bonds, notes, debentures, or other evidences of indebtedness held by a life insurance company. Such amortization and accrual shall be determined—

(A) in accordance with the method regularly employed by such company, if such method is reasonable, and

(B) in all other cases, in accordance with regulations prescribed by the Secretary.

(2) Special rules

(A) Amortization of bond premium

In the case of any bond (as defined in section 171(d)), the amount of bond premium, and the amortizable bond premium for the taxable year, shall be determined under section 171(b) as if the election set forth in section 171(c) had been made.

(B) Convertible evidence of indebtedness

In no case shall the amount of premium on a convertible evidence of indebtedness include any amount attributable to the conversion features of the evidence of indebtedness.

(3) Exception

No accrual of discount shall be required under paragraph (1) on any bond (as defined in section 171(d)), except in the case of discount which is—

(A) interest to which section 103 applies, or

(B) original issue discount (as defined in section 1273).

(c) No double counting

Nothing in this part shall permit—

(1) a reserve to be established for any item unless the gross amount of premiums and other consideration attributable to such item are required to be included in life insurance gross income,

(2) the same item to be counted more than once for reserve purposes, or

(3) any item to be deducted (either directly or as an increase in reserves) more than once.

(d) Method of computing reserves on contract where interest is guaranteed beyond end of taxable year

For purposes of this part (other than section 816), amounts in the nature of interest to be paid or credited under any contract for any period which is computed at a rate which—

(1) exceeds the prevailing State assumed interest rate for the contract for such period, and

(2) is guaranteed beyond the end of the taxable year on which the reserves are being computed,

shall be taken into account in computing the reserves with respect to such contract as if such interest were guaranteed only up to the end of the taxable year.

(e) Short taxable years

If any return of a corporation made under this part is for a period of less than the entire calendar year (referred to in this subsection as "short period"), then section 443 shall not apply in respect to such period, but life insurance company taxable income shall be determined, under regulations prescribed by the Secretary, on an annual basis by a ratable daily projection of the appropriate figures for the short period.

(Added and amended Pub. L. 98-369, div. A, title I, § 42(a)(8), title II, § 211(a), July 18, 1984, 98 Stat. 557, 740.)

PRIOR PROVISIONS

A prior section 811, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 126, and amended Pub. L. 97-248, title II, § 255(b)(1), Sept. 3, 1982, 96 Stat. 533; Pub. L. 98-369, div. A, title VII, § 714(a), July 18, 1984, 98 Stat. 960, related to dividends to policyholders, prior to the general revision of this part by Pub. L. 98-369, § 211(a).

Another prior section 811, act Aug. 16, 1954, ch. 736, § 811, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 44, and amended July 24, 1956, ch. 696, § 2(c), 70 Stat. 633; Mar. 17, 1958, Pub. L. 85-345, § 2(c), 72 Stat. 37, imposed a tax on the life insurance company taxable income of all life insurance companies for taxable years beginning after Dec. 31, 1957, prior to the general revision of this part by Pub. L. 86-69, § 2(a).

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98-369, § 42(a)(8), substituted "section 1273" for "section 1232(b)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment of subsec. (b)(3) by section 42(a)(8) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 805, 809, 1016, 1272 of this title.

§ 812. Definition of company's share and policyholders' share

(a) General rule

(1) Company's share

For purposes of section 805(a)(4), the term "company's share" means, with respect to any taxable year, the percentage obtained by dividing—

(A) the company's share of the net investment income for the taxable year, by

(B) the net investment income for the taxable year.

(2) Policyholders' share

For purposes of section 807, the term "policyholders' share" means, with respect to any taxable year, the excess of 100 percent over the percentage determined under paragraph (1).

(b) Company's share of net investment income

(1) In general

For purposes of this section, the company's share of net investment income is the excess (if any) of—

(A) the net investment income for the taxable year, over

(B) the sum of—

(i) the policy interest, for the taxable year, plus

(ii) the gross investment income's proportionate share of policyholder dividends for the taxable year.

(2) Policy interest

For purposes of this subsection, the term "policy interest" means—

(A) required interest (at the prevailing State assumed rate) on reserves under section 807(c) (other than paragraph (2) thereof),

(B) the deductible portion of excess interest, and

(C) the deductible portion of any amount (whether or not a policyholder dividend), and not taken into account under subparagraph (A) or (B), credited to—

(i) a policyholder's fund under a pension plan contract for employees (other than retired employees), or

(ii) a deferred annuity contract before the annuity starting date.

(3) Gross investment income's proportionate share of policyholder dividends

For purposes of paragraph (1), the gross investment income's proportionate share of policyholder dividends is—

(A) the deduction for policyholders' dividends determined under sections 808 and 809 for the taxable year, but not including—

(i) the deductible portion of excess interest,

(ii) the deductible portion of policyholder dividends on contracts referred to in clauses (i) and (ii) of paragraph (2)(C), and

(iii) the deductible portion of the premium and mortality charge adjustments with respect to contracts paying excess interest for such year,

multiplied by

(B) the fraction—

(i) the numerator of which is gross investment income for the taxable year (reduced by the policy interest for such year), and

(ii) the denominator of which is life insurance gross income (including tax-exempt interest) reduced by the excess (if any) of the closing balance for the items described in section 807(c) over the opening balance for such items for the taxable year.

(c) Net investment income

For purposes of this section, the term "net investment income" means 90 percent of gross investment income.

(d) Gross investment income

For purposes of this section, the term "gross investment income" means the sum of the following:

(1) Interest, etc.

The gross amount of income from—

(A) interest (including tax-exempt interest), dividends, rents, and royalties,

(B) the entering into of any lease, mortgage, or other instrument or agreement from which the life insurance company derives interest, rents, or royalties, and

(C) the alteration or termination of any instrument or agreement described in subparagraph (B).

(2) Short-term capital gain

The amount (if any) by which the net short-term capital gain exceeds the net long-term capital loss.

(3) Trade or business income

The gross income from any trade or business (other than an insurance business) carried on by the life insurance company, or by a partnership of which the life insurance company is a partner. In computing gross income under this paragraph, there shall be excluded any item described in paragraph (1).

Except as provided in paragraph (2), in computing gross investment income under this subsection, there shall be excluded any gain from the sale or exchange of a capital asset, and any gain considered as gain from the sale or exchange of a capital asset.

(e) Dividends from certain subsidiaries not included in gross investment income

For purposes of this section, the term "gross investment income" shall not include any dividend received by the life insurance company which is a 100-percent dividend (as defined in section 805(a)(4)(C)). Such term also shall not include any dividend described in section 805(a)(4)(D) (relating to certain dividends in the case of foreign corporations).

(f) No double counting

Under regulations, proper adjustments shall be made in the application of this section to prevent an item from being counted more than once.

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 741.)

Prior Provisions

A prior section 812, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 127, and amended Pub. L. 87-858, § 3(d)(1), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-571, § 1(a), Sept. 2, 1964, 78 Stat. 857; Pub. L. 94-455, title VIII, § 806(d)(1), title XIX, § 1901(a)(99), Oct. 4, 1976, 90 Stat. 1598, 1781; Pub. L. 97-34, title II, § 207(b), Aug. 13, 1981, 95 Stat. 225, related to operations loss deductions, prior to the general revision of this part by Pub. L. 98-369, § 211(a).

Another prior section 812, act Aug. 16, 1954, ch. 736, § 812, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 45, related to reserve and other policy liability deduction, prior to the general revision of this part by Pub. L. 86-69, § 2(a).

Effective Date

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

Section Referred to in Other Sections

This section is referred to in section 810 of this title.

§ 813. Foreign life insurance companies

(a) Adjustment where surplus held in the United States is less than specified minimum

(1) In general

In the case of any foreign company taxable under this part, if—

(A) the required surplus determined under paragraph (2), exceeds

(B) the surplus held in the United States,

then its income effectively connected with the conduct of an insurance business within the United States shall be increased by an amount determined by multiplying such excess by such company's current investment yield.

(2) Required surplus

For purposes of this subsection—

(A) In general

The term "required surplus" means the amount determined by multiplying the taxpayer's total insurance liabilities on United States business by a percentage for the taxable year determined and proclaimed by the Secretary under subparagraph (B).

(B) Determination of percentage

The percentage determined and proclaimed by the Secretary under this subparagraph shall be based on such data with respect to domestic life insurance companies for the preceding taxable year as the Secretary considers representative. Such percentage shall be computed on the basis of a ratio the numerator of which is the excess of the assets over the total insurance liabilities, and the denominator of which is the total insurance liabilities.

(3) Current investment yield

For purposes of this subsection—

(A) In general

The term "current investment yield" means the percent obtained by dividing—

(i) the net investment income on assets held in the United States, by

(ii) the mean of the assets held in the United States during the taxable year.

(B) Determinations based on amount set forth in the annual statement

Except as otherwise provided in regulations, determinations under subparagraph (A) shall be made on the basis of the amounts required to be set forth on the annual statement approved by the National Association of Insurance Commissioners.

(4) Other definitions

For purposes of this subsection—

(A) Surplus held in the United States

The surplus held in the United States is the excess of the assets (determined under section 806(b)(3)(C)) held in the United States over the total insurance liabilities on United States business.

(B) Total insurance liabilities

For purposes of this subsection, the term "total insurance liabilities" means the sum of the total reserves (as defined in section 816(c)) plus (to the extent not included in total reserves) the items referred to in paragraphs (3), (4), (5), and (6) of section 807(c).

(5) Reduction of section 881 taxes

In the case of any foreign company taxable under this part, there shall be determined—

(A) the amount which would be subject to taxes under section 881 if the amount taxable under such section were determined without regard to sections 103 and 894, and

(B) the amount of the increase provided by paragraph (1).

The tax under section 881 (determined without regard to this paragraph) shall be reduced (but not below zero) by an amount which is the same proportion of such tax as the amount referred to in subparagraph (B) is of the amount referred to in subparagraph (A); but such reduction in taxes shall not exceed the increase in taxes under this part by reason of the increase provided by paragraph (1).

(b) Adjustment to limitation on deduction for policyholder dividends in the case of foreign mutual life insurance companies

For purposes of section 809, the equity base of any foreign mutual life insurance company as of the close of any taxable year shall be increased by the amount of any excess determined under paragraph (1) of subsection (a) with respect to such taxable year.

(c) Cross reference

For taxation of foreign corporations carrying on life insurance business within the United States, see section 842.

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 743.)

PRIOR PROVISIONS

A prior section 813, act Aug. 16, 1954, ch. 736, § 813, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, related to adjustment for certain reserves, prior to the general revision of this part by Pub. L. 86-69, § 2(a).

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4371 of this title.

§ 814. Contiguous country branches of domestic life insurance companies

(a) Exclusion of items

In the case of a domestic mutual insurance company which—

(1) is a life insurance company,

(2) has a contiguous country life insurance branch, and

(3) makes the election provided by subsection (g) with respect to such branch,

there shall be excluded from each item involved in the determination of life insurance company taxable income the items separately accounted for in accordance with subsection (c).

(b) Contiguous country life insurance branch

For purposes of this section, the term contiguous country life insurance branch means a branch which—

(1) issues insurance contracts insuring risks in connection with the lives or health of residents of a country which is contiguous to the United States,

(2) has its principal place of business in such contiguous country, and

(3) would constitute a mutual life insurance company if such branch were a separate domestic insurance company.

For purposes of this section, the term "insurance contract" means any life, health, accident, or annuity contract or reinsurance contract or any contract relating thereto.

(c) Separate accounting required

Any taxpayer which makes the election provided by subsection (g) shall establish and maintain a separate account for the various income, exclusion, deduction, asset, reserve, liability, and surplus items properly attributable to the contracts described in subsection (b). Such separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method clearly reflects income derived from, and the other items attributable to, the contracts described in subsection (b), and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Recognition of gain on assets in branch account

If the aggregate fair market value of all the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account established pursuant to subsection (c) exceeds the aggregate adjusted basis of such assets for purposes of determining gain, then the domestic life insurance company shall be treated as having sold all such assets on the first day of the first taxable year for which the election is in effect at their fair market value on such first day. Notwithstanding any other provision of this chapter, the net gain shall be recognized to the domestic life insurance company on the deemed sale described in the preceding sentence.

(e) Transactions between contiguous country branch and domestic life insurance company

(1) Reimbursement for home office services, etc.

Any payment, transfer, reimbursement, credit, or allowance which is made from a separate account established pursuant to subsection (c) to one or more other accounts of a domestic life insurance company as reimbursement for costs incurred for or with respect to the insurance (or reinsurance) of risks accounted for in such separate account shall be taken into account by the domestic life insurance company in the same manner as if such payment, transfer, reimbursement, credit, or allowance had been received from a separate person.

(2) **Repatriation of income**

(A) **In general**

Except as provided in subparagraph (B), any amount directly or indirectly transferred or credited from a branch account established pursuant to subsection (c) to one or more other accounts of such company shall, unless such transfer or credit is a reimbursement to which paragraph (1) applies, be added to the income of the domestic life insurance company.

(B) **Limitation**

The addition provided by subparagraph (A) for the taxable year with respect to any contiguous country life insurance branch shall not exceed the amount by which—

(i) the aggregate decrease in the tentative LICTI of the domestic life insurance company for the taxable year and for all prior taxable years resulting solely from the application of subsection (a) of this section with respect to such branch, exceeds

(ii) the amount of additions to tentative LICTI pursuant to subparagraph (A) with respect to such contiguous country branch for all prior taxable years.

(C) **Transitional rule**

For purposes of this paragraph, in the case of a prior taxable year beginning before January 1, 1984, the term "tentative LICTI" means life insurance company taxable income determined under this part (as in effect for such year) without regard to this paragraph.

(f) **Other rules**

(1) **Treatment of foreign taxes**

(A) **In general**

No income, war profits, or excess profits taxes paid or accrued to any foreign country or possession of the United States which is attributable to income excluded under subsection (a) shall be taken into account for purposes of subpart A of part III of subchapter N (relating to foreign tax credit) or allowable as a deduction.

(B) **Treatment of repatriated amounts**

For purposes of sections 78 and 902, where any amount is added to the life insurance company taxable income of the domestic life insurance company by reason of subsection (e)(2), the contiguous country life insurance branch shall be treated as a foreign corporation. Any amount so added shall be treated as a dividend paid by a foreign corporation, and the taxes paid to any foreign country or possession of the United States with respect to such amount shall be deemed to have been paid by such branch.

(2) **United States source income allocable to contiguous country branch**

For purposes of sections 881, 882, and 1442, each contiguous country life insurance branch shall be treated as a foreign corporation. Such sections shall be applied to each such branch in the same manner as if such sections contained the provisions of any treaty to which the United States and the contiguous country are parties, to the same extent such provisions would apply if such branch were incorporated in such contiguous country.

(g) **Election**

A taxpayer may make the election provided by this subsection with respect to any contiguous country for any taxable year. An election made under this subsection for any taxable year shall remain in effect for all subsequent taxable years, except that it may be revoked with the consent of the Secretary. The election provided by this subsection shall be made not later than the time prescribed by law for filing the return for the taxable year (including extensions thereof) with respect to which such election is made, and such election and any approved revocation thereof shall be made in the manner provided by the Secretary.

(h) **Special rule for domestic stock life insurance companies**

At the election of a domestic stock life insurance company which has a contiguous country life insurance branch described in subsection (b) (without regard to the mutual requirement in subsection (b)(3)), the assets of such branch may be transferred to a foreign corporation organized under the laws of the contiguous country without the application of section 367 or 1491. Subsection (a) shall apply to the stock of such foreign corporation as if such domestic company were a mutual company and as if the stock were an item described in subsection (c). Subsection (e)(2) shall apply to amounts transferred or credited to such domestic company as if such domestic company and such foreign corporation constituted one domestic mutual life insurance company. The insurance contracts which may be transferred pursuant to this subsection shall include only those which are similar to the types of insurance contracts issued by a mutual life insurance company. Notwithstanding the first sentence of this subsection, if the aggregate fair market value of the invested assets and tangible property which are separately accounted for by the domestic life insurance company in the branch account exceeds the aggregate adjusted basis of such assets for purposes of determining gain, the domestic life insurance company shall be deemed to have sold all such assets on the first day of the taxable year for which the election under this subsection applies and the net gain shall be recognized to the domestic life insurance company on the deemed sale, but not in excess of the proportion of such net gain which equals the proportion which the aggregate fair market value of such assets which are transferred pursuant to this subsection is of the aggregate fair market value of all such assets.

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 744.)

NEW SECTION 814 TREATED AS CONTINUATION OF SECTION 819A

Section 217(a) of Pub. L. 98-369 provided that: "For purposes of section 814 of the Internal Revenue Code of 1954 (relating to contiguous country branches of domestic life insurance companies)—

"(1) any election under section 819A of such Code (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) shall be treated as an election under such section 814, and

"(2) any reference to a provision of such section 814 shall be treated as including a reference to the corresponding provision of such section 819A."

Effective Date

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

§ 815. Distributions to shareholders from pre-1984 policyholders surplus account

(a) General rule

In the case of a stock life insurance company which has an existing policyholders surplus account, the tax imposed by section 801 for any taxable year shall be the amount which would be imposed by such section for such year on the sum of—

(1) life insurance company taxable income for such year (but not less than zero), plus

(2) the amount of direct and indirect distributions during such year to shareholders from such account.

(b) Ordering rule

For purposes of this section, any distribution to shareholders shall be treated as made—

(1) first out of the shareholders surplus account, to the extent thereof,

(2) then out of the policyholders surplus account, to the extent thereof, and

(3) finally, out of other accounts.

(c) Shareholders surplus account

(1) In general

Each stock life insurance company which has an existing policyholders surplus account shall continue its shareholders surplus account for purposes of this part.

(2) Additions to account

The amount added to the shareholders surplus account for any taxable year beginning after December 31, 1983, shall be the excess of—

(A) the sum of—

(i) the life insurance company's taxable income (but not below zero),

(ii) the special deductions provided by section 806, and

(iii) the deductions for dividends received provided by sections 243, 244, and 245 (as modified by section 805(a)(4)) and the amount of interest excluded from gross income under section 103, over

(B) the taxes imposed for the taxable year by section 801 (determined without regard to this section).

(3) Subtractions from account

There shall be subtracted from the shareholders surplus account for any taxable year the amount which is treated under this section as distributed out of such account.

(d) Policyholders surplus account

(1) In general

Each stock life insurance company which has an existing policyholders surplus account shall continue such account.

(2) No additions to account

No amount shall be added to the policyholders surplus account for any taxable year beginning after December 31, 1983.

(3) Subtractions from account

There shall be subtracted from the policyholders surplus account for any taxable year an amount equal to the sum of—

(A) the amount which (without regard to subparagraph (B)) is treated under this section as distributed out of the policyholders surplus account, and

(B) the amount by which the tax imposed for the taxable year by section 801 is increased by reason of this section.

(e) Existing policyholders surplus account

For purposes of this section, the term "existing policyholders surplus account" means any policyholders surplus account which has a balance as of the close of December 31, 1983.

(f) Other rules applicable to policyholders surplus account continued

Except to the extent inconsistent with the provisions of this part, the provisions of subsections (d), (e), (f), and (g) of section 815 (and of sections 6501(c)(6), 6501(k), 6511(d)(6), 6601(d)(3), and 6611(f)(4)) as in effect before the enactment of the Tax Reform Act of 1984 are hereby made applicable in respect of any policyholders surplus account for which there was a balance as of December 31, 1983.

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 747.)

References in Text

The enactment of the Tax Reform Act of 1984, referred to in subsec. (f), means the enactment of division A of Pub. L. 98-369, which was approved July 18, 1984.

Prior Provisions

A prior section 815, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 129, and amended Pub. L. 87-790, § 3(b), Oct. 10, 1962, 76 Stat. 808; Pub. L. 87-858, § 3(b)(4), (e), Oct. 23, 1962, 76 Stat. 1137; Pub. L. 88-571, §§ 2, 3(a), 4(a), Sept. 2, 1964, 78 Stat. 857, 859; Pub. L. 90-225, § 4(a), (b), Dec. 27, 1967, 81 Stat. 733, 734; Pub. L. 91-172, title IX, § 907(b), Dec. 30, 1969, 83 Stat. 715; Pub. L. 94-331, § 1(a), June 30, 1976, 90 Stat. 781; Pub. L. 94-455, title XIX, §§ 1901(b)(1)(O), (24), (33)(H), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1791, 1798, 1801, 1834, contained provisions similar to this section, prior to the general revision of this part by Pub. L. 98-369, § 211(a).

Effective Date

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

Section Referred to in Other Sections

This section is referred to in section 801 of this title.

SUBPART E—DEFINITIONS AND SPECIAL RULES

Sec.
816. Life insurance company defined.
817. Treatment of variable contracts.
818. Other definitions and special rules.

§ 816. Life insurance company defined

(a) Life insurance company defined

For purposes of this subtitle, the term "life insurance company" means an insurance company which is engaged in the business of issuing life insurance and annuity contracts (either separately or combined with accident and health insurance), or noncancellable contracts of health and accident insurance, if—

(1) its life insurance reserves (as defined in subsection (b)), plus

(2) unearned premiums, and unpaid losses (whether or not ascertained), on noncancellable life, accident, or health policies not included in life insurance reserves,

comprise more than 50 percent of its total reserves (as defined in subsection (c)). For purposes of the preceding sentence, the term "insurance company" means any company more than half of the business of which during the taxable year is the issuing of insurance or annuity contracts or the reinsuring of risks underwritten by insurance companies.

(b) Life insurance reserves defined

(1) In general

For purposes of this part, the term "life insurance reserves" means amounts—

(A) which are computed or estimated on the basis of recognized mortality or morbidity tables and assumed rates of interest, and

(B) which are set aside to mature or liquidate, either by payment or reinsurance, future unaccrued claims arising from life insurance, annuity, and noncancellable accident and health insurance contracts (including life insurance or annuity contracts combined with noncancellable accident and health insurance) involving, at the time with respect to which the reserve is computed, life, accident, or health contingencies.

(2) Reserves must be required by law

Except—

(A) in the case of policies covering life, accident, and health insurance combined in one policy issued on the weekly premium payment plan, continuing for life and not subject to cancellation, and

(B) as provided in paragraph (3),

in addition to the requirements set forth in paragraph (1), life insurance reserves must be required by law.

(3) Assessment companies

In the case of an assessment life insurance company or association, the term "life insurance reserves" includes—

(A) sums actually deposited by such company or association with State officers pursuant to law as guaranty or reserve funds, and

(B) any funds maintained, under the charter or articles of incorporation or association (or bylaws approved by a State insurance commissioner) of such company or association, exclusively for the payment of claims arising under certificates of membership or policies issued on the assessment plan and not subject to any other use.

(4) Amount of reserves

For purposes of this subsection, subsection (a), and subsection (c), the amount of any reserve (or portion thereof) for any taxable year shall be the mean of such reserve (or portion thereof) at the beginning and end of the taxable year.

(c) Total reserves defined

For purposes of subsection (a), the term "total reserves" means—

(1) life insurance reserves,

(2) unearned premiums, and unpaid losses (whether or not ascertained), not included in life insurance reserves, and

(3) all other insurance reserves required by law.

(d) Adjustments in reserves for policy loans

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, the life insurance reserves, and the total reserves, shall each be reduced by an amount equal to the mean of the aggregates, at the beginning and end of the taxable year, of the policy loans outstanding with respect to contracts for which life insurance reserves are maintained.

(e) Guaranteed renewable contracts

For purposes of this part, guaranteed renewable life, accident, and health insurance shall be treated in the same manner as noncancellable life, accident, and health insurance.

(f) Amounts not involving life, accident, or health contingencies

For purposes only of determining under subsection (a) whether or not an insurance company is a life insurance company, amounts set aside and held at interest to satisfy obligations under contracts which do not contain permanent guarantees with respect to life, accident, or health contingencies shall not be included in reserves described in paragraph (1) or (3) of subsection (c).

(g) Burial and funeral benefit insurance companies

A burial or funeral benefit insurance company engaged directly in the manufacture of funeral supplies or the performance of funeral services shall not be taxable under this part but shall be taxable under section 821 or section 831.

(Added Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 748.)

PRIOR PROVISIONS

A prior section 816, act Aug. 16, 1954, ch. 736, § 816, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, related to taxation of foreign life insurance companies, prior to the general revision of this part by Pub. L. 86-69, § 2(a).

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as a note under section 801 of this title.

SPECIAL ELECTION TO TREAT INDIVIDUAL NONCANCELLABLE ACCIDENT AND HEALTH CONTRACTS AS CANCELLABLE

Section 217(l) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—A mutual life insurance company may elect to treat all individual noncancellable (or guaranteed renewable) accident and health insurance contracts as though they were cancellable for purposes of section 816 of subchapter L of chapter 1 of the Internal Revenue Code of 1954.

"(2) EFFECT OF ELECTION ON SUBSIDIARIES OF ELECTING PARENT.—

"(A) TREATED AS MUTUAL LIFE INSURANCE COMPANY.—Any stock life insurance company which is a member of an affiliated group which has a common parent which made an election under paragraph (1), for purposes of part I of subchapter L of the Internal Revenue Code of 1954, such stock life insurance company shall be treated as though it were a mutual life insurance company.

"(B) INCOME OF ELECTING PARENT TAKEN INTO ACCOUNT IN DETERMINING SMALL LIFE INSURANCE COMPANY DEDUCTION OF ANY SUBSIDIARY.—For purposes of determining the amount of the small life insurance company deduction of any controlled group which includes a mutual company which made an election under paragraph (1), the taxable income of such electing company shall be taken into account under section 806(b)(2) of the Internal Revenue Code of 1954 (relating to phase-out of small life insurance company deduction).

"(3) ELECTION.—An election under paragraph (1) shall apply to the company's first taxable year beginning after December 31, 1983, and all taxable years thereafter.

"(4) TIME AND MANNER.—An election under paragraph (1) shall be made—

"(A) on the return of the taxpayer for its first taxable year beginning after December 31, 1983, and

"(B) in such manner as the Secretary of the Treasury or his delegate may prescribe."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 453B, 465, 594, 807, 811, 813, 817 of this title.

§ 817. Treatment of variable contracts

(a) Increases and decreases in reserves

For purposes of subsections (a) and (b) of section 807, the sum of the items described in section 807(c) taken into account as of the close of the taxable year with respect to any variable contract shall, under regulations prescribed by the Secretary, be adjusted—

(1) by subtracting therefrom an amount equal to the sum of the amounts added from time to time (for the taxable year) to the reserves separately accounted for in accordance with subsection (c) by reason of appreciation in value of assets (whether or not the assets have been disposed of), and

(2) by adding thereto an amount equal to the sum of the amounts subtracted from time to time (for the taxable year) from such reserves by reason of depreciation in value of assets (whether or not the assets have been disposed of).

The deduction allowable for items described in paragraphs (1) and (6) of section 805(a) with respect to variable contracts shall be reduced to the extent that the amount of such items is increased for the taxable year by appreciation (or increased to the extent that the amount of such items is decreased for the taxable year by depreciation) not reflected in adjustments under the preceding sentence.

(b) Adjustment to basis of assets held in segregated asset account

In the case of variable contracts, the basis of each asset in a segregated asset account shall (in addition to all other adjustments to basis) be—

(1) increased by the amount of any appreciation in value, and

(2) decreased by the amount of any depreciation in value,

to the extent such appreciation and depreciation are from time to time reflected in the increases and decreases in reserves or other items referred to in subsection (a) with respect to such contracts.

(c) Separate accounting

For purposes of this part (other than section 809), a life insurance company which issues variable contracts shall separately account for the various income, exclusion, deduction, asset, reserve, and other liability items properly attributable to such variable contracts. For such items as are not accounted for directly, separate accounting shall be made—

(1) in accordance with the method regularly employed by such company, if such method is reasonable, and

(2) in all other cases, in accordance with regulations prescribed by the Secretary.

(d) Variable contract defined

For purposes of this part, the term "variable contract" means a contract—

(1) which provides for the allocation of all or part of the amounts received under the contract to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company,

(2) which—

(A) provides for the payment of annuities, or

(B) is a life insurance contract, and

(3) under which—

(A) in the case of an annuity contract, the amounts paid in, or the amount paid out, reflect the investment return and the market value of the segregated asset account, or

(B) in the case of a life insurance contract, the amount of the death benefit (or the period of coverage) is adjusted on the basis of the investment return and the market value of the segregated asset account.

If a contract ceases to reflect current investment return and current market value, such contract shall not be considered as meeting the requirements of paragraph (3) after such cessation.

(e) Pension plan contracts treated as paying annuity

A pension plan contract which is not a life, accident, or health, property, casualty, or liability insurance contract shall be treated as a contract which provides for the payments of annuities for purposes of subsection (d).

(f) Other special rules

(1) Life insurance reserves

For purposes of subsection (b)(1)(A) of section 816, the reflection of the investment return and the market value of the segregated asset account shall be considered an assumed rate of interest.

(2) Additional separate computations

Under regulations prescribed by the Secretary, such additional separate computations shall be made, with respect to the items separately accounted for in accordance with subsection (c), as may be necessary to carry out the purposes of this section and this part.

(g) Variable annuity contracts treated as annuity contracts

For purposes of this part, the term "annuity contract" includes a contract which provides for the payment of a variable annuity computed on the basis of—

(1) recognized mortality tables, and

(2)(A) the investment experience of a segregated asset account, or

(B) the company-wide investment experience of the company.

Paragraph (2)(B) shall not apply to any company which issues contracts which are not variable contracts.

(h) Treatment of certain nondiversified contracts

(1) In general

For purposes of subchapter L, section 72 (relating to annuities), and section 7702(a) (relating to definition of life insurance contract), a variable contract (other than a pension plan contract) which is otherwise described in this section and which is based on a segregated asset account shall not be treated as an annuity, endowment, or life insurance contract for any period (and any subsequent period) for which the investments made by such account are not, in accordance with regulations prescribed by the Secretary, adequately diversified. For purposes of this paragraph and paragraph (2), beneficial interests in a regulated investment company or in a trust shall not be treated as 1 investment if all of the beneficial interests in such company or trust are held by 1 or more segregated asset accounts of 1 or more insurance companies.

(2) Safe harbor for diversification

A segregated asset account shall be treated as meeting the requirements of paragraph (1) for any quarter of a taxable year if as of the close of such quarter—

(A) it meets the requirements of section 851(b)(4), and

(B) no more than 55 percent of the value of the total assets of the account are assets described in section 851(b)(4)(A)(i).

(3) Special rule for variable life insurance contracts investing in United States obligations

In the case of a segregated asset account with respect to variable life insurance contracts, paragraph (1) shall not apply in the case of securities issued by the United States Treasury which are owned by a regulated investment company or by a trust all the beneficial interests in which are held by 1 or more segregated asset accounts of the company issuing the contract.

(4) Independent investment advisors permitted

Nothing in this subsection shall be construed as prohibiting the use of independent investment advisors.

(Added Pub. L. 98–369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 750.)

PRIOR PROVISIONS

A prior section 817, added Pub. L. 86–69, § 2(a), June 25, 1959, 73 Stat. 132, and amended Pub. L. 94–455, title XIV, § 1402(b)(1)(M), (2), title XIX, §§ 1901(a)(100), 1951(b)(11)(A), Oct. 4, 1976, 90 Stat. 1732, 1781, 1839, related to rules regarding certain gains and losses, prior to the general revision of this part by Pub. L. 98–369, § 211(a).

Another prior section 817, act Aug. 16, 1954, ch. 736, § 817, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, related to denial of double deductions, prior to the general revision of this part by Pub. L. 86–69, § 2(a).

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7702 of this title.

§ 818. Other definitions and special rules

(a) Pension plan contracts

For purposes of this part, the term "pension plan contract" means any contract—

(1) entered into with trusts which (as of the time the contracts were entered into) were deemed to be trusts described in section 401(a) and exempt from tax under section 501(a) (or trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws);

(2) entered into under plans which (as of the time the contracts were entered into) were deemed to be plans described in section 403(a), or plans meeting the requirements of paragraphs (3), (4), (5), and (6) of section 165(a) of the Internal Revenue Code of 1939;

(3) provided for employees of the life insurance company under a plan which, for the taxable year, meets the requirements of paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (19), (20), and (22) of section 401(a);

(4) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) (or was an organization

exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws), or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing;

(5) entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b); or

(6) purchased by—

(A) a governmental plan (within the meaning of section 414(d)), or

(B) the Government of the United States, the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, for use in satisfying an obligation of such government, political subdivision, or agency or instrumentality to provide a benefit under a plan described in subparagraph (A).

(b) Treatment of capital gains and losses, etc.

In the case of a life insurance company—

(1) in applying section 1231(a), the term "property used in the trade or business" shall be treated as including only—

(A) property used in carrying on an insurance business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 6 months, and real property used in carrying on an insurance business, held for more than 6 months, which is not described in section 1231(b)(1)(A), (B), or (C), and

(B) property described in section 1231(b)(2), and

(2) in applying section 1221(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

(c) Gain on property held on December 31, 1958 and certain substituted property acquired after 1958

(1) Property held on December 31, 1958

In the case of property held by the taxpayer on December 31, 1958, if—

(A) the fair market value of such property on such date exceeds the adjusted basis for determining gain as of such date, and

(B) the taxpayer has been a life insurance company at all times on and after December 31, 1958,

the gain on the sale or other disposition of such property shall be treated as an amount (not less than zero) equal to the amount by which the gain (determined without regard to this subsection) exceeds the difference between the fair market value on December 31, 1958, and the adjusted basis for determining gain as of such date.

(2) Certain property acquired after December 31, 1958

In the case of property acquired after December 31, 1958, and having a substituted basis (within the meaning of section 1016(b))—

(A) for purposes of paragraph (1), such property shall be deemed held continuously by the taxpayer since the beginning of the holding period thereof, determined with reference to section 1223,

(B) the fair market value and adjusted basis referred to in paragraph (1) shall be that of that property for which the holding period taken into account includes December 31, 1958,

(C) paragraph (1) shall apply only if the property or properties the holding periods of which are taken into account were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account,

(D) the difference between the fair market value and adjusted basis referred to in paragraph (1) shall be reduced (to not less than zero) by the excess of (i) the gain that would have been recognized but for this subsection on all prior sales or dispositions after December 31, 1958, of properties referred to in subparagraph (C), over (ii) the gain which was recognized on such sales or other dispositions, and

(E) the basis of such property shall be determined as if the gain which would have been recognized but for this subsection were recognized gain.

(3) Property defined

For purposes of paragraphs (1) and (2), the term "property" does not include insurance and annuity contracts and property described in paragraph (1) of section 1221.

(d) Insurance or annuity contract includes contracts supplementary thereto

For purposes of this part, the term "insurance or annuity contract" includes any contract supplementary thereto.

(e) Special rule for consolidated returns

If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.

(f) Allocation of certain items for purposes of foreign tax credit, etc.

(1) In general

Under regulations, in applying sections 861, 862, and 863 to a life insurance company, the deduction for policyholder dividends (determined under section 808(c)), reserve adjustments under subsections (a) and (b) of section 807, and death benefits and other amounts described in section 805(a)([illegible]) shall be treated as items which cannot definitely be allocated to an item or class of gross income.

(2) Election of alternative allocation

(A) In general

On or before September 15, 1985, any life insurance company may elect to treat items described in paragraph (1) as properly apportioned or allocated among items of gross income to the extent (and in the manner) prescribed in regulations.

(B) Election irrevocable

Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(Added and amended Pub. L. 98-369, div. A, title II, § 211(a), title X, § 1001(b)(10), July 18, 1984, 98 Stat. 752, 1011.)

REFERENCES IN TEXT

Section 165 of the Internal Revenue Code of 1939, referred to in subsecs. (a)(1) and (2), was classified to section 165 of former Title 26, Internal Revenue Code. Section 101 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4) was classified to section 101 of former Title 26, Internal Revenue Code. Sections 101 and 165 were repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1954 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1954 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1954 Code, which is then applicable.

PRIOR PROVISIONS

A prior section 818, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 133, and amended Pub. L. 88-272, title II, § 228(b)(1), Feb. 26, 1964, 78 Stat. 98; Pub. L. 91-688, § 1(a), Jan. 12, 1971, 84 Stat. 2072; Pub. L. 94-455, title XIX, §§ 1901(a)(101), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834; Pub. L. 97-248, title II, §§ 258(a), 260(a), 262, 267(a), Sept. 3, 1982, 96 Stat. 538-540, 550, related to accounting provisions generally, prior to the general revision of this part by Pub. L. 98-369, § 211(a).

Another prior section 818, act Aug. 16, 1954, ch. 736, § 818, as added Mar. 13, 1956, ch. 83, § 2, 70 Stat. 46, related to certain new insurance companies, prior to the general revision of this part by Pub. L. 86-69, § 2(a).

A prior section 819, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 136, and amended Pub. L. 89-809, title I, § 104(i)(3), Nov. 13, 1966, 80 Stat. 1561; Pub. L. 94-455, title XIX, §§ 1901(a)(102), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834, related to foreign life insurance companies, prior to the general revision of this part by Pub. L. 98-369, § 211(a). See section 813 of this title.

A prior section 819A, added Pub. L. 94-455, title X, § 1043(a), Oct. 4, 1976, 90 Stat. 1639, related to contiguous country branches of domestic life insurance companies prior to the general revision of this part by Pub. L. 98-369, § 211(a). See section 814 of this title.

A prior section 820, added Pub. L. 86-69, § 2(a), June 25, 1959, 73 Stat. 137, and amended Pub. L. 94-455, title XIX, §§ 1901(a)(103), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1834, which related to optional treatment of policies reinsured under modified coinsurance contracts, was repealed by Pub. L. 97-248, title II, § 255(a), (c), Sept. 3, 1982, 96 Stat. 533, 534, applicable to taxable years beginning after Dec. 31, 1981, with exception.

AMENDMENTS

1984—Subsec. (b)(1)(A). Pub. L. 98-369, § 1001(b)(10), substituted "6 months" for "1 year".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1001(b)(10) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 401 of this title.

PART II—MUTUAL INSURANCE COMPANIES (OTHER THAN LIFE AND CERTAIN MARINE INSURANCE COMPANIES AND OTHER THAN FIRE OR FLOOD INSURANCE COMPANIES WHICH OPERATE ON BASIS OF PERPETUAL POLICIES OR PREMIUM DEPOSITS)

§ 821. Tax on mutual insurance companies to which part II applies

CROSS REFERENCES

Burial or funeral benefit insurance company as taxable under this section or section 831, see section 816 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 816, 822, 823, 824, 825, 826, 831, 841, 891, 1201, 1504, 1563 of this title.

PART III—OTHER INSURANCE COMPANIES

§ 831. Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies

CROSS REFERENCES

Burial or funeral benefit insurance company as taxable under this section or section 821, see section 816 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 816, 821, 823, 832, 841, 891, 1201 of this title.

§ 832. Insurance company taxable income

[*See main edition for text of* (a)]

(b) Definitions

In the case of an insurance company subject to the tax imposed by section 831—

[*See main edition for text of* (1) *to* (3)]

(4) Premiums earned

The term "premiums earned on insurance contracts during the taxable year" means an amount computed as follows:

[*See main edition for text of* (A) *and* (B)]

For purposes of this subsection, unearned premiums shall include life insurance reserves, as defined in section 816(b) but determined as provided in section 807, pertaining to the life, burial, or funeral insurance, or annuity business of an insurance company subject to the tax imposed by section 831 and not qualifying as a life insurance company under section 801. For purposes of this subsection, unearned premiums of mutual fire or flood insurance companies described in section 831(a)(3)(B) means (with respect to the policies described in section 831(a)(3)(B)) the amount of unabsorbed premium deposits which the company would be obligated to return to its policyholders at the close of the taxable year if all of its policies were terminated at such time; and the determination of such amount shall be based on the schedule of unabsorbed premium deposit returns for each such company then in effect. Premiums paid by the subscriber of a mutual flood insurance company referred to in paragraph (3) of section 831(a) shall be treated, for purposes of computing the taxable income of such subscriber, in the same manner as premiums paid by a policyholder to a mutual fire insurance company referred to in such paragraph (3).

[*See main edition for text of* (*5*) *and* (*6*); (*c*) *to* (*e*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title II, § 211(b)(9), 98 Stat. 755.)

AMENDMENTS

1984—Subsec. (b)(4). Pub. L. 98-369 in provisions following subpar. (B) substituted "section 816(b) but determined as provided in section 807" and "section 816" for "section 801(b)" and "section 801", respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

PART IV—PROVISIONS OF GENERAL APPLICATION

Sec.
845. Certain reinsurance agreements.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title II, § 212(b), July 18, 1984, 98 Stat. 758, added item 845.

§ 841. Credit for foreign taxes

The taxes imposed by foreign countries or possessions of the United States shall be allowed as a credit against the tax of a domestic insurance company subject to the tax imposed by section 801, 821, or 831, to the extent provided in the case of a domestic corporation in section 901 (relating to foreign tax credit). For purposes of the preceding sentence (and for purposes of applying section 906 with respect to a foreign corporation subject to tax under this subchapter), the term "taxable income" as used in section 904 means—

(1) in the case of the tax imposed by section 801, the life insurance company taxable income (as defined in section 801(b)),

[*See main edition for text of* (*2*) *and* (*3*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title II, § 211(b)(10), 98 Stat. 755.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "section 801" for "section 802", wherever appearing, and "section 801(b)" for "section 802(b)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

§ 842. Foreign corporations carrying on insurance business

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 813, 821, 831, 884, 1442 of this title.

§ 844. Special loss carryover rules

(a) General rule

If an insurance company—

[*See main edition for text of* (*1*) *and* (*2*)]

then any operations loss carryover under section 810 (or the corresponding provisions of prior law),,[1] unused loss carryover under section 825, or net operating loss carryover under section 172, as the case may be, arising in such prior taxable year shall be included in its operations loss deduction under section 810(a), unused loss deduction under section 825(a), or net operating loss deduction under section 832(c)(10), as the case may be.

(b) Limitation

The amount included under section 810(a), 825(a), or 832(c)(10), as the case may be, by reason of the application of subsection (a) shall not exceed the amount that would have constituted the loss carryover under such section if for all relevant taxable years such company had been subject to the tax imposed by the part referred to in subsection (a)(1) rather than the part referred to in subsection (a)(2). For purposes of applying the preceding sentence—

[*See main edition for text of* (*1*)]

(2) section 810(b)(1)(C) (relating to additional years to which losses may be carried by new life insurance companies) shall not apply.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-369, div. A, title II, § 211(b)(11), July 18, 1984, 98 Stat. 755.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 211(b)(11)(A), substituted "section 810 (or the corresponding provisions of prior law)," for "section 812" and "section 810(a)" for "section 812(a)" in provisions following par. (2).

Subsec. (b). Pub. L. 98-369, § 211(b)(11)(B), substituted "section 810(a)" for "section 812(a)" in introductory provisions, and "section 810(b)(1)(C)" for "section 812(b)(1)(C)" in par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 805, 823, 825 of this title.

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[1] So in original.

§ 845. Certain reinsurance agreements

(a) Allocation in case of reinsurance agreement involving tax avoidance or evasion

In the case of 2 or more related persons (within the meaning of section 482) who are parties to a reinsurance agreement (or where one of the parties to a reinsurance agreement is, with respect to any contract covered by the agreement, in effect an agent of another party to such agreement or a conduit between related persons), the Secretary may—

(1) allocate between or among such persons income (whether investment income, premium, or otherwise), deductions, assets, reserves, credits, and other items related to such agreement,

(2) recharacterize any such items, or

(3) make any other adjustment,

if he determines that such allocation, recharacterization, or adjustment is necessary to reflect the proper source and character of the taxable income (or any item described in paragraph (1) relating to such taxable income) of each such person.

(b) Reinsurance contract having significant tax avoidance effect

If the Secretary determines that any reinsurance contract has a significant tax avoidance effect on any party to such contract, the Secretary may make proper adjustments with respect to such party to eliminate such tax avoidance effect (including treating such contract with respect to such party as terminated on December 31 of each year and reinstated on January 1 of the next year).

(Added Pub. L. 98-369, div. A, title II, § 212(a), July 18, 1984, 98 Stat. 757.)

EFFECTIVE DATE

Section 217(d) of title II of div. A of Pub. L. 98-369 provided that:

"(1) Subsection (a) of section 845 of the Internal Revenue Code of 1954 (as added by this title) shall apply with respect to any risk reinsured on or after September 27, 1983.

"(2) Subsection (b) of section 845 of such Code (as so added) shall apply with respect to risks reinsured after December 31, 1984."

Subchapter M—Regulated Investment Companies and Real Estate Investment Trusts

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 11, 46, 52, 269B, 1504 of this title.

PART I—REGULATED INVESTMENT COMPANIES

§ 851. Definition of regulated investment company

(a) General rule

For purposes of this subtitle, the term "regulated investment company" means any domestic corporation—

[*See main edition for text of (1) and (2); (b) to (f)*]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1071(a)(1), 98 Stat. 1049.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 struck out "(other than a personal holding company as defined in section 542)" after "any domestic corporation" in introductory provisions.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1982, with certain exceptions, see section 1071(a)(5) of Pub. L. 98-369, set out as a note under section 852 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 50B, 403, 817, 852, 853, 992, 1092, 1212, 1247 of this title.

§ 852. Taxation of regulated investment companies and their shareholders

(a) Requirements applicable to regulated investment companies

The provisions of this part (other than subsection (c) of this section) shall not be applicable to a regulated investment company for a taxable year unless—

(1) the deduction for dividends paid during the taxable year (as defined in section 561, but without regard to capital gain dividends) equals or exceeds the sum of—

(A) 90 percent of its investment company taxable income for the taxable year determined without regard to subsection (b)(2)(D); and

(B) 90 percent of the excess of (i) its interest income excludable from gross income under section 103(a) over (ii) its deductions disallowed under sections 265, 171(a)(2),

(2) the investment company complies for such year with regulations prescribed by the Secretary for the purpose of ascertaining the actual ownership of its outstanding stock, and

(3) either—

(A) the provisions of this part applied to the investment company for all taxable years ending on or after November 8, 1983, or

(B) as of the close of the taxable year, the investment company has no earnings and profits accumulated in any taxable year to which the provisions of this part (or the corresponding provisions of prior law) did not apply to it.

(b) Method of taxation of companies and shareholders

(1) Imposition of tax on regulated investment companies

There is hereby imposed for each taxable year upon the investment company taxable income of every regulated investment company a tax computed as provided in section 11, as though the investment company taxable income were the taxable income referred to in section 11. In the case of a regulated investment company which is a personal holding company (as defined in section 542), that tax shall be computed at the highest rate of tax specified in section 11(b).

(2) Investment company taxable income

The investment company taxable income shall be the taxable income of the regulated investment company adjusted as follows:

[See main edition for text of (A) to (E)]

(F) The taxable income shall be computed without regard to section 454(b) (relating to short-term obligations issued on a discount basis) if the company so elects in a manner prescribed by the Secretary.

(3) Capital gains

[See main edition for text of (A)]

(B) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders as a gain from the sale or exchange of a capital asset held for more than 6 months.

[See main edition for text of (C) and (D)]

(4) Loss on sale or exchange of stock held less than 31 days

(A) Loss attributable to capital gain dividend

If—

(i) subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share is to be treated as long-term capital gain, and

(ii) such share is held by the taxpayer for 6 months or less,

then any loss (to the extent not disallowed under subparagraph (B)) on the sale or exchange of such share shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

[See main edition for text of (B)]

(C) Determination of holding periods

For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer held any share of stock; except that for the number of days specified in subparagraph (B) of section 246(c)(3) there shall be substituted—

(i) "6 months" for purposes of subparagraph (A), and

(ii) "30 days" for purposes of subparagraph (B).

(D) Losses incurred under a periodic liquidation plan

To the extent provided in regulations, subparagraph (A) shall not apply to losses incurred on the sale or exchange of shares of stock in a regulated investment company pursuant to a plan which provides for the periodic liquidation of such shares.

[See main edition for text of (5); (c) and (d)]

(e) Procedures similar to deficiency dividend procedures made applicable

(1) In general

If—

(A) there is a determination that the provisions of this part do not apply to an investment company for any taxable year (hereinafter in this subsection referred to as the "non-RIC year"), and

(B) such investment company meets the distribution requirements of paragraph (2) with respect to the non-RIC year,

for purposes of applying subsection (a)(3) to subsequent taxable years, the provisions of this part shall be treated as applying to such investment company for the non-RIC year.

(2) Distribution requirements

(A) In general

The distribution requirements of this paragraph are met with respect to any non-RIC year if, within the 90-day period beginning on the date of the determination (or within such longer period as the Secretary may permit), the investment company makes 1 or more qualified designated distributions and the amount of such distributions is not less than the excess of—

(i) the portion of the accumulated earnings and profits of the investment company (as of the date of the determination) which are attributable to the non-RIC year, over

(ii) any interest payable under paragraph (3).

(B) Qualified designated distribution

For purposes of this paragraph, the term "qualified designated distribution" means any distribution made by the investment company if—

(i) section 301 applies to such distribution, and

(ii) such distribution is designated (at such time and in such manner as the Secretary shall by regulations prescribe) as being taken into account under this paragraph with respect to the non-RIC year.

(C) Effect on dividends paid deduction

Any qualified designated distribution shall not be included in the amount of dividends paid for purposes of computing the dividends paid deduction for any taxable year.

(3) Interest charge

(A) In general

If paragraph (1) applies to any non-RIC year of an investment company, such investment company shall pay interest at the annual rate established under section 6621—

(i) on an amount equal to 50 percent of the amount referred to in paragraph (2)(A)(i),

(ii) for the period—

(I) which begins on the last day prescribed for payment of the tax imposed for the non-RIC year (determined without regard to extensions), and

(II) which ends on the date the determination is made.

(B) Coordination with subtitle F

Any interest payable under subparagraph (A) may be assessed and collected at any time during the period during which any tax imposed for the taxable year in which the determination is made may be assessed and collected.

(4) **Provision not to apply in the case of fraud**

The provisions of this subsection shall not apply if the determination contains a finding that the failure to meet any requirement of this part was due to fraud with intent to evade tax.

(5) **Determination**

For purposes of this subsection, the term "determination" has the meaning given to such term by section 860(e). Such term also includes a determination by the investment company filed with the Secretary that the provisions of this part do not apply to the investment company for a taxable year.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 55(a), title X, §§ 1001(b)(11), 1071(a)(2)-(4), (b)(1), 98 Stat. 571, 1011, 1049, 1050, 1052.)

Amendments

1984—Subsec. (a)(3). Pub. L. 98-369, § 1071(a)(3), added par. (3).

Subsec. (b)(1). Pub. L. 98-369, § 1071(a)(2), added provision that in the case of a regulated investment company which is a personal holding company (as defined in section 542), that tax shall be computed at the highest rate of tax specified in section 11.

Subsec. (b)(2)(F). Pub. L. 98-369, § 1071(b)(1), added subpar. (F).

Subsec. (b)(3)(B). Pub. L. 98-369, § 1001(b)(11), substituted "6 months" for "1 year".

Subsec. (b)(4)(A)(i). Pub. L. 98-369, § 55(a)(1), substituted "subparagraph (B) or (D) of paragraph (3) provides that any amount with respect to any share is to be treated as long-term capital gain" for "under subparagraph (B) or (D) of paragraph (3) a shareholder of a regulated investment company is required, with respect to any share, to treat any amount as a long-term capital gain".

Subsec. (b)(4)(A)(ii). Pub. L. 98-369, § 55(a)(1), substituted "6 months or less" for "less than 31 days".

Subsec. (b)(4)(C). Pub. L. 98-369, § 55(a)(2), substituted "the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer held any share of stock;" for "the rules of section 246(c)(3) shall apply in determining whethr any share of stock has been held for less than 31 days;" and substituted provisions dealing with the applicable number of days for former provisions which set forth different applicable days.

Subsec. (b)(4)(D). Pub. L. 98-369, § 55(a)(3), added subpar. (D).

Subsec. (e). Pub. L. 98-369, § 1071(a)(4), added subsec. (e).

Effective Date of 1984 Amendment

Section 55(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 852 and 857 of this title] shall apply to losses incurred with respect to shares of stock and beneficial interests with respect to which the taxpayer's holding period begins after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 1001(b)(11) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

Section 1071(a)(5) of Pub. L. 98-369 provided that:

"(A) In general.—Except as otherwise provided in this paragraph, the amendments made by this subsection [amending sections 851 and 852 of this title] shall apply to taxable years beginning after December 31, 1982.

"(B) Investment companies which were regulated investment companies for years ending before November 8, 1983.—In the case of any investment company to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1954 applied for any taxable year ending before November 8, 1983, for purposes of section 852(a)(3)(B) of the Internal Revenue Code of 1954 (as amended by this subsection), no earnings and profits accumulated in any taxable year ending before January 1, 1984, shall be taken into account.

"(C) Investment companies beginning business in 1983.—In the case of an investment company which began business in 1983 (and was not a successor corporation), earnings and profits accumulated during its first taxable year shall not be taken into account for purposes of section 852(a)(3)(B) of such Code (as so amended).

"(D) Investment companies registering before November 8, 1983.—In the case of any investment company—

"(i) which, during the period after December 31, 1981, and before November 8, 1983—

"(I) was engaged in the active conduct of a trade or business,

"(II) sold substantially all of its operating assets, and

"(III) registered under the Investment Company Act of 1940 [15 U.S.C. § 80a-1 et seq.] as either a management company or a unit investment trust, and

"(ii) to which the provisions of part I of subchapter M of chapter 1 of the Internal Revenue Code of 1954 applied for its first taxable year beginning after November 8, 1983,

for purposes of section 852(a)(3)(A) of such Code (as amended by paragraph (3)), the provisions of part I of subchapter M of chapter 1 of such Code shall be treated as applying to such investment company for its first taxable year ending after November 8, 1983. For purposes of the preceding sentence, all members of an affiliated group (as defined in section 1504(a) of such Code) filing a consolidated return shall be treated as 1 taxpayer."

Section 1071(b)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [enacting subsec. (b)(2)(F) of this section] shall apply to taxable years beginning after December 31, 1978."

§ 854. Limitations applicable to dividends received from regulated investment company

[See main edition for text of (a)]

(b) Other dividends

(1) Amount treated as dividend

(A) Deduction under section 243

In any case in which—

(i) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies), and

(ii) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend,

then, in computing any deduction under section 243, there shall be taken into account only that portion of such dividend designated under this subparagraph by the regulated investment company.

(B) Exclusion under section 116

If the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the exclusion under section 116, rules similar to the rules of subparagraph (A) shall apply.

(C) Limitation

The aggregate amount which may be designated as dividends under subparagraph (A) or (B) shall not exceed the aggregate dividends received by the company for the taxable year.

[See main edition for text of (2)]

(3) Definitions

For purposes of this subsection—

(A) In the case of 1 or more sales or other dispositions of stock and securities, the term "gross income" includes only the excess of—

(i) the net short-term capital gain from such sales or dispositions, over

(ii) the net long-term capital loss from such sales or dispositions.

[See main edition for text of (B)]

(4) Special rule for computing deduction under section 243

For purposes of subparagraph (A) of paragraph (1), an amount shall be treated as a dividend for the purpose of paragraph (1) only if a deduction would have been allowable under section 243 to the regulated investment company determined—

(A) as if section 243 applied to dividends received by a regulated investment company,

(B) after the application of section 246 (but without regard to subsection (b) thereof), and

(C) after the application of section 246A.

(As amended Aug. 13, 1981, Pub. L. 97-34, title III, § 302(c)(4), (d)(1), 95 Stat. 272, 274; July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 16(a), 52(a)-(c), 98 Stat. 505, 564, 565.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 16(a), repealed amendments made by Pub. L. 97-34, § 302(c). See 1981 Amendment note below.

Subsec. (b)(1). Pub. L. 98-369, § 52(a), increased the required amount of dividends by substituting provisions directing that in any case in which (i) a dividend is received from a regulated investment company (other than a dividend to which subsection (a) applies), and (ii) such investment company meets the requirements of section 852(a) for the taxable year during which it paid such dividend, then, in computing any deduction under section 243, there shall be taken into account only that portion of such dividend thus designated by the regulated investment company, that if the aggregate dividends received by a regulated investment company during any taxable year are less than 95 percent of its gross income, then, in computing the exclusion under section 116, similar rules applied, and that the aggregate amount which may be designated thus dividends shall not exceed the aggregate dividends received by the company for the taxable year for provisions which had directed that in the case of a dividend received from a regulated investment company (other than a dividend to which subsection (a) applied) (A) if such investment company met the requirements of section 852(a) for the taxable year during which it paid such dividend; and (B) the aggregate dividends received by such company during such taxable year were less than 75 percent of its gross income, then, in computing the exclusion under section 116 and the deduction under section 243, there was taken into account only that portion of the dividend which bore the same ratio to the amount of such dividend as the aggregate dividends received by such company during such taxable year to its gross income for such taxable year.

Subsec. (b)(3)(A). Pub. L. 98-369, § 52(c), substituted provisions directing that in the case of 1 or more sales or other dispositions of stock and securities, the term "gross income" include only the excess of (i) the net short-term capital gain from such sales or dispositions, over (ii) the net long-term capital loss from such sales or dispositions for provisions which had directed that the term "gross income" not include gain from the sale or other disposition of stock or securities.

Subsec. (b)(4). Pub. L. 98-369, § 52(b), added par. (4).

1981—Subsec. (b). Pub. L. 97-34, § 302(c)(4), (d)(1), provided for general amendment of subsec. (b) so as to include provisions relating to taxable interest described in section 128 of this title, applicable to taxable years beginning after Dec. 31, 1984. Section 16(a) of Pub. L. 98-369, repealed section 302(c) of Pub. L. 97-34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98-369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98-369, set out as a note under section 48 of this title.

Section 52(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (b) of this section] shall apply to taxable years of regulated investment companies beginning after the date of the enactment of this Act [July 18, 1984]."

PART II—REAL ESTATE INVESTMENT TRUSTS

§ 856. Definition of real estate investment trust

[See main edition for text of (a) and (b)]

(c) Limitations

A corporation, trust, or association shall not be considered a real estate investment trust for any taxable year unless—

[See main edition for text of (1) to (3)]

(4) less than 30 percent of its gross income is derived from the sale or other disposition of—

(A) stock or securities held for less than 6 months;

[See main edition for text of (B) and (C), (5) to (7); (d) to (g)]

(As amended Pub. L. 98-369, div. A, title X, § 1001(b)(12), July 18, 1984, 98 Stat. 1011.)

AMENDMENTS

1984—Subsec. (c)(4)(A). Pub. L. 98-369 substituted "6 months" for "1 year".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988.

see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 108, 291, 318, 857, 1212, 6049 of this title.

§ 857. Taxation of real estate investment trusts and their beneficiaries

[See main edition for text of (a)]

(b) Method of taxation of real estate investment trusts and holders of shares or certificates of beneficial interest

[See main edition for text of (1) and (2)]

(3) Capital gains

[See main edition for text of (A)]

(B) Treatment of capital gain dividends by shareholders

A capital gain dividend shall be treated by the shareholders or holders of beneficial interests as a gain from the sale or exchange of a capital asset held for more than 6 months.

[See main edition for text of (C), (4) to (6)]

(7) Loss on sale or exchange of stock held 6 months or less

(A) In general

If—

(i) subparagraph (B) of paragraph (3) provides that any amount with respect to any share or beneficial interest is to be treated as a long-term capital gain, and

(ii) the taxpayer has held such share or interest for 6 months or less,

then any loss on the sale or exchange of such share or interest shall, to the extent of the amount described in clause (i), be treated as a long-term capital loss.

(B) Determination of holding period

For purposes of this paragraph, the rules of paragraphs (3) and (4) of section 246(c) shall apply in determining the period for which the taxpayer has held any share of stock or beneficial interest; except that "6 months" shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

(C) Exception for losses incurred under periodic liquidation plans

To the extent provided in regulations, subparagraph (A) shall not apply to any loss incurred on the sale or exchange of shares of stock of, or beneficial interest in, a real estate investment trust pursuant to a plan which provides for the periodic liquidation of such shares or interests.

[See main edition for text of (c) to (e)]

(As amended Pub. L. 97-34, title III, § 302(c)(5), (d)(1), Aug. 13, 1981, 95 Stat. 273, 274; Pub. L. 98-369, div. A, title I, §§ 16(a), 55(b), title X, § 1001(b)(13), July 18, 1984, 98 Stat. 505, 572, 1011.)

AMENDMENTS

1984—Subsec. (b)(3)(B). Pub. L. 98-369, § 1001(b)(13), substituted "6 months" for "1 year".

Subsec. (b)(7). Pub. L. 98-369, § 55(b), substituted provisions relating to loss on sale or exchange of stock held 6 months or less for provisions which related to loss on sale or exchange of stock held 31 days or less. Pub. L. 98-369, § 1001(b)(13), substituted "6 months" for "1 year".

Subsec. (c). Pub. L. 98-369, § 16(a), repealed amendments made by Pub. L. 97-34, § 302(c). See 1981 Amendment note below.

1981—Subsec. (c). Pub. L. 97-34, § 302(c)(5), (d)(1), provided for general amendment of subsec. (c) so as to include provisions relating to treatment for section 128 of this title, adjustments to gross income and aggregate interest received, and notice to shareholders, applicable to taxable years beginning after Dec. 31, 1984. Section 16(a) of Pub. L. 98-369, repealed section 302(c) of Pub. L. 97-34, and provided that this title shall be applied and administered as if section 302(c), and the amendments made by section 302(c), had not been enacted.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 16(a) of Pub. L. 98-369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98-369, set out as a note under section 48 of this title.

Amendment by section 55(b) of Pub. L. 98-369 applicable to losses incurred with respect to shares of stock and beneficial interest with respect to which the taxpayer's holding period begins after July 18, 1984, see section 55(c) of Pub. L. 98-369, set out as a note under section 852 of this title.

Amendment by section 1001(b)(13) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

Subchapter N—Tax Based on Income From Sources Within or Without the United States

PART I—DETERMINATION OF SOURCES OF INCOME

§ 861. Income from sources within the United States

(a) Gross income from sources within United States

The following items of gross income shall be treated as income from sources within the United States:

[See main edition for text of (1) to (7)]

(8) Social security benefits

Any social security benefit (as defined in section 86(d)).

[See main edition for text of (b) to (f)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 121(d), 97 Stat. 83.)

AMENDMENTS

1983—Subsec. (a)(8). Pub. L. 98-21 added par. (8).

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as an Effective Date note under section 86 of this title.

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

Pub. L. 98-369, div. A, title I, § 126, July 18, 1984, 98 Stat. 648, provided that:

"(a) IN GENERAL.—For purposes of section 861(b), section 862(b), and section 863(b) of the Internal Revenue Code of 1954, all amounts allowable as a deduction for qualified research and experimental expenditures shall be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States.

"(b) QUALIFIED RESEARCH AND EXPERIMENTAL EXPENDITURES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified research and experimental expenditures' means amounts—

"(A) which are research and experimental expenditures within the meaning of section 174 of such Code, and

"(B) which are attributable to activities conducted in the United States.

"(2) TREATMENT OF DEPRECIATION, ETC.—Rules similar to the rules of subsection (c) of section 174 of such Code shall apply.

"(c) EFFECTIVE DATES.—

"(1) IN GENERAL.—This section shall apply to taxable years beginning after August 13, 1983, and on or before August 1, 1985.

"(2) SPECIAL RULE.—If the taxpayer's 3rd taxable year beginning after August 13, 1981, is not described in paragraph (1), this section shall apply also to such 3rd taxable year."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 79, 105, 410, 505, 638, 818, 862 to 864, 907, 2104, 2105, 4948 of this title.

§ 862. Income from sources without the United States

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1985, see section 126 of Pub. L. 98-369, set out as a note under section 861 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 638, 818, 861, 863, 864 of this title.

§ 863. Items not specified in section 861 or 862

[See main edition for text of (a) and (b)]

(c) Source rule for certain transportation income

(1) Transportation beginning and ending in the United States

All transportation income attributable to transportation which begins and ends in the United States shall be treated as derived from sources within the United States.

(2) Transportation between United States and any possession

(A) In general

50 percent of all transportation income attributable to transportation which—

(i) begins in the United States and ends in a possession of the United States, or

(ii) begins in a possession of the United States and ends in the United States,

shall be treated as derived from sources within the United States.

(B) Special rule for certain lessors of aircraft

If—

(i) the taxpayer owns an aircraft which is section 38 property and leases such aircraft to a United States person (other than a member of the same controlled group of corporations (as defined in section 1563) as the taxpayer), and

(ii) such United States person is a regularly scheduled air carrier,

subparagraph (A) shall be applied by substituting "100 percent" for "50 percent".

(3) Transportation income

For purposes of this subsection, the term "transportation income" means any income derived from, or in connection with—

(A) the use (or hiring or leasing for use) of a vessel or aircraft, or

(B) the performance of services directly related to the use of a vessel or aircraft.

For purposes of the preceding sentence, the term "vessel or aircraft" includes any container used in connection with a vessel or aircraft.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 124(a), 98 Stat. 646.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 124(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (c) of this section] shall apply with respect to transportation beginning after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

ALLOCATION UNDER SECTION 861 OF RESEARCH AND EXPERIMENTAL EXPENDITURES

For purposes of subsec. (b) of this section, all amounts allowable as a deduction for qualified research and experimental expenditures are to be allocated to income from sources within the United States and deducted from such income in determining the amount of taxable income from sources within the United States for taxable years beginning after Aug. 13, 1983, and on or before Aug. 1, 1985, see section 126 of Pub. L. 98-369, set out as a note under section 861 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 818 of this title.

§ 864. Definitions

[See main edition for text of (a) and (b)]

(c) Effectively connected income, etc.

[See main edition for text of (1)]

(2) Periodical, etc., income from sources within United States—factors

In determining whether income from sources within the United States of the types described in section 871(a)(1), section 871(h)[1] section 881(a), or section 881(c), or whether gain or loss from sources within the United States from the sale or exchange of capital assets, is effectively connected with the conduct of a trade or business within the United States, the factors taken into account shall include whether—

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[1] So in original. Probably should be followed by a comma.

[See main edition for text of (A) and (B)]

In determining whether an asset is used in or held for use in the conduct of such trade or business or whether the activities of such trade or business were a material factor in realizing an item of income, gain, or loss, due regard shall be given to whether or not such asset or such income, gain, or loss was accounted for through such trade or business. In applying this paragraph and paragraph (4), interest referred to in section 861(a)(1)(A) shall be considered income from sources within the United States.

[See main edition for text of (3) to (5)]

(d) Treatment of related person factoring income

(1) In general

For purposes of the provisions set forth in paragraph (2), if any person acquires (directly or indirectly) a trade or service receivable from a related person, any income of such person from the trade or service receivable so acquired shall be treated as if it were interest on a loan to the obligor under the receivable.

(2) Provisions to which paragraph (1) applies

The provisions set forth in this paragraph are as follows:

(A) Part III of subchapter G of this chapter (relating to foreign personal holding companies).

(B) Section 904 (relating to limitation on foreign tax credit).

(C) Subpart F of part III of this subchapter (relating to controlled foreign corporations).

(3) Trade or service receivable

For purposes of this subsection, the term "trade or service receivable" means any account receivable or evidence of indebtedness arising out of—

(A) the disposition by a related person of property described in section 1221(1), or

(B) the performance of services by a related person.

(4) Related person

For purposes of this subsection, the term "related person" means—

(A) any person who is a related person (within the meaning of section 267(b)), and

(B) any United States shareholder (as defined in section 951(b)) and any person who is a related person (within the meaning of section 267(b)) to such a shareholder.

(5) Certain provisions not to apply

(A) Certain exceptions

The following provisions shall not apply to any amount treated as interest under paragraph (1) or (6):

(i) Subparagraphs (A), (B), (C), and (D) of section 904(d)(2) (relating to interest income to which separate limitation applies).

(ii) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 10 percent).

(iii) Subparagraph (B) of section 954(c)(3) (relating to certain income derived in active conduct of trade or business).

(iv) Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for certain income received from related persons).

(B) Special rules for possessions

(i) Puerto Rico and possessions tax credit

Any amount treated as interest under paragraph (1) shall not be treated as income described in subparagraph (A) or (B) of section 936(a)(1) unless such amount is from sources within a possession of the United States (determined after the application of paragraph (1)).

(ii) Virgin Islands corporations

Subsection (b) of section 934 shall not apply to any amount treated as interest under paragraph (1) unless such amount is from sources within the Virgin Islands (determined after the application of paragraph (1)).

(6) Special rule for certain income from loans of a controlled foreign corporation

Any income of a controlled foreign corporation (within the meaning of section 957(a)) from a loan to a person for the purpose of financing—

(A) the purchase of property described in section 1221(1) of a related person, or

(B) the payment for the performance of services by a related person,

shall be treated as interest described in paragraph (1).

(7) Regulations

The Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of the provisions of this subsection or section 956(b)(3).

(As amended July 18, 1984, Pub. L. 98–369, div. A, title I, §§ 123(a), 127(c), 98 Stat. 644, 651.)

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98–369, § 127(c), substituted "section 871(a)(1), section 871(h) section 881(a), or section 881(c)" for "section 871(a)(1) or section 881(a)".

Subsec. (d). Pub. L. 98–369, § 123(a), added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 123(c) of Pub. L. 98–369 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending sections 864 and 956 of this title] shall apply to accounts receivable and evidences of indebtedness transferred after March 1, 1984, in taxable years ending after such date.

"(2) TRANSITIONAL RULE.—The amendments made by this section shall not apply to accounts receivable and evidences of indebtedness acquired after March 1, 1984, and before March 1, 1994, by a Belgian corporation in existence on March 1, 1984, in any taxable year ending after such date, but only to the extent that the amount includible in gross income by reason of section 956 of the Internal Revenue Code of 1954 with respect to such corporation for all such taxable years is not reduced by reason of this paragraph by more than the lesser of—

"(A) $15,000,000 or

"(B) the amount of the Belgian corporation's adjusted basis on March 1, 1984, in stock of a foreign corporation formed to issue bonds outside the United States to the public."

Amendment by section 127(c) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 871, 881, 884, 954, 956 of this title.

PART II—NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

SUBPART A—NONRESIDENT ALIEN INDIVIDUALS

Sec.	
879.	Tax treatment of certain community income in the case of nonresident alien individuals.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, § 139(b)(2), July 18, 1984, 98 Stat. 677, substituted "nonresident alien individuals" for "a resident or citizen of the United States who is married to a nonresident alien individual" in item 879.

§ 871. Tax on nonresident alien individuals

(a) Income not connected with United States business—30 percent tax

(1) Income other than capital gains

Except as provided in subsection (i), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a nonresident alien individual as—

(A) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(B) gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), and gains on transfers described in section 1235 made on or before October 4, 1966,

(C) in the case of—

(i) a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and

(ii) the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and

[*See main edition for text of* (*D*)]

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

[*See main edition for text of* (*2*)]

(3) Taxation of social security benefits

For purposes of this section and section 1441—

(A) one-half of any social security benefit (as defined in section 86(d)) shall be included in gross income (notwithstanding section 207 of the Social Security Act), and

(B) section 86 shall not apply.

[*See main edition for text of* (*b*) *to* (*f*)]

(g) Special rules for original issue discount

For purposes of this section and section 881—

(1) Original issue discount obligation

(A) In general

Except as provided in subparagraph (B), the term "original issue discount obligation" means any bond or other evidence of indebtedness having original issue discount (within the meaning of section 1273).

(B) Exceptions

The term "original issue discount obligation" shall not include—

(i) Certain short-term obligations

Any obligation payable 183 days or less from the date of original issue (without regard to the period held by the taxpayer).

(ii) Tax-exempt obligations

Any obligation the interest on which is exempt from tax under section 103 or under any other provision of law without regard to the identity of the holder.

(2) Determination of portion of original issue discount accruing during any period

The determination of the amount of the original issue discount which accrues during any period shall be made under the rules of section 1272 (or the corresponding provisions of prior law) without regard to any exception for short-term obligations.

(3) Source of original issue discount

Except to the extent provided in regulations prescribed by the Secretary, the determination of whether any amount described in subsection (a)(1)(C) is from sources within the United States shall be made at the time of the payment (or sale or exchange) as if such payment (or sale or exchange) involved the payment of interest.

(4) Stripped bonds

The provisions of section 1286 (relating to the treatment of stripped bonds and stripped coupons as obligations with original issue discount) shall apply for purposes of this section.

(h) Repeal of tax on interest of nonresident alien individuals received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a nonresident individual from sources within the United States, no tax shall be imposed under paragraph (1)(A) or (1)(C) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term "portfolio interest" means any interest (including original issue discount) which is described in any of the following subparagraphs:

(A) Certain obligations which are not registered

Interest which is paid on any obligation which—

(i) is not in registered form, and

(ii) is described in section 163(f)(2)(B).

(B) Certain registered obligations

Interest which is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which the United States person who would otherwise be required to deduct and withhold tax from such interest under section 1441(a) has received a statement (which meets the requirements of paragraph (4)) that the beneficial owner of the obligation is not a United States person.

(3) Portfolio interest not to include interest received by 10-percent shareholders

For purposes of this subsection—

(A) In general

The term "portfolio interest" shall not include any interest described in subparagraph (A) or (B) of paragraph (2) which is received by a 10-percent shareholder.

(B) 10-Percent shareholder

The term "10-percent shareholder" means—

(i) in the case of an obligation issued by a corporation, any person who owns 10 percent or more of the total combined voting power of all classes of stock of such corporation entitled to vote, or

(ii) in the case of an obligation issued by a partnership, any person who owns 10 percent or more of the capital or profits interest in such partnership.

(C) Attribution rules

For purposes of determining ownership of stock under subparagraph (B)(i) the rules of section 318(a) shall apply, except that—

(i) section 318(a)(2)(C) shall be applied without regard to the 50-percent limitation therein, and

(ii) any stock which a person is treated as owning after application of section 318(a)(4) shall not, for purposes of applying paragraphs (2) and (3) of section 318(a), be treated as actually owned by such person.

Under regulations prescribed by the Secretary, rules similar to the rules of the preceding sentence shall be applied in determining the ownership of the capital or profits interest in a partnership for purposes of subparagraph (B)(ii).

(4) Certain statements

A statement with respect to any obligation meets the requirements of this paragraph if such statement is made by—

(A) the beneficial owner of such obligation, or

(B) a securities clearing organization, a bank, or other financial institution that holds customers' securities in the ordinary course of its trade or business.

The preceding sentence shall not apply to any statement with respect to payment of interest on any obligation by any person if, at least one month before such payment, the Secretary has published a determination that any statement from such person (or any class including such person) does not meet the requirements of this paragraph.

(5) Secretary may provide subsection not to apply in cases of inadequate information exchange

(A) In general

If the Secretary determines that the exchange of information between the United States and a foreign country is inadequate to prevent evasion of the United States income tax by United States persons, the Secretary may provide in writing (and publish a statement) that the provisions of this subsection shall not apply to payments of interest to any person within such foreign country (or payments addressed to, or for the account of, persons within such foreign country) during the period—

(i) beginning on the date specified by the Secretary, and

(ii) ending on the date that the Secretary determines that the exchange of information between the United States and the foreign country is adequate to prevent the evasion of United States income tax by United States persons.

(B) Exception for certain obligations

Subparagraph (A) shall not apply to the payment of interest on any obligation which is issued on or before the date of the publication of the Secretary's determination under such subparagraph.

(6) Registered form

For purposes of this subsection, the term "registered form" has the same meaning given such term by section 163(*f*).

(i) Cross references

(1) For tax treatment of certain amounts distributed by the United States to nonresident alien individuals, see section 402(a)(4).

(2) For taxation of nonresident alien individuals who are expatriate United States citizens, see section 877.

(3) For doubling of tax on citizens of certain foreign countries, see section 891.

(4) For adjustment of tax in case of nationals or residents of certain foreign countries, see section 896.

(5) For withholding of tax at source on nonresident alien individuals, see section 1441.

(6) For election to treat married nonresident alien individual as resident of United States in certain cases, see subsections (g) and (h) of section 6013.

(7) For special tax treatment of gain or loss from the disposition by a nonresident alien individual of a United States real property interest, see section 897.

(As amended Apr. 20, 1983, Pub. L. 98–21, title I, § 121(c)(1), title III, § 335(b)(2)(B), 97 Stat. 82, 130; July 18, 1984, Pub. L. 98–369, div. A, title I, §§ 42(a)(9), 127(a), 128(a), title IV, § 412(b)(1), 98 Stat. 557, 648, 653, 792.)

References in Text

Section 207 of the Social Security Act, referred to in subsec. (a)(3)(A), is classified to section 407 of Title 42, The Public Health and Welfare.

Amendments

1984—Subsec. (a)(1). Pub. L. 98–369, § 127(a)(2), substituted "Except as provided in subsection (i), there" for "There".

Subsec. (a)(1)(A). Pub. L. 98–369, § 42(a)(9), substituted "section 1273" for "section 1232(b)".

Subsec. (a)(1)(C). Pub. L. 98–369, § 128(a)(1), amended subpar. (C) generally, substituting in cl. (i), "a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the nonresident alien individual (to the extent such discount was not theretofore taken into account under clause (ii)), and" for "bonds or other evidences of indebtedness issued after September 28, 1965, and before April 1, 1972, amounts which under section 1232(a)(2)(B) are considered as ordinary income, and, in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,", substituting in cl. (ii), "the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this clause only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by subparagraph (A) thereon), and" for "bonds or other evidences of indebtedness issued after March 31, 1972, and payable more than 6 months from the date of original issue (without regard to the period held by the taxpayer), amounts which under section 1232(a)(2)(B) would be considered as ordinary income but for the fact such obligations were issued after May 27, 1969, and", and striking out cl. (iii) which required that in the case of the payment of interest on an obligation described in cl. (ii), an amount equal to the original issue discount, but not in excess of such interest less the tax imposed by subpar. (A) thereon, accrued on such ogligation since the last payment of interest thereon, be included for purpose of the 30 percent tax.

Subsec. (g). Pub. L. 98–369, § 128(a)(2), added subsec. (g). Former subsec. (g), relating to cross references, was redesignated (h).

Subsec. (g)(6) to (8). Pub. L. 98–369, § 412(b)(1), amended subsec. (g), relating to cross references, by striking out par. (6) referring to section 6015(j) for the requirement of making a declaration of estimated tax by certain nonresident alien individuals and redesignating pars. (7) and (8) as (6) and (7), respectively.

Subsec. (h). Pub. L. 98–369, § 127(a), added subsec. (h). Former subsec. (h), relating to cross references, was redesignated (i).

Pub. L. 98–369, § 128(a)(2), redesignated subsec. (g), relating to cross references, as (h).

Subsec. (i). Pub. L. 98–369, § 127(a)(1), redesignated subsec. (h), relating to cross references, as (i).

1983—Subsec. (a)(3). Pub. L. 98–21, § 121(c)(1), added par. (3).

Subsec. (a)(3)(A). Pub. L. 98–21, § 335(b)(2)(B), inserted "(notwithstanding section 207 of the Social Security Act)" after "income".

Effective Date of 1984 Amendment

Amendment by section 42(a)(9) of Pub. L. 98–369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

Section 127(g) of Pub. L. 98–369 provided that:

"(1) In general.—Except as otherwise provided in this subsection, the amendments made by this section [amending sections 163, 864, 871, 881, 1441, 1442, and 2105 of this title] shall apply to interest received after the date of the enactment of this Act [July 18, 1984] with respect to obligations issued after such date, in taxable years ending after such date.

"(2) Subsection (d).—The amendment made by subsection (d) [amending section 2105(b) of this title] shall apply to obligations issued after the date of the enactment of this Act [July 18, 1984] with respect to the estates of decedents dying after such date.

"(3) Special rule for certain United States affiliate obligations.—

"(A) In general.—For purposes of the Internal Revenue Code of 1954, payments of interest on a United States affiliate obligation to an applicable CFC in existence on or before June 22, 1984, shall be treated as payments to a resident of the country in which the applicable CFC is incorporated.

"(B) Exception.—Subparagraph (A) shall not apply to any applicable CFC which did not meet requirements which are based on the principles set forth in Revenue Rulings 69–501, 69–377, 70–645, and 73–110.

"(C) Definitions.—

"(i) The term 'applicable CFC' has the meaning given such term by section 121(b)(2)(D) of this Act [set out as a note under section 904 of this title], except that such section shall be applied by substituting 'the date of interest payment' for 'March 31, 1984,' in clause (i) thereof.

"(ii) The term 'United States affiliate obligation' means an obligation described in section 121(b)(2)(F) of this Act [set out as a note under section 904 of this title] which was issued before June 22, 1984."

Section 128(d) of Pub. L. 98–369 provided that:

"(1) In general.—Except as provided in paragraph (2), the amendments made by this section [amending sections 163, 871, and 881 of this title] shall apply to payments made on or after the 60th day after the date of the enactment of this Act [July 18, 1984] with respect to obligations issued after March 31, 1972.

"(2) Subsection (c).—The amendment made by subsection (c) [amending section 163 of this title] shall apply to obligations issued after June 9, 1984."

Amendment by section 412(b)(1) of Pub. L. 98–369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98–369, set out as a note under section 6654 of this title.

Effective Date of 1983 Amendment

Amendment by section 121 of Pub. L. 98–21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98–21, set out as an Effective Date note under section 86 of this title.

Cross References

Nonresident alien ineligible for credit for the elderly and the permanently and totally disabled, see section 22 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2, 5, 32, 116, 306, 864, 873, 877, 881, 882, 891, 897, 906, 934A, 1235, 1276, 1278, 1441, 1442, 1444, 1445, 2105, 6012, 7701 of this title.

§ 873. Deductions

[*See main edition for text of* (*a*)]

(b) Exceptions

The following deductions shall be allowed whether or not they are connected with income which is effectively connected with the conduct of a trade or business within the United States:

(1) Losses

The deduction for losses allowed by section 165(c)(3), but only if the loss is of property located within the United States.

[*See main edition for text of* (*2*) *and* (*3*); (*c*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 711(c)(2)(A)(iv), 98 Stat. 945.)

Amendments

1984—Subsec. (b)(1). Pub. L. 98-369 substituted "for losses" for ", for losses of property not connected with the trade or business if arising from certain casualties or theft,".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98-369, set out as a note under section 165 of this title.

§ 874. Allowance of deductions and credits

(a) Return prerequisite to allowance

A nonresident alien individual shall receive the benefit of the deductions and credits allowed to him in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F (sec. 6001 and following, relating to procedure and administration), including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. This subsection shall not be construed to deny the credits provided by sections 31 and 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline and special fuels.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(19), 98 Stat. 843.)

Amendments

1984—Subsec. (a). Pub. L. 98-369 substituted reference to section "33" for "32" and "34" for "39".

Effective Date of 1984 Amendment

Amendment by section 474(r)(19) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section Referred to in Other Sections

This section is referred to in section 1441 of this title.

§ 877. Expatriation to avoid tax

Section Referred to in Other Sections

This section is referred to in sections 2, 116, 894, 7701 of this title.

§ 879. Tax treatment of certain community income in the case of nonresident alien individuals

(a) General rule

In the case of a married couple 1 or both of whom are nonresident alien individuals and who have community income for the taxable year, such community income shall be treated as follows:

[*See main edition for text of* (*1*) *to* (*4*); (*b*) *and* (*c*)]

(As amended Pub. L. 98-369, div. A, title I, § 139(a), (b)(1), July 18, 1984, 98 Stat. 677.)

Amendments

1984—Pub. L. 98-369, § 139(b)(1), substituted "nonresident alien individuals" for "a resident or citizen of the United States who is married to a nonresident alien individual" in section catchline.

Subsec. (a). Pub. L. 98-369, § 139(a), substituted in provision preceding par. (1) "married couple 1 or both of whom are nonresident alien individuals" for "citizen or resident of the United States who is married to a nonresident alien individual".

Effective Date of 1984 Amendment

Section 139(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to taxable years beginning after December 31, 1984."

Subpart B—Foreign Corporations

§ 881. Tax on income of foreign corporations not connected with United States business

(a) Imposition of tax

Except as provided in subsection (c), there is hereby imposed for each taxable year a tax of 30 percent of the amount received from sources within the United States by a foreign corporation as—

(1) interest (other than original issue discount as defined in section 1273), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, and other fixed or determinable annual or periodical gains, profits, and income,

(2) gains described in section 631(b) or (c),

(3) in the case of—

(A) a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not therefore taken into account under subparagraph (B)), and

(B) the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this subparagraph only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by paragraph (1) thereon), and

[*See main edition for text of* (4)]

but only to the extent the amount so received is not effectively connected with the conduct of a trade or business within the United States.

(b) Exception for certain Guam and Virgin Islands corporations

(1) In general

For purposes of this section, a corporation created or organized in Guam or the Virgin Islands or under the law of Guam or the Virgin Islands shall not be treated as a foreign corporation for any taxable year if—

(A) at all times during such taxable year less than 25 percent in value of the stock of such corporation is owned (directly or indirectly) by foreign persons, and

(B) at least 20 percent of the gross income of such corporation is shown to the satisfaction of the Secretary to have been derived from sources within Guam or the Virgin Islands (as the case may be) for the 3-year period ending with the close of the preceding taxable year of such corporation (or for such part of such period as the corporation has been in existence).

(2) Paragraph (1) not to apply to tax imposed in Guam

For purposes of applying this subsection with respect to income tax liability incurred to Guam—

(A) Paragraph [1] (1) shall not apply, and

(B) for purposes of this section, the term "foreign corporation" does not include a corporation created or organized in Guam or under the law of Guam.

(3) Definitions

(A) Foreign person

For purposes of paragraph (1), the term "foreign person" means any person other than—

(i) a United States person, or

(ii) a person who would be a United States person if references to the United States in section 7701 included references to a possession of the United States.

(B) Indirect ownership rules

For purposes of paragraph (1), the rules of section 318(a)(2) shall apply except that "5 percent" shall be substituted for "50 percent" in subparagraph (C) thereof.

(4) Cross reference

For tax imposed in the Virgin Islands, see sections 934 and 934A.

(c) Repeal of tax on interest of foreign corporations received from certain portfolio debt investments

(1) In general

In the case of any portfolio interest received by a foreign corporation from sources within the United States, no tax shall be imposed under paragraph (1) or (3) of subsection (a).

(2) Portfolio interest

For purposes of this subsection, the term "portfolio interest" means any interest (including original issue discount) which is described in any of the following subparagraphs:

(A) Certain obligations which are not registered

Interest which is paid on any obligation which is described in section 871(h)(2)(A).

(B) Certain registered obligations

Interest which is paid on an obligation—

(i) which is in registered form, and

(ii) with respect to which the person who would otherwise be required to deduct and withhold tax from such interest under section 1442(a) has received a statement which meets the requirements of section 871(h)(4) that the beneficial owner of the obligation is not a United States person.

(3) Portfolio interest shall not include interest received by certain persons

For purposes of this subsection, the term "portfolio interest" shall not include any portfolio interest which—

(A) except in the case of interest paid on an obligation of the United States, is received by a bank on an extension of credit made pursuant to a loan agreement entered into in the ordinary course of its trade or business,

(B) is received by a 10-percent shareholder (within the meaning of section 871(h)(3)(B)), or

(C) is received by a controlled foreign corporation from a related person (within the meaning of section 864(d)(4).[1]

(4) Special rules for controlled foreign corporations

(A) In general

In the case of any portfolio interest received by a controlled foreign corporation, the following provisions shall not apply:

(i) Subparagraph (A) of section 954(b)(3) (relating to exception where foreign base company income is less than 10 percent).

(ii) Paragraph (4) of section 954(b) (relating to corporations not formed or availed of to avoid tax).

(iii) Subparagraph (B) of section 954(c)(3) (relating to certain income derived in active conduct of trade or business).

(iv) Subparagraph (C) of section 954(c)(3) (relating to certain income derived by an insurance company).

(v) Subparagraphs (A) and (B) of section 954(c)(4) (relating to exception for certain income received from related persons).

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[1] So in original. Probably should be "paragraph".

[1] So in original. A closing parenthesis probably should precede the period.

(B) Controlled foreign corporation

For purposes of this subsection, the term "controlled foreign corporation" has the meaning given to such term by section 957(a).

(5) Secretary may cease application of this subsection

Under rules similar to the rules of section 871(h)(5), the Secretary may provide that this subsection shall not apply to payments of interest described in section 871(h)(5).

(6) Registered form

For purposes of this subsection, the term "registered form" has the meaning given such term by section 163(f).

(d) Cross reference

For doubling of tax on corporations of certain foreign countries, see section 891.

For special rules for original issue discount, see section 871(g).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 42(a)(10), 127(b), 128(b), 130(a), 98 Stat. 557, 650, 654, 660.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 127(b)(2), substituted "Except as provided in subsection (c), there" for "There" in introductory provision.

Subsec. (a)(1). Pub. L. 98-369, § 42(a)(10), substituted "section 1273" for "section 1232(b)".

Subsec. (a)(3). Pub. L. 98-369, § 128(b)(1), amended par. (3) generally, substituting in subpar. (A), "a sale or exchange of an original issue discount obligation, the amount of any gain not in excess of the original issue discount accruing while such obligation was held by the foreign corporation (to the extent such discount was not theretofore taken into account under subparagraph (B)), and" for "bonds or other evidences of indebtedness issued after September 28, 1965, and before April 1, 1972, amounts which under section 1232(a)(2)(B) are considered as ordinary income, and, in the case of corporate obligations issued after May 27, 1969, and before April 1, 1972, amounts which would be so considered but for the fact the obligations were issued after May 27, 1969,", substituting in subpar. (B), "the payment of interest on an original issue discount obligation, an amount equal to the original issue discount accrued on such obligation since the last payment of interest thereon (except that such original issue discount shall be taken into account under this subparagraph only to the extent that the tax thereon does not exceed the interest payment less the tax imposed by paragraph (1) thereon), and" for "bonds or other evidences of indebtedness issued after March 31, 1972, and payable more than 6 months from the date of original issue (without regard to the period held by the taxpayer), amounts which under section 1232(a)(2)(B) would be considered as ordinary income but for the fact such obligations were issued after May 27, 1969, and", and striking out subpar. (C) which required that in the case of the payment of interest on an obligation described in subpar. (B), an amount equal to the original issue discount, but not in excess of such interest less the tax imposed by par. (1) thereon, accrued on such obligation since the last payment of interest thereon, be included for purpose of the 30 percent tax.

Subsec. (b). Pub. L. 98-369, § 130(a), amended subsec. (b) generally, substituting provision establishing an exception for certain Guam and Virgin Islands corporations for provision establishing an exception for Guam corporations.

Subsec. (c). Pub. L. 98-369, § 127(b)(1), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-369, § 128(b)(2), which directed the amendment of subsec. (c) by substituting in heading "Cross reference" for "Doubling of tax" and inserting provision directing that for special rules for original issue discount, see section 871(g), was executed to subsec. (d) as the probable intent of Congress, in view of the previous redesignation of subsec. (c) as (d) by section 127(b)(1) of Pub. L. 98-369.

Pub. L. 98-369, § 127(b)(1), redesignated subsec. (c) as (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(10) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 127(b) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

Amendment by section 128(b) of Pub. L. 98-369 applicable to payments made on or after the 60th day after July 18, 1984, with respect to obligations issued after Mar. 31, 1972, see section 128(d)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

Section 130(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 881(b), 1442(c), and 7651(5)(B) of this title] shall apply to payments made after March 1, 1984, in taxable years ending after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 306, 813, 814, 842, 864, 871, 891, 906, 934A, 1276, 1278, 1442, 1444, 1563, 6012, 6154, 7651 of this title.

§ 882. Tax on income of foreign corporations connected with United States business

[See main edition for text of (a) and (b)]

(c) Allowance of deductions and credits

[See main edition for text of (1)]

(2) Deductions and credits allowed only if return filed

A foreign corporation shall receive the benefit of the deductions and credits allowed to it in this subtitle only by filing or causing to be filed with the Secretary a true and accurate return, in the manner prescribed in subtitle F, including therein all the information which the Secretary may deem necessary for the calculation of such deductions and credits. The preceding sentence shall not apply for purposes of the tax imposed by section 541 (relating to personal holding company tax), and shall not be construed to deny the credit provided by section 33 for tax withheld at source or the credit provided by section 34 for certain uses of gasoline.

[See main edition for text of (3) and (4); (d) to (f)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(19), 98 Stat. 843.)

AMENDMENTS

1984—Subsec. (c)(2). Pub. L. 98-369 substituted reference to section "33" for "32" and "34" for "39".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(19) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11, 814, 864, 897, 906, 1442, 1445 of this title.

SUBPART C—MISCELLANEOUS PROVISIONS

§ 891. Doubling of rates of tax on citizens and corporations of certain foreign countries

Whenever the President finds that, under the laws of any foreign country, citizens or corporations of the United States are being subjected to discriminatory or extraterritorial taxes, the President shall so proclaim and the rates of tax imposed by sections 1, 3, 11, 801, 821, 831, 852, 871, and 881 shall, for the taxable year during which such proclamation is made and for each taxable year thereafter, be doubled in the case of each citizen and corporation of such foreign country; but the tax at such doubled rate shall be considered as imposed by such sections as the case may be. In no case shall this section operate to increase the taxes imposed by such sections (computed without regard to this section) to an amount in excess of 80 percent of the taxable income of the taxpayer (computed without regard to the deductions allowable under section 151 and under part VIII of subchapter B). Whenever the President finds that the laws of any foreign country with respect to which the President has made a proclamation under the preceding provisions of this section have been modified so that discriminatory and extraterritorial taxes applicable to citizens and corporations of the United States have been removed, he shall so proclaim, and the provisions of this section providing for doubled rates of tax shall not apply to any citizen or corporation of such foreign country with respect to any taxable year beginning after such proclamation is made.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title II, § 211(b)(12), 98 Stat. 755.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "801" for "802".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

§ 894. Income affected by treaty

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 269B, 643, 813 of this title.

§ 897. Disposition of investment in United States real property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 861, 862, 871, 882, 1445, 6039C of this title.

PART III—INCOME FROM SOURCES WITHOUT THE UNITED STATES

Subpart
C. Taxation of foreign sales corporations.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title VIII, § 802(c)(4), July 18, 1984, 98 Stat. 999, added item for subpart C.

SUBPART A—FOREIGN TAX CREDIT

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 55, 78, 172, 667, 814, 861, 1351, 1373 of this title.

§ 901. Taxes of foreign countries and of possessions of United States

(a) Allowance of credit

If the taxpayer chooses to have the benefits of this subpart, the tax imposed by this chapter shall, subject to the limitation of section 904, be credited with the amounts provided in the applicable paragraph of subsection (b) plus, in the case of a corporation, the taxes deemed to have been paid under sections 902 and 960. Such choice for any taxable year may be made or changed at any time before the expiration of the period prescribed for making a claim for credit or refund of the tax imposed by this chapter for such taxable year. The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 26(b).

[*See main edition for text of* (*b*) *to* (*g*)]

(h) Taxes paid with respect to foreign trade income

No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC, other than section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6).[1]

(i) Cross reference

(1) For deductions of income, war profits, and excess profits taxes paid to a foreign country or a possession of the United States, see sections 164 and 275.

(2) For right of each partner to make election under this section, see section 703(b).

(3) For right of estate or trust to the credit for taxes imposed by foreign countries and possessions of the United States under this section, see section 642(a)(1).

(4) For reduction of credit for failure of a United States person to furnish certain information with respect to a foreign corporation controlled by him, see section 6038.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(20), title VI, § 612(e)(1), title VII, § 713(c)(1)(C), title VIII, § 801(d)(1), 98 Stat. 843, 912, 957, 995.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 612(e)(1), substituted "section 26(b)" for "section 25(b)".

Pub. L. 98-369, § 474(r)(20), substituted "The credit shall not be allowed against any tax treated as a tax not imposed by this chapter under section 25(b)" for "The credit shall not be allowed against the tax imposed by section 56 (relating to corporate minimum tax), against the tax imposed for the taxable year under section 72(m)(5)(B) (relating to 10 percent tax on premature distributions to owner-employees) section 72(q)(1) (relating to 5-percent tax on premature distributions under annuity contracts),, against the tax imposed by section 402(e) (relating to tax on lump sum distributions), against the tax imposed for the taxable year by section 408(f) (relating to additional tax on income from certain retirement accounts), against the tax imposed by section 531 (relating to the tax on accumulated earnings), against the additional tax imposed for the taxable year under section 1351 (relating to recoveries of foreign expropriation losses), or against the personal holding company tax imposed by section 541".

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[1] So in original. A closing parenthesis probably should precede the period.

Pub. L. 98–369, § 713(c)(1)(C), substituted "premature distributions to key employees" for "premature distributions to owner-employees".

Subsecs. (h), (i). Pub. L. 98–369, § 801(d)(1), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(20) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 612(e)(1) of Pub. L. 98–369 applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98–369, set out as an Effective Date note under section 25 of this title.

Amendment by section 713(c)(1)(C) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 801(d)(1) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, set out as an Effective Date note under section 921 of this title.

CROSS REFERENCES

Taxes of foreign countries and possessions of the United States, see sections 27 and 515 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27, 243, 275, 515, 642, 702, 703, 841, 853, 861, 874, 882, 904 to 908, 931, 960, 1247, 1363, 6038, 6511 of this title.

§ 902. Credit for corporate stockholder in foreign corporation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 78, 535, 545, 814, 901, 906, 907, 908, 954, 960, 1248, 6038 of this title.

§ 904. Limitation on credit

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Separate application of section with respect to certain interest income and income from DISC, former DISC, FSC, or former FSC

(1) In general

The provisions of subsections (a), (b), and (c) shall be applied separately with respect to each of the following items of income:

(A) the interest income described in paragraph (2),

(B) dividends from a DISC or former DISC (as defined in section 992(a)) to the extent such dividends are treated as income from sources without the United States,

(C) taxable income attributable to foreign trade income (within the meaning of section 923(b)),

(D) distributions from a FSC (or former FSC) out of earnings and profits attributable to foreign trade income (within the meaning of section 923(b)), and

(E) income other than income described in subparagraph (A), (B), (C), or (D).

[*See main edition for text of* (*2*)]

(3) Certain amounts attributable to United States-owned foreign corporations, etc., treated as interest

(A) In general

For purposes of this subsection, dividends and interest—

(i) paid or accrued by a designated payor corporation, and

(ii) attributable to any taxable year of such corporation,

shall be treated as interest income described in paragraph (2) to the extent that the aggregate amount of such dividends and interest does not exceed the separate limitation interest of the designated payor corporation for such taxable year.

(B) Separate limitation interest

For purposes of this subsection, the term "separate limitation interest" means, with respect to any taxable year—

(i) the aggregate amount of the interest income described in paragraph (2) (including amounts treated as so described by reason of this paragraph) which is received or accrued by the designated payor corporation during the taxable year, reduced by

(ii) the deductions properly allocable (under regulations prescribed by the Secretary) to such income.

(C) Exception where designated corporation has small amount of separate limitation interest

Subparagraph (A) shall not apply to any amount attributable to the taxable year of a designated payor corporation, if—

(i) such corporation has earnings and profits for such taxable year, and

(ii) less than 10 percent of such earnings and profits is attributable to separate limitation interest.

(D) Treatment of certain interest

For purposes of this paragraph, the amount of the separate limitation interest and the earnings and profits of any designated payor corporation shall be determined without any reduction for interest paid or accrued to a United States shareholder (as defined in section 951(b)) or a related person (within the meaning of section 267(b)) to such a shareholder.

(E) Designated payor corporation

For purposes of this paragraph, the term "designated payor corporation" means—

(i) any United States-owned foreign corporation (within the meaning of subsection (g)(6)),

(ii) any other foreign corporation in which a United States person is a United States shareholder (as defined in section 951(b)) at any time during the taxable year of such foreign corporation, and

(iii) any regulated investment company.

(F) Determination of year to which amount is attributable

For purposes of determining whether an amount is attributable to a taxable year of a designated payor corporation—

(i) any amount includible in gross income under section 551 or 951 in respect of such taxable year,

(ii) any interest paid or accrued by such corporation during such taxable year, and

(iii) any dividend paid out of the earnings and profits of such corporation for such taxable year,

shall be treated as attributable to such taxable year.

(G) Ordering rules

Subparagraph (A) shall be applied to amounts described therein in the order in which such amounts are described in subparagraph (F).

(H) Dividend

For purposes of this paragraph, the term "dividend" includes—

(i) any amount includible in gross income under section 551 or 951, and

(ii) any gain treated as ordinary income under section 1246 or as a dividend under section 1248.

(I) Distributions through other entities

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph in the case of distributions or payments through 1 or more entities.

(J) Interest from members of same affiliated group

For purposes of this paragraph, interest received or accrued by the designated payor corporation from another member of the same affiliated group (determined under section 1504 without regard to subsection (b)(3) thereof) shall not be treated as separate limitation interest, unless such interest is attributable directly or indirectly to separate limitation interest of such other member.

[*See main edition for text of* (e) *and* (*f*)]

(g) Source rules in case of United States-owned foreign corporations

(1) In general

The following amounts which are derived from a United States-owned foreign corporation and which would be treated as derived from sources outside the United States without regard to this subsection shall, for purposes of this section, be treated as derived from sources within the United States to the extent provided in this subsection:

(A) Any amount included in gross income under—

(i) section 951(a) (relating to amounts included in gross income of United States shareholders), or

(ii) section 551 (relating to foreign personal holding company income taxed to United States shareholders).

(B) Interest.

(C) Dividends.

(2) Subpart F and foreign personal holding company inclusions

Any amount described in subparagraph (A) of paragraph (1) shall be treated as derived from sources within the United States to the extent such amount is attributable to income of the United States-owned foreign corporation from sources within the United States.

(3) Certain interest allocable to United States source income

Any interest which—

(A) is paid or accrued by a United States-owned foreign corporation during any taxable year,

(B) is paid or accrued to a United States shareholder (as defined in section 951(b)) or a related person (within the meaning of section 267(b)) to such a shareholder, and

(C) is properly allocable (under regulations prescribed by the Secretary) to income of such foreign corporation for the taxable year from sources within the United States,

shall be treated as derived from sources within the United States.

(4) Dividends

(A) In general

The United States source ratio of any dividend paid or accrued by a United States-owned foreign corporation shall be treated as derived from sources within the United States.

(B) United States source ratio

For purposes of subparagraph (A), the term "United States source ratio" means, with respect to any dividend paid out of the earnings and profits for any taxable year, a fraction—

(i) the numerator of which is the portion of the earnings and profits for such taxable year from sources within the United States, and

(ii) the denominator of which is the total amount of earnings and profits for such taxable year.

(5) Exception where United States-owned foreign corporation has small amount of United States source income

Paragraph (3) shall not apply to interest paid or accrued during any taxable year (and paragraph (4) shall not apply to any dividends paid out of the earnings and profits for such taxable year) if—

(A) the United States-owned foreign corporation has earnings and profits for such taxable year, and

(B) less than 10 percent of such earnings and profits is attributable to sources within the United States.

For purposes of the preceding sentence, earnings and profits shall be determined without any reduction for interest described in paragraph (3) (determined without regard to subparagraph (C) thereof).

(6) United States-owned foreign corporation

For purposes of this subsection, the term "United States-owned foreign corporation" means any foreign corporation if 50 percent or more of—

(A) the total combined voting power of all classes of stock of such corporation entitled to vote, or

(B) the total value of the stock of such corporation,

is held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

(7) Dividend

For purposes of this subsection, the term "dividend" includes any gain treated as ordinary income under section 1246 or as a dividend under section 1248.

(8) Coordination with subsection (f)

This subsection shall be applied before subsection (f).

(9) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate for purposes of this subsection, including—

(A) regulations for the application of this subsection in the case of interest or dividend payments through 1 or more entities, and

(B) regulations providing that this subsection shall apply to interest paid or accrued to any person (whether or not a United States shareholder).

(h) Coordination with nonrefundable personal credits

In the case of an individual, for purposes of subsection (a), the tax against which the credit is taken is such tax reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter.

(i) Cross reference

(1) For increase of limitation under subsection (a) for taxes paid with respect to amounts received which were included in the gross income of the taxpayer for a prior taxable year as a United States shareholder with respect to a controlled foreign corporation, see section 960(b).

(2) For modification of limitation under subsection (a) for purposes of determining the amount of credit which can be taken by an individual against the alternative minimum tax, see section 55(c).

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 122(c)(1), 97 Stat. 87; July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 121(a), 122(a), title IV, § 474(r)(21), title VIII, § 801(d)(2), 98 Stat. 638, 643, 843, 995.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369, § 801(d)(2)(C), which directed amendment of par. (1) heading by substituting "Separate application of section with respect to certain interest income and income from DISC, former DISC, FSC, or former FSC" for "Application of section in case of certain interest income and dividends from a DISC or former DISC" was executed to subsec. (d) heading to reflect the probable intent of Congress.

Subsec. (d)(1)(B) to (E). Pub. L. 98-369, § 801(d)(2)(A), (B), struck out "and" after "United States," at end of subpar. (B), substituted "taxable income attributable to foreign trade income (within the meaning of section 923(b))," for "income other than the interest income described in paragraph (2) and dividends described in subparagraph (B)," in subpar. (C), and added subpars. (D) and (E).

Subsec. (d)(3). Pub. L. 98-369, § 122(a), added par. (3).

Subsec. (g). Pub. L. 98-369, § 121(a), added subsec. (g). Former subsec. (g) redesignated (h).

Pub. L. 98-369, § 474(r)(21), amended subsec. (g) generally, substituting "Coordination with nonrefundable personal credits" for "Coordination with credit for the elderly" in heading and in text substituting "reduced by the sum of the credits allowable under subpart A of part IV of subchapter A of this chapter" for "reduced by the amount of the credit (if any) for the taxable year allowable under section 37 (relating to credit for the elderly and the permanently and totally disabled)".

Subsecs. (h), (i). Pub. L. 98-369, § 121(a), redesignated former subsecs. (g) and (h) as (h) and (i), respectively.

1983—Subsec. (g). Pub. L. 98-21 substituted "relating to credit for the elderly and the permanently and totally disabled" for "relating to credit for the elderly".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 121(b) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [enacting subsec. (g) of this section and redesignating former subsecs. (g) and (h) as (h) and (i)] shall take effect on the date of the enactment of this Act [July 18, 1984]. In the case of any taxable year of any United States-owned foreign corporation ending after the date of the enactment of this Act—

"(A) only income received or accrued by such foreign corporation after such date of enactment shall be taken into account under section 904(g) of the Internal Revenue Code of 1954 (as added by subsection (a)); except that

"(B) paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income) shall be applied by taking into account all income received or accrued by such foreign corporation during such taxable year.

"(2) SPECIAL RULE FOR APPLICABLE CFC.—

"(A) IN GENERAL.—In the case of qualified interest received or accrued by an applicable CFC before January 1, 1992—

"(i) such interest shall not be taken into account under section 904(g) of the Internal Revenue Code of 1954 (as added by subsection (a)), except that

"(ii) such interest shall be taken into account for purposes of applying paragraph (5) of such section 904(g) (relating to exception where small amount of United States source income).

"(B) QUALIFIED INTEREST.—For purposes of subparagraph (A), the term 'qualified interest' means—

"(i) the aggregate amount of interest received or accrued during any taxable year by an applicable CFC on United States affiliate obligations held by such applicable CFC, multiplied by,

"(ii) a fraction (not in excess of 1)—

"(I) the numerator of which is the sum of the aggregate principal amount of United States affiliate obligations held by the applicable CFC on March 31, 1984, but not in excess of the applicable limit, and

"(II) the denominator of which is the average daily principal amount of United States affiliate obligations held by such applicable CFC during the taxable year.

Proper adjustments shall be made to the numerator described in clause (ii)(I) for original issue discount accruing after March 31, 1984, on CFC obligations and United States affiliate obligations.

"(C) Adjustment for retirement of CFC obligations.—The amount described in subparagraph (B)(ii)(I) for any taxable year shall be reduced by the sum of—

"(i) the excess of (I) the aggregate principal amount of CFC obligations which are outstanding on March 31, 1984, but only with respect to obligations issued before March 8, 1984, or issued after March 7, 1984, by the applicable CFC pursuant to a binding commitment in effect on March 7, 1984, over (II) the average daily outstanding principal amount during the taxable year of the CFC obligations described in subclause (I), and

"(ii) the portion of the equity of such applicable CFC allocable to the excess described in clause (i) (determined on the basis of the debt-equity ratio of such applicable CFC on March 31, 1984).

"(D) Applicable CFC.—For purposes of this paragraph, the term 'applicable CFC' means any controlled foreign corporation (within the meaning of section 957)—

"(i) which was in existence on March 31, 1984, and

"(ii) the principal purpose of which on such date consisted of the issuing of CFC obligations or the holding of short-term obligations and lending the proceeds of such obligations to affiliates.

"(E) Affiliates; United States affiliates.—For purposes of this paragraph—

"(i) Affiliate.—The term 'affiliate' means any person who is a related person (within the meaning of section 482 of the Internal Revenue Code of 1954) to the applicable CFC.

"(ii) United States affiliate.—The term 'United States affiliate' means any United States person which is an affiliate of the applicable CFC.

"(F) United States affiliate obligations.—For purposes of this paragraph, the term 'United States affiliate obligations' means any obligation of (and payable by) a United States affiliate.

"(G) CFC obligation.—For purposes of this paragraph, the term 'CFC obligation' means any obligation of (and issued by) a CFC if—

"(i) the requirements of clause (i) of section 163(f)(2)(B) of the Internal Revenue Code of 1954 are met with respect to such obligation, and

"(ii) in the case of an obligation issued after December 31, 1982, the requirements of clause (ii) of such section 163(f)(2)(B) are met with respect to such obligation.

"(H) Treatment of obligations with original issue discount.—For purposes of this paragraph, in the case of any obligation with original issue discount, the principal amount of such obligation as of any day shall be treated as equal to the revised issue price as of such day (as defined in section 1278(a)(4) of the Internal Revenue Code of 1954).

"(I) Applicable limit.—For purposes of subparagraph (B)(ii)(I), the term 'applicable limit' means the sum of—

"(i) the equity of the applicable CFC on March 31, 1984, and

"(ii) the aggregate principal amount of CFC obligations outstanding on March 31, 1984, which were issued by an applicable CFC—

"(I) before March 8, 1984, or

"(II) after March 7, 1984, pursuant to a binding commitment in effect on March 7, 1984.

"(3) Exception for certain term obligations.—The amendments made by subsection (a) shall not apply to interest on any term obligations held by a foreign corporation on March 7, 1984. The preceding sentence shall not apply to any United States affiliate obligation (as defined in paragraph (2)(F)) held by an applicable CFC (as defined in paragraph (2)(D)).

"(4) Definitions.—Any term used in this subsection which is also used in section 904(g) of the Internal Revenue Code of 1954 (as added by subsection (a)) shall have the meaning given such term by such section 904(g).

"(5) Separate application of section 904 in case of income covered by transitional rules.—Subsections (a), (b), and (c) of section 904 of the Internal Revenue Code of 1954 shall be applied separately to any amount not treated as income derived from sources within the United States but which (but for the provisions of paragraph (2) or (3) of this subsection) would be so treated under the amendments made by subsection (a). Any such separate application shall be made before any separate application required under section 904(d) of such Code.

"(6) Application of paragraph (5) delayed in certain cases.—In the case of a foreign corporation—

"(A) which is a subsidiary of a domestic corporation which has been engaged in manufacturing for more than 50 years, and

"(B) which issued certificates with respect to obligations on—

"(i) September 24, 1979, denominated in French francs,

"(ii) September 10, 1981, denominated in Swiss francs,

"(iii) July 14, 1982, denominated in Swiss francs, and

"(iv) December 1, 1982, denominated in United States dollars,

with a total principal amount of less than 200,000,000 United States dollars.[,]

then paragraph (5) shall not apply to the proceeds from relending such obligations or related capital before January 1, 1986."

Section 122(b) of Pub. L. 98–369 provided that:

"(1) In general.—The amendment made by subsection (a) [enacting subsec. (d)(3) of this section] shall take effect on the date of the enactment of this Act [July 18, 1984].

"(2) Special rules for interest income.—

"(A) In general.—Interest income received or accrued by a designated payor corporation shall be taken into account for purposes of the amendment made by subsection (a) only in taxable years beginning after the date of the enactment of this Act.

"(B) Exception for investment after June 22, 1984.—Notwithstanding subparagraph (A), the amendment made by subsection (a) shall apply to interest income received or accrued by a designated payor corporation after the date of enactment of this Act if it is attributable to investment in the designated payor corporation after June 22, 1984.

"(3) Term obligations of designated payor corporation which is not applicable CFC.—In the case of any designated payor corporation which is not an applicable CFC (as defined in section 121(b)(2)(D) [section 121(b)(2)(D) of Pub. L. 98–369, set out as a note above]), any interest received or accrued by such corporation on a term obligation held by such corporation on March 7, 1984, shall not be taken into account."

Amendment by section 474(r)(21) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 801(d)(2) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 55, 367, 383, 535, 667, 841, 864, 901, 906, 907, 936, 960, 1373, 6038, 6501 of this title.

§ 906. Nonresident alien individuals and foreign corporations

[See main edition for text of (a)]

(b) Special rules

[See main edition for text of (1) to (4)]

(5) No credit shall be allowed under this section for any income, war profits, and excess profits taxes paid or accrued with respect to the foreign trade income (within the meaning of section 923(b)) of a FSC.

(As amended Pub. L. 98-369, div. A, title VIII, § 801(d)(3), July 18, 1984, 98 Stat. 996.)

AMENDMENTS

1984—Subsec. (b)(5). Pub. L. 98-369 added par. (5).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

§ 907. Special rules in case of foreign oil and gas income

EFFECTIVE DATE OF 1982 AMENDMENT

Section 211(e) of Pub. L. 97-248, as amended by Pub. L. 97-448, title III, § 306(a)(5), 96 Stat. 2401; Pub. L. 98-369, div. A, title VII, § 712(e), July 18, 1984, 98 Stat. 947, provided that:

[See main edition for text of (1)]

"(2) RETENTION OF OLD SECTIONS 907(b) AND 904(f)(4) WHERE TAXPAYER HAD SEPARATE BASKET FOREIGN LOSS.—

"(A) IN GENERAL.—If, after applying old sections 907(b) and 904(f)(4) [former subsec. (b) of this section and former section 904(f)(4) of this title] to a taxable year beginning before January 1, 1983, the taxpayer had a separate basket foreign loss, such loss shall not be recaptured from income of a kind not taken into account in computing the amount of such separate basket foreign loss more rapidly than ratably over the 8-year period (or such shorter period as the taxpayer may select) beginning with the first taxable year beginning after December 31, 1982.

[See main edition for text of (B)]

SUBPART B—EARNED INCOME OF CITIZENS OR RESIDENTS OF UNITED STATES

§ 911. Citizens or residents of the United States living abroad

[See main edition for text of (a)]

(b) Foreign earned income

[See main edition for text of (1)]

(2) Limitation on foreign earned income

(A) In general

The foreign earned income of an individual which may be excluded under subsection (a)(1) for any taxable year shall not exceed the amount of foreign earned income computed on a daily basis at the annual rate set forth in the following table for each day of the taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1):

In the case of taxable years beginning in:	The annual rate is:
1983, 1984, 1985, 1986, or 1987	$80,000
1988	85,000
1989	90,000
1990 and thereafter	95,000.

[See main edition for text of (B) and (C); (c) to (f)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 17, 98 Stat. 505.)

AMENDMENTS

1984—Subsec. (b)(2)(A). Pub. L. 98-369 amended the table by striking out the item which had set the annual rate at $75,000 for taxable years beginning in 1982, substituted an item setting the annual rate at $80,000 for taxable years beginning in 1983, 1984, 1985, 1986, or 1987 for items which had set annual rates of $80,000 for taxable years beginning in 1983, $85,000 for taxable years beginning in 1984, $90,000 for taxable years beginning in 1985, and $95,000 for taxable years beginning in 1986 and thereafter, and added items setting annual rates of $85,000 for taxable years beginning in 1988, $90,000 for taxable years beginning in 1989, and $95,000 for taxable years beginning in 1990 and thereafter.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years ending after Dec. 31, 1983, see section 18(a) of Pub. L. 98-369, set out as a note under section 48 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32, 63, 66, 72, 79, 86, 105, 219, 221, 403, 410, 415, 505, 879, 1034, 1302, 1303, 1304, 1402, 3401, 6012, 6091, 7701 of this title; title 22 section 3310; title 29 section 1322; title 42 section 411.

SUBPART C—TAXATION OF FOREIGN SALES CORPORATIONS

Sec.
921. Exempt foreign trade income excluded from gross income.
922. FSC defined.
923. Exempt foreign trade income.
924. Foreign trading gross receipts.
925. Transfer pricing rules.
926. Distributions to shareholders.
927. Other definitions and special rules.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in section 7651 of this title.

§ 921. Exempt foreign trade income excluded from gross income

(a) Exclusion

Exempt foreign trade income of a FSC shall be treated as foreign source income which is not effectively connected with the conduct of a trade or business within the United States.

(b) Proportionate allocation of deductions to exempt foreign trade income

Any deductions of the FSC properly apportioned and allocated to the foreign trade income derived by a FSC from any transaction shall be allocated between—

(1) the exempt foreign trade income derived from such transaction, and

(2) the foreign trade income (other than exempt foreign trade income) derived from such transaction, on a proportionate basis.

(c) Denial of credits

Notwithstanding any other provision of this chapter, no credit (other than a credit allowable under section 27(a), 33, or 34) shall be allowed under this chapter to any FSC.

(d) Foreign trade income, investment income, and carrying charges treated as effectively connected with United States business

For purposes of this chapter—

(1) all foreign trade income of a FSC other than—

(A) exempt foreign trade income, and

(B) section 923(a)(2) non-exempt income,

(2) all interest, dividends, royalties, and other investment income received or accrued by a FSC, and

(3) all carrying charges received or accrued by a FSC,

shall be treated as income effectively connected with a trade or business conducted through a permanent establishment of such corporation within the United States. Income described in paragraph (1) shall be treated as derived from sources within the United States.

(Added Pub. L. 98-369, div. A, title VIII, § 801(a), July 18, 1984, 98 Stat. 985.)

PRIOR PROVISIONS

A prior section 921, acts Aug. 16, 1954, ch. 736, 68A Stat. 290; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1901(a)(116), 90 Stat. 1784, which defined Western Hemisphere trade corporation, was repealed by Pub. L. 94-455, title X, § 1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

EFFECTIVE DATE

Section 805(a) of title VIII of div. A of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this title [enacting sections 921 to 927 of this title, amending sections 245, 246, 274, 275, 441, 901, 904, 906, 934, 936, 951, 956, 992, 993, 995, 996, 999, 1248, 6011, 6072, 6501, 6686, and 7651 of this title, and enacting provisions set out as notes under sections 921 and 991 of this title] shall apply to transactions after December 31, 1984, in taxable years ending after such date.

"(2) SPECIAL RULE FOR CERTAIN CONTRACTS.—To the extent provided in regulations prescribed by the Secretary, subsections (c) and (d) of section 924 of the Internal Revenue Code of 1954 (as added by this title) shall not apply to—

"(A) any contract with respect to which the taxpayer uses the completed contract method of accounting and which—

"(i) was entered into before March 16, 1984, or

"(ii) was entered into after March 15, 1984, and before January 1, 1985, pursuant to a written plan to enter into such contract which was in effect on March 15, 1984,

"(B) any contract which was entered into before March 16, 1984, except that this subparagraph shall only apply to the first 2 taxable years of the FSC ending after January 1, 1985, or such later taxable years as the Secretary of the Treasury may designate, or

"(C) any contract which was entered into after March 15, 1984, and before January 1, 1985, except that this subparagraph shall only apply to the first taxable year of the FSC ending after January 1, 1985, or such later taxable years as the Secretary of the Treasury may designate.

"(3) SECTION 801(d)(10).—The amendment made by section 801(d)(10) [amending section 996 of this title] shall apply to distributions on or after June 22, 1984.

"(4) SECTION 803.—The amendments made by section 803 [amending section 441 of this title] shall apply to any DISC established after March 21, 1984."

SUBMISSION OF BI-ANNUAL REPORTS TO CONGRESS

Section 804(a) of title VIII of div. A of Pub. L. 98-369 provided that: "The Secretary of the Treasury shall, for calendar year 1985 and each second calendar year thereafter, submit a report to the Congress within 2½ months following the close of such calendar year setting forth an analysis of the operation and effect of the provisions of this title [see Effective Date note above for classification]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 925, 951 of this title.

§ 922. FSC defined

(a) FSC defined

For purposes of this title, the term "FSC" means any corporation—

(1) which—

(A) was created or organized—

(i) under the laws of any foreign country which meets the requirements of section 927(e)(3), or

(ii) under the laws applicable to any possession of the United States,

(B) has no more than 25 shareholders at any time during the taxable year,

(C) does not have any preferred stock outstanding at any time during the taxable year,

(D) during the taxable year—

(i) maintains an office located outside the United States in a foreign country which meets the requirements of section 927(e)(3) or in any possession of the United States,

(ii) maintains a set of the permanent books of account (including invoices) of such corporation at such office, and

(iii) maintains at a location within the United States the records which such corporation is required to keep under section 6001,

(E) at all times during the taxable year, has a board of directors which includes at least one individual who is not a resident of the United States, and

(F) is not a member, at any time during the taxable year, of any controlled group of corporations of which a DISC is a member, and

(2) which has made an election (at the time and in the manner provided in section 927(f)(1)) which is in effect for the taxable year to be treated as a FSC.

(b) Small FSC defined

For purposes of this title, a FSC is a small FSC with respect to any taxable year if—

(1) such corporation has made an election (at the time and in the manner provided in section 927(f)(1)) which is in effect for the taxable year to be treated as a small FSC, and

(2) such corporation is not a member, at any time during the taxable year, of a controlled group of corporations which includes a FSC unless such other FSC has also made an election under paragraph (1) which is in effect for such year.

(Added Pub. L. 98-369, div. A, title VIII, § 801(a), July 18, 1984, 98 Stat. 986.)

Prior Provisions

A prior section 922, acts Aug. 16, 1954, ch. 736, 68A Stat. 291; Dec. 10, 1971, Pub. L. 92-178, title V, § 502(c), 85 Stat. 550; Oct. 4, 1976, Pub. L. 94-455, title X, § 1052(a), (c)(1), 90 Stat. 1647, 1648; Nov. 6, 1978, Pub. L. 95-600, title III, § 301(b)(15), 92 Stat. 2822, which related to a special deduction for a Western Hemisphere trade corporation, was repealed by Pub. L. 94-455, title X, § 1052(b), Oct. 4, 1976, 90 Stat. 1648, effective with respect to taxable years beginning after Dec. 31, 1979.

Effective Date

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as a note under section 921 of this title.

Section Referred to in Other Sections

This section is referred to in section 927 of this title.

§ 923. Exempt foreign trade income

(a) Exempt foreign trade income

For purposes of this subpart—

(1) In general

The term "exempt foreign trade income" means the aggregate amount of all foreign trade income of a FSC for the taxable year which is described in paragraph (2) or (3).

(2) Income determined without regard to administrative pricing rules

In the case of any transaction to which paragraph (3) does not apply, 32 percent of the foreign trade income derived from such transaction shall be treated as described in this paragraph. For purposes of the preceding sentence, foreign trade income shall not include any income properly allocable to excluded property described in subparagraph (B) of section 927(a)(2) (relating to intangibles).

(3) Income determined with regard to administrative pricing rules

In the case of any transaction with respect to which paragraph (1) or (2) of section 925(a) (or the corresponding provisions of the regulations prescribed under section 925(b)) applies, 16/23 of the foreign trade income derived from such transaction shall be treated as described in this paragraph.

(4) Special rule for foreign trade income allocable to a cooperative

(A) In general

In any case in which a qualified cooperative is a shareholder of a FSC, paragraph (3) shall be applied with respect to that portion of the foreign trade income of such FSC for any taxable year which is properly allocable to the marketing of agricultural or horticultural products (or the providing of related services) by such cooperative by substituting "100 percent" for "16/23".

(B) Paragraph only to apply to amounts FSC distributes

Subparagraph (A) shall not apply for any taxable year unless the FSC distributes to the qualified cooperative the amount which (but for such subparagraph) would not be treated as exempt foreign trade income. Any distribution under this subparagraph for any taxable year—

(i) shall be made before the due date for filing the return of tax for such taxable year, but

(ii) shall be treated as made on the last day of such taxable year.

(5) Special rule for military property

Under regulations prescribed by the Secretary, that portion of the foreign trading gross receipts of the FSC for the taxable year attributable to the disposition of, or services relating to, military property (within the meaning of section 995(b)(3)(B)) which may be treated as exempt foreign trade income shall equal 50 percent of the amount which (but for this paragraph) would be treated as exempt foreign trade income.

(b) Foreign trade income defined

For purposes of this subpart, the term "foreign trade income" means the gross income of a FSC attributable to foreign trading gross receipts.

(Added Pub. L. 98-369, div. A, title VIII, § 801(a), July 18, 1984, 98 Stat. 986.)

Effective Date

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as a note under section 921 of this title.

Section Referred to in Other Sections

This section is referred to in sections 245, 275, 291, 901, 904, 906, 921, 927, 951, 1248 of this title.

§ 924. Foreign trading gross receipts

(a) In general

Except as otherwise provided in this section, for purposes of this subpart, the term "foreign trading gross receipts" means the gross receipts of any FSC which are—

(1) from the sale, exchange, or other disposition of export property,

(2) from the lease or rental of export property for use by the lessee outside the United States,

(3) for services which are related and subsidiary to—

(A) any sale, exchange, or other disposition of export property by such corporation, or

(B) any lease or rental of export property described in paragraph (2) by such corporation,

(4) for engineering or architectural services for construction projects located (or proposed for location) outside the United States, or

(5) for the performance of managerial services for an unrelated FSC or DISC in furtherance of the production of foreign trading gross receipts described in paragraph (1), (2), or (3).

Paragraph (5) shall not apply to a FSC for any taxable year unless at least 50 percent of its gross receipts for such taxable year is derived from activities described in paragraph (1), (2), or (3).

(b) Foreign management and foreign economic process requirements

(1) In general

Except as provided in paragraph (2)—

(A) a FSC shall be treated as having foreign trading gross receipts for the taxable year only if the management of such corporation during such taxable year takes place outside the United States as required by subsection (c), and

(B) a FSC has foreign trading gross receipts from any transaction only if economic processes with respect to such transaction take place outside the United States as required by subsection (d).

(2) Exception for small FSC

(A) In general

Paragraph (1) shall not apply with respect to any small FSC.

(B) Limitation on amount of foreign trading gross receipts of small FSC taken into account

(i) In general

Any foreign trading gross receipts of a small FSC for the taxable year which exceed $5,000,000 shall not be taken into account in determining the exempt foreign trade income of such corporation and shall not be taken into account under any other provision of this subpart.

(ii) Allocation of limitation

If the foreign trading gross receipts of a small FSC exceed the limitation of clause (i), the corporation may allocate such limitation among such gross receipts in such manner as it may select (at such time and in such manner as may be prescribed in regulations).

(iii) Receipts of controlled group aggregated

For purposes of applying clauses (i) and (ii), all small FSC's which are members of the same controlled group of corporations shall be treated as a single corporation.

(iv) Allocation of limitation among members of controlled group

The limitation under clause (i) shall be allocated among the foreign trading gross receipts of small FSC's which are members of the same controlled group of corporations in a manner provided in regulations prescribed by the Secretary.

(c) Requirement that FSC be managed outside the United States

The management of a FSC meets the requirements of this subsection for the taxable year if—

(1) all meetings of the board of directors of the corporation, and all meetings of the shareholders of the corporation, are outside the United States,

(2) the principal bank account of the corporation is maintained outside the United States at all times during the taxable year, and

(3) all dividends, legal and accounting fees, and salaries of officers and members of the board of directors of the corporation disbursed during the taxable year are disbursed out of bank accounts of the corporation maintained outside the United States.

(d) Requirement that economic processes take place outside the United States

(1) In general

The requirements of this subsection are met with respect to the gross receipts of a FSC derived from any transaction if—

(A) such corporation (or any person acting under a contract with such corporation) has participated outside the United States in the solicitation (other than advertising), the negotiation, or the making of the contract relating to such transaction, and

(B) the foreign direct costs incurred by the FSC attributable to the transaction equal or exceed 50 percent of the total direct costs attributable to the transaction.

(2) Alternative 85-percent test

A corporation shall be treated as satisfying the requirements of paragraph (1)(B) with respect to any transaction if, with respect to each of at least 2 paragraphs of subsection (e), the foreign direct costs incurred by such corporation attributable to activities described in such paragraph equal or exceed 85 percent of the total direct costs attributable to activities described in such paragraph.

(3) Definitions

For purposes of this subsection—

(A) Total direct costs

The term "total direct costs" means, with respect to any transaction, the total direct costs incurred by the FSC attributable to activities described in subsection (e) performed at any location by the FSC or any person acting under a contract with such FSC.

(B) Foreign direct costs

The term "foreign direct costs" means, with respect to any transaction, the portion of the total direct costs which are attributable to activities performed outside the United States.

(4) Rules for commissions, etc.

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection and subsection (e) in the case of commissions, rentals, and furnishing of services.

(e) Activities relating to disposition of export property

The activities referred to in subsection (d) are—

(1) advertising and sales promotion,

(2) the processing of customer orders and the arranging for delivery of the export property,

(3) transportation from the time of acquisition by the FSC (or, in the case of a commission relationship, from the beginning of such relationship for such transaction) to the delivery to the customer,

(4) the determination and transmittal of a final invoice or statement of account and the receipt of payment, and

(5) the assumption of credit risk.

(f) Certain receipts not included in foreign trading gross receipts

(1) Certain receipts excluded on basis of use; subsidized receipts and receipts from related parties excluded

The term "foreign trading gross receipts" shall not include receipts of a FSC from a transaction if—

(A) the export property or services—

(i) are for ultimate use in the United States, or

(ii) are for use by the United States or any instrumentality thereof and such use of export property or services is required by law or regulation,

(B) such transaction is accomplished by a subsidy granted by the United States or any instrumentality thereof, or

(C) such receipts are from another FSC which is a member of the same controlled group of corporations of which such corporation is a member.

(2) Investment income; carrying charges

The term "foreign trading gross receipts" shall not include any investment income or carrying charges.

(Added Pub. L. 98-369, div. A, title VIII, § 801(a), July 18, 1984, 98 Stat. 987.)

EFFECTIVE DATE

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, with a special rule for application of subsecs. (c) and (d) for certain contracts, see section 805(a)(1) and (2) of Pub. L. 98-369, set out as a note under section 921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 925 of this title.

§ 925. Transfer pricing rules

(a) In general

In the case of a sale of export property to a FSC by a person described in section 482, the taxable income of such FSC and such person shall be based upon a transfer price which would allow such FSC to derive taxable income attributable to such sale (regardless of the sales price actually charged) in an amount which does not exceed the greatest of—

(1) 1.83 percent of the foreign trading gross receipts derived from the sale of such property by such FSC,

(2) 23 percent of the combined taxable income of such FSC and such person which is attributable to the foreign trading gross receipts derived from the sale of such property by such FSC, or

(3) taxable income based upon the sale price actually charged (but subject to the rules provided in section 482).

Paragraphs (1) and (2) shall apply only if the FSC meets the requirements of subsection (c) with respect to the sale.

(b) Rules for commissions, rentals, and marginal costing

The Secretary shall prescribe regulations setting forth—

(1) rules which are consistent with the rules set forth in subsection (a) for the application of this section in the case of commissions, rentals, and other income, and

(2) rules for the allocation of expenditures in computing combined taxable income under subsection (a)(2) in those cases where a FSC is seeking to establish or maintain a market for export property.

(c) Requirements for use of administrative pricing rules

A sale by a FSC meets the requirements of this subsection if—

(1) all of the activities described in section 924(e) attributable to such sale, and

(2) all of the activities relating to the solicitation (other than advertising), negotiation, and making of the contract for such sale,

have been performed by such FSC (or by another person acting under a contract with such FSC).

(d) Limitation on gross receipts pricing rule

The amount determined under subsection (a)(1) with respect to any transaction shall not exceed 2 times the amount which would be determined under subsection (a)(2) with respect to such transaction.

(e) Taxable income

For purposes of this section, the taxable income of a FSC shall be determined without regard to section 921.

(f) Special rule for cooperatives

In any case in which a qualified cooperative sells export property to a FSC, in computing the combined taxable income of such FSC and such organization for purposes of subsection (a)(2), there shall not be taken into account any deduction allowable under subsection (b) or (c) of section 1382 (relating to patronage dividends, per-unit retain allocations, and nonpatronage distributions).

(Added Pub. L. 98-369, div. A, title VIII, § 801(a), July 18, 1984, 98 Stat. 990.)

EFFECTIVE DATE

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as a note under section 921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 923, 927 of this title.

§ 926. Distributions to shareholders

(a) Distributions made first out of foreign trade income

For purposes of this title, any distribution to a shareholder of a FSC by such FSC which is made out of earnings and profits shall be treated as made—

(1) first, out of earnings and profits attributable to foreign trade income, to the extent thereof, and

(2) then, out of any other earnings and profits.

(b) Distributions by FSC to nonresident aliens and foreign corporations treated as United States connected

For purposes of this title, any distribution by a FSC which is made out of earnings and profits attributable to foreign trade income to any shareholder of such corporation which is a foreign corporation or a nonresident alien individual shall be treated as a distribution—

(1) which is effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States, and

(2) of income which is derived from sources within the United States.

(c) FSC includes former FSC

For purposes of this section, the term "FSC" includes a former FSC.

(Added Pub. L. 98-369, div. A, title VIII, § 801(a), July 18, 1984, 98 Stat. 991.)

EFFECTIVE DATE

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as a note under section 921 of this title.

§ 927. Other definitions and special rules

(a) Export property

For purposes of this subpart—

(1) In general

The term "export property" means property—

(A) manufactured, produced, grown, or extracted in the United States by a person other than a FSC,

(B) held primarily for sale, lease, or rental, in the ordinary course of trade or business, by, or to, a FSC, for direct use, consumption, or disposition outside the United States, and

(C) not more than 50 percent of the fair market value of which is attributable to articles imported into the United States.

For purposes of subparagraph (C), the fair market value of any article imported into the United States shall be its appraised value, as determined by the Secretary under section 402 of the Tariff Act of 1930 (19 U.S.C. 1401a) in connection with its importation.

(2) Excluded property

The term "export property" shall not include—

(A) property leased or rented by a FSC for use by any member of a controlled group of corporations of which such FSC is a member,

(B) patents, inventions, models, designs, formulas, or processes whether or not patented, copyrights (other than films, tapes, records, or similar reproductions, for commercial or home use), good will, trademarks, trade brands, franchises, or other like property,

(C) oil or gas (or any primary product thereof), or

(D) products the export of which is prohibited or curtailed to effectuate the policy set forth in paragraph (2)(C) of section 3 of the Export Administration Act of 1979 (relating to the protection of the domestic economy).

(3) Property in short supply

If the President determines that the supply of any property described in paragraph (1) is insufficient to meet the requirements of the domestic economy, he may by Executive order designate the property as in short supply. Any property so designated shall not be treated as export property during the period beginning with the date specified in the Executive order and ending with the date specified in an Executive order setting forth the President's determination that the property is no longer in short supply.

(4) Qualified cooperative

The term "qualified cooperative" means any organization to which part I of subchapter T applies which is engaged in the marketing of agricultural or horticultural products.

(b) Gross receipts

(1) In general

For purposes of this subpart, the term "gross receipts" means—

(A) the total receipts from the sale, lease, or rental of property held primarily for sale, lease, or rental in the ordinary course of trade or business, and

(B) gross income from all other sources.

(2) Gross receipts taken into account in case of commissions

In the case of commissions on the sale, lease, or rental of property, the amount taken into account for purposes of this subpart as gross receipts shall be the gross receipts on the sale, lease, or rental of the property on which such commissions arose.

(c) Investment income

For purposes of this subpart, the term "investment income" means—

(1) dividends,

(2) interest,

(3) royalties,

(4) annuities,

(5) rents (other than rents from the lease or rental of export property for use by the lessee outside of the United States),

(6) gains from the sale or exchange of stock or securities,

(7) gains from futures transactions in any commodity on, or subject to the rules of, a board of trade or commodity exchange (other than gains which arise out of a bona fide hedging transaction reasonably necessary to conduct the business of the FSC in the manner in which such business is customarily conducted by others),

(8) amounts includible in computing the taxable income of the corporation under part I of subchapter J, and

(9) gains from the sale or other disposition of any interest in an estate or trust.

(d) Other definitions

For purposes of this subpart—

(1) Carrying charges

The term "carrying charges" means—

(A) carrying charges, and

(B) under regulations prescribed by the Secretary, any amount in excess of the price for an immediate cash sale and any other unstated interest.

(2) Transaction

(A) In general

The term "transaction" means—

(i) any sale, exchange, or other disposition,

(ii) any lease or rental, and

(iii) any furnishing of services.

(B) Grouping of transactions

To the extent provided in regulations, any provision of this subpart which, but for this subparagraph, would be applied on a transaction-by-transaction basis may be applied by the taxpayer on the basis of groups of transactions based on product lines or recognized industry or trade usage. Such regulations may permit different groupings for different purposes.

(3) United States defined

The term "United States" includes the Commonwealth of Puerto Rico.

(4) Controlled group of corporations

The term "controlled group of corporations" has the meaning given to such term by section 1563(a), except that—

(A) "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein, and

(B) section 1563(b) shall not apply.

(5) Possessions

The term "possession of the United States" means Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

(6) Section 923(a)(2) non-exempt income

The term "section 923(a)(2) non-exempt income" means any foreign trade income from a transaction with respect to which paragraph (1) or (2) of section 925(a) does not apply and which is not exempt foreign trade income.

(e) Special rules

(1) Source rules for related persons

Under regulations, the income of a person described in section 482 from a transaction giving rise to foreign trading gross receipts of a FSC which is treated as from sources outside the United States shall not exceed the amount which would be treated as foreign source income earned by such person if the pricing rule under section 994 which corresponds to the rule used under section 925 with respect to such transaction applied to such transaction.

(2) Participation in international boycotts, etc.

Under regulations prescribed by the Secretary, the exempt foreign trade income of a FSC for any taxable year shall be limited under rules similar to the rules of clauses (i) and (ii) of section 995(b)(1)(F).

(3) Exchange of information requirements

For purposes of this title, the term "FSC" shall not include any corporation which was created or organized under the laws of any foreign country unless, at the time such corporation was created or organized, there was in effect between such country and the United States—

(A) a bilateral or multilateral agreement described in section 274(h)(6)(C), or

(B) an income tax treaty with respect to which the Secretary certifies that the exchange of information program with such country under such treaty carries out the purposes of this paragraph.

(4) Disallowance of treaty benefits

Any corporation electing to be treated as a FSC under subsection (f)(1) may not claim any benefits under any income tax treaty between the United States and any foreign country.

(5) Exemption from certain other taxes

No tax shall be imposed by any jurisdiction described in subsection (d)(5) on any foreign trade income derived before January 1, 1987.

(f) Election of status as FSC (and as small FSC)

(1) Election

(A) Time for making

An election by a corporation under section 922(a)(2) to be treated as a FSC, and an election under section 922(b)(1) to be a small FSC, shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

(B) Manner of election

An election under subparagraph (A) shall be made in such manner as the Secretary shall prescribe and shall be valid only if all persons who are shareholders in such corporation on the first day of the first taxable year for which such election is effective consent to such election.

(2) Effect of election

If a corporation makes an election under paragraph (1), then the provisions of this subpart shall apply to such corporation for the taxable year of the corporation for which made and for all succeeding taxable years.

(3) Termination of election

(A) Revocation

An election under this subsection made by any corporation may be terminated by revocation of such election for any taxable year of the corporation after the first taxable year of the corporation for which the election is effective. A termination under this paragraph shall be effective with respect to such election—

(i) for the taxable year in which made, if made at any time during the first 90 days of such taxable year, or

(ii) for the taxable year following the taxable year in which made, if made after the close of such 90 days, and

for all succeeding taxable years of the corporation. Such termination shall be made in such manner as the Secretary shall prescribe by regulations.

(B) Continued failure to be a FSC

If a corporation is not a FSC for each of any 5 consecutive taxable years of the corporation for which an election under this subsection is effective, the election to be a FSC shall be terminated and not be in effect for any taxable year of the corporation after such 5th year.

(Added Pub. L. 98-369, div. A, title VIII, § 801(a), July 18, 1984, 98 Stat. 991.)

REFERENCES IN TEXT

Paragraph (2)(C) of section 3 of the Export Administration Act of 1979, referred to in subsec. (a)(2)(D), is classified to section 2402(2)(C) of the Appendix to Title 50, War and National Defense.

EFFECTIVE DATE

Section applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as a note under section 921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 245, 901, 922, 923, 951 of this title.

SUBPART D—POSSESSIONS OF THE UNITED STATES

§ 931. Income from sources within possessions of the United States

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Deductions

[*See main edition for text of* (*1*)]

(2) Exceptions

The following deductions shall be allowed whether or not they are connected with income from sources within the United States:

[*See main edition for text of* (*A*)]

(B) The deduction for losses allowed by section 165(c)(3), but only if the loss is of property within the United States.

[*See main edition for text of* (*C*); (*e*) *to* (*h*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 711(c)(2)(A)(iv), 98 Stat. 945.)

AMENDMENTS

1984—Subsec. (d)(2)(B). Pub. L. 98-369 substituted "for losses" for ", for losses of property not connected with the trade or business if arising from certain casualties or theft,".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98-369, set out as a note under section 165 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32, 48, 63, 86, 153, 221, 901, 936, 957, 1302, 1402, 1504, 6012, 6091 of this title; title 42 section 411; title 48 section 1421i.

§ 933. Income from sources within Puerto Rico

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 86, 876, 957, 1402, 6091, 7655 of this title; title 42 section 411.

§ 934. Limitation on reduction in income tax liability incurred to the Virgin Islands

[*See main edition for text of* (*a*) *to* (*e*)]

(f) [1] Transitional rule

In applying subsection (b)(2) with respect to taxable years beginning after December 31,

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[1] So in original. There are two subsecs. designated "(f)".

1982, and before January 1, 1985, the following percentage shall be substituted for "65 percent":

For taxable years beginning in calendar year:	The percentage is:
1983	55
1984	60

(f)[3] FSC

Subsection (a) shall not apply in the case of a Virgin Islands corporation which is a FSC.

(As amended Pub. L. 98–369, div. A, title VIII, § 801(d)(7), July 18, 1984, 98 Stat. 996.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98–369 added the subsec. (f) relating to FSC.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, set out as an Effective Date note under section 921 of this title.

REPORT ON POSSESSIONS CORPORATIONS

For provisions requiring the Secretary of the Treasury to submit a report to Congress respecting the operation and effect of subsec. (b) of this section for the year 1981 and each second calendar year thereafter, see section 441(a) of Pub. L. 98–369, set out as a note under section 936 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28, 48, 246, 338, 864, 881, 934A, 1442 of this title.

§ 934A. Income tax rate on Virgin Islands source income

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 881, 934, 1442, 1444 of this title.

§ 936. Puerto Rico and possession tax credit

(a) Allowance of credit

[*See main edition for text of (1)*]

(2) Conditions which must be satisfied

The conditions referred to in paragraph (1) are:

[*See main edition for text of (A) and (B)*]

(C) Transitional rule

In applying subparagraph (B) with respect to taxable years beginning after December 31, 1982, and before January 1, 1985, the following percentage shall be substituted for "65 percent":

For taxable years beginning in calendar year:	The percentage is:
1983	55
1984	60

[*See main edition for text of (3); (b) to (e)*]

(f) Limitation on credit for DISC's and FSC's

No credit shall be allowed under this section to a corporation for any taxable year—

(1) for which it is a DISC or former DISC, or

(2) in which it owns at any time stock in a—

(A) DISC or former DISC, or

(B) FSC or former FSC.

[*See main edition for text of (g)*]

(h) Tax treatment of intangible property income

[*See main edition for text of (1) to (4)*]

(5) Election out

[*See main edition for text of (A) and (B)*]

(C) Methods of computation of taxable income

If an election of one of the following methods is in effect pursuant to subparagraph (F) with respect to a product or type of service, an electing corporation shall compute its income derived from the active conduct of a trade or business in a possession with respect to such product or type of service in accordance with the method which is elected.

(i) Cost sharing

(I) Payment of cost sharing

If an election of this method is in effect, the electing corporation must make a payment for its share of the cost (if any) of product area research which is paid or accrued by the affiliated group during that taxable year. Such share shall not be less than the same proportion of the cost of such product area research which the amount of "possession sales" bears to the amount of "total sales" of the affiliated group. The cost of product area research paid or accrued solely by the electing corporation in a taxable year (excluding amounts paid directly or indirectly to or on behalf of related persons and excluding amounts paid under any cost sharing agreements with related persons) will reduce (but not below zero) the amount of the electing corporation's cost sharing payment under this method for that year.

(a) Product area research

For purposes of this section, the term "product area research" includes (notwithstanding any provision to the contrary) the research, development and experimental costs, losses, expenses and other related deductions—including amounts paid or accrued for the performance of research or similar activities by another person; qualified research expenses within the meaning of section 30(b); amounts paid or accrued for the use of, or the right to use, research or any of the items specified in subsection (h)(3)(B)(i); and a proper allowance for amounts incurred for the acquisition of any of the items specified in subsection (h)(3)(B)(i)—which are properly apportioned or allocated to the same product area as that in which the electing corporation conducts its activities, and a ratable part of any such costs, losses, expenses and other deductions which cannot definitely be allocated to a particular product area.

[*See main edition for text of* (*b*) *to* (*e*), (*II*) *and* (*III*)]

(IV) Special rules

[*See main edition for text of* (*a*) *and* (*b*)]

(c) The amount of qualified research expenses, within the meaning of section 30, of any member of the controlled group of corporations (as defined in section 30(f)) of which the electing corporation is a member shall not be affected by the cost sharing payment required under this method.

[*See main edition for text of* (*ii*), (*D*) *to* (*F*), (*6*) *and* (*7*)]

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(22), title VII, § 712(g), title VIII, § 801(d)(11), July 18, 1984, 98 Stat. 843, 947, 997.)

AMENDMENTS

1984—Subsec. (a)(2)(C). Pub. L. 98-369, § 712(g), substituted in table heading "The percentage is" for "The percentage tax is".

Subsec. (f). Pub. L. 98-369, § 801(d)(11), amended subsec. (f) generally, substituting in heading "Limitation on credit for DISC's and FSC's" for "DISC or former DISC corporation ineligible for credit", and in text striking out reference to section 992(a) and inserting provision disallowing a credit to a corporation for a taxable year in which it owns at any time stock in a FSC or former FSC.

Subsec. (h)(5)(C)(i)(I)(a). Pub. L. 98-369, § 474(r)(22)(A), substituted "section 30(b)" for "section 44F(b)".

Subsec. (h)(5)(C)(i)(IV)(c). Pub. L. 98-369, § 474(r)(22)(B), substituted "section 30" for "section 44F" and "section 30(f)" for "section 44F(f)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(22) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 712(g) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 801(d)(11) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

REPORT ON POSSESSIONS CORPORATIONS

Section 441(a) of Pub. L. 98-369 provided that: "The Secretary of the Treasury shall, for the calendar year 1981 and each second calendar year thereafter, submit a report to the Congress within 24 months following the close of such calendar year setting forth an analysis of the operation and effect of sections 936 and 934(b) of the Internal Revenue Code of 1954."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27, 28, 48, 243, 246, 338, 367, 444, 864, 901, 904, 934, 1361, 1504 of this title.

SUBPART F—CONTROLLED FOREIGN CORPORATIONS

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 864, 904, 951, 952, 955, 970, 999, 1373 of this title.

§ 951. Amounts included in gross income of United States shareholders

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Coordination with foreign personal holding company provisions

If, but for this subsection, an amount would be included in the gross income of a United States shareholder for any taxable year both under subsection (a)(1)(A)(i) and under section 551(b) (relating to foreign personal holding company income included in gross income of United States shareholder), such amount shall be included in the gross income of such shareholder only under subsection (a)(1)(A).

(e) Foreign trade income not taken into account

(1) In general

The foreign trade income of a FSC and any deductions which are apportioned or allocated to such income shall not be taken into account under this subpart. For purposes of the preceding sentence, income described in paragraph (2) or (3) of section 921(d) shall be treated as derived from sources within the United States.

(2) Foreign trade income

For purposes of this subsection, the term "foreign trade income" has the meaning given such term by section 923(b), but does not include section 923(a)(2) non-exempt income (within the meaning of section 927(d)(6)).

(As amended Pub. L. 98-369, div. A, title I, § 132(c)(1), title VIII, § 801(d)(4), July 18, 1984, 98 Stat. 666, 996.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369, § 132(c)(1), amended subsec. (d) generally, substituting provision that, if a United States shareholder is required to include in gross income an amount under both subsec. (a)(1)(A)(ii) of this section and section 551(b) of this title, such amount be included only under subsec. (a)(1)(A)(ii) of this section for provision that, if a United States shareholder is subject to tax under section 551(b) of this title, such shareholder not be required to include as gross income any amount under subsec. (a) of this section.

Subsec. (e). Pub. L. 98-369, § 801(d)(4), added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 132(d)(2)(A) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) of subsection (c) [amending subsec. (d) of this section] shall apply to taxable years of United States shareholders beginning after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 801(d)(4) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

Section Referred to in Other Sections

This section is referred to in sections 168, 679, 851, 864, 904, 952, 955, 956, 958, 959, 960, 961, 962, 970, 993, 999, 1246, 1248 of this title.

§ 953. Income from insurance of United States risks

(a) General rule

For purposes of section 952(a)(1), the term "income derived from the insurance of United States risks" means that income which—

[*See main edition for text of (1)*]

(2) would (subject to the modifications provided by paragraphs (1) and (2) of subsection (b)) be taxed under subchapter L of this chapter if such income were the income of a domestic insurance corporation.

This section shall apply only in the case of a controlled foreign corporation which receives, during any taxable year, premiums or other consideration in respect of the reinsurance, and the issuing, of insurance and annuity contracts described in paragraph (1) in excess of 5 percent of the total of premiums and other consideration received during such taxable year in respect of all reinsurance and issuing of insurance and annuity contracts.

(b) Special rules

For purposes of subsection (a)—

(1) A corporation which would, if it were a domestic insurance corporation, be taxable under part II of subchapter L shall apply subsection (a) as if it were taxable under part III of subchapter L.

(2) The following provisions of subchapter L shall not apply:

(A) The special life insurance company deduction and the small life insurance company deduction.

(B) Section 805(a)(5) (relating to operations loss deduction).

(C) Section 832(c)(5) (relating to certain capital losses).

(3) The items referred to in—

(A) section 803(a)(1) (relating to gross amount of premiums and other considerations),

(B) section 803(a)(2) (relating to net decrease in reserves),

(C) section 805(a)(2) (relating to net increase in reserves), and

(D) section 832(b)(4) (relating to premiums earned on insurance contracts),

shall be taken into account only to the extent they are in respect of any reinsurance or the issuing of any insurance or annuity contract described in subsection (a)(1).

(4) All items of income, expenses, losses, and deductions (other than those taken into account under paragraph (3)) shall be properly allocated or apportioned under regulations prescribed by the Secretary.

(As amended Pub. L. 98-369, div. A, title II, § 211(b)(13), July 18, 1984, 98 Stat. 755.)

Amendments

1984—Subsec. (a)(2). Pub. L. 98-369, § 211(b)(13)(D), substituted "and (2)" for ", (2), and (3)".

Subsec. (b)(1). Pub. L. 98-369, § 211(b)(13)(A), redesignated par. (2) as (1). Former par. (1), which provided that the application of part I of subchapter L of this chapter, life insurance company taxable income was the gain from operations as defined in section 809(b), was struck out.

Subsec. (b)(2). Pub. L. 98-369, § 211(b)(13)(B), in amending par. (2) generally, substituted

"(A) The special life insurance company deduction and the small life insurance company deduction.

"(B) Section 805(a)(5) (relating to operations loss deduction).

"(C) Section 832(c)(5) (relating to certain capital losses)."

for

"(A) Section 809(d)(4) (operations loss deduction).

"(B) Section 809(d)(5) (certain nonparticipating contracts).

"(C) Section 809(d)(6) (group life, accident, and health insurance)."

and struck out

"(D) Section 809(d)(10) (small business deduction).

"(E) Section 817(b) (gain on property held on December 31, 1958, and certain substituted property acquired after 1958).

"(F) Section 832(c)(5) (certain capital losses)."

Pub. L. 98-369, § 211(b)(13)(A), redesignated par. (3) as (2). Former par. (2) redesignated (1).

Subsec. (b)(3). Pub. L. 98-369, § 211(b)(13)(A), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(3)(A). Pub. L. 98-369, § 211(b)(13)(C)(i), substituted "section 803(a)(1)" for "section 809(c)(1)".

Subsec. (b)(3)(B). Pub. L. 98-369, § 211(b)(13)(C)(ii), substituted "section 803(a)(2)" for "section 809(c)(2)".

Subsec. (b)(3)(C). Pub. L. 98-369, § 211(b)(13)(C)(iii), substituted "section 805(a)(2)" for "section 809(d)(2)".

Subsec. (b)(4), (5). Pub. L. 98-369, § 211(b)(13)(A), (E), redesignated par. (5) as (4) and substituted therein "paragraph (3)" for "paragraph (4)". Former par. (4) redesignated (3).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Section Referred to in Other Sections

This section is referred to in sections 861, 952, 954, 956, 957, of this title.

§ 954. Foreign base company income

[*See main edition for text of (a) to (d)*]

(e) Foreign base company services income

For purposes of subsection (a)(3), the term "foreign base company services income" means income (whether in the form of compensation, commissions, fees, or otherwise) derived in connection with the performance of technical, managerial, engineering, architectural, scientific, skilled, industrial; commercial, or like services which—

[*See main edition for text of (1) and (2)*]

The preceding sentence shall not apply to income derived in connection with the performance of services which are directly related to the sale or exchange by the controlled foreign corporation of property manufactured, produced, grown, or extracted by it and which are performed prior to the time of the sale or exchange, or of services directly related to an offer or effort to sell or exchange such property. For purposes of paragraph (2), any services performed with respect to any policy of insurance or reinsurance with respect to which the primary insured is a related person (within the meaning of section 864(d)(4)) shall be treated as having been performed in the country within which the insured hazards, risks, losses, or liabilities occur, and except as provided in regulations prescribed by the Secretary, rules similar to the rules of section 953(b) shall be applied in determining the income from such services.

[*See main edition for text of* (*f*) *and* (*g*)]

(h) Foreign base company oil related income

For purposes of this section—

(1) In general

Except as otherwise provided in this subsection, the term "foreign base company oil related income" means foreign oil related income (within the meaning of paragraphs (2) and (3) of section 907(c)) other than income derived from a source within a foreign country in connection with—

[*See main edition for text of* (*A*) *and* (*B*), (*2*)]

(As amended Pub. L. 98-369, div. A, title I, § 137(a), title VII, § 712(f), July 18, 1984, 98 Stat. 672, 947.)

Amendments

1984—Subsec. (e). Pub. L. 98-369, § 137(a), inserted provision that for purposes of par. (2) services performed with respect to any insurance or reinsurance policy be treated as performed in the country of risk.

Subsec. (h)(1). Pub. L. 98-369, § 712(f), substituted "paragraphs (2) and (3) of section 907(c)" for "section 907(c)(2)".

Effective Date of 1984 Amendment

Section 137(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending subsec. (e) of this section] shall apply to taxable years of controlled foreign corporations beginning after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 712(f) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Section Referred to in Other Sections

This section is referred to in sections 552, 864, 881, 936, 952, 955, 958, 970, 971 of this title.

§ 956. Investment of earnings in United States property

[*See main edition for text of* (*a*)]

(b) United States property defined

[*See main edition for text of* (*1*)]

(2) Exceptions

For purposes of subsection (a), the term "United States property" does not include—

[*See main edition for text of* (*A*) *to* (*F*)]

(G) any movable property (other than a vessel or aircraft) which is used for the purpose of exploring for, developing, removing, or transporting resources from ocean waters or under such waters when used on the Continental Shelf of the United States;

(H) an amount of assets of the controlled foreign corporation equal to the earnings and profits accumulated after December 31, 1962, and excluded from subpart F income under section 952(b); and

(I) to the extent provided in regulations prescribed by the Secretary, property which is otherwise United States property which is held by a FSC and which is related to the export activities of such FSC.

(3) Certain trade or service receivables acquired from related United States persons

(A) In general

Notwithstanding paragraph (2), the term "United States property" includes any trade or service receivable if—

(i) such trade or service receivable is acquired (directly or indirectly) from a related person who is a United States person, and

(ii) the obligor under such receivable is a United States person.

(B) Definitions

For purposes of this paragraph, the term "trade or service receivable" and "related person" have the respective meanings given to such terms by section 864(d).

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-369, div. A, title I, § 123(b), title VIII, § 801(d)(8), July 18, 1984, 98 Stat. 646, 996.)

Amendments

1984—Subsec. (b)(2)(I). Pub. L. 98-369, § 801(d)(8), added subpar. (I).

Subsec. (b)(3). Pub. L. 98-369, § 123(b), added par. (3).

Effective Date of 1984 Amendment

Amendment by section 123(b) of Pub. L. 98-369 applicable to accounts receivable and evidences of indebtedness transferred after Mar. 1, 1984, in taxable years ending after such date, with an exception, see section 123(c) of Pub. L. 98-369, set out as a note under section 864 of this title.

Amendment by section 801(d)(8) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

Section Referred to in Other Sections

This section is referred to in sections 864, 902, 951, 955, 958, 964, 4916 of this title.

§ 957. Controlled foreign corporations; United States persons

Section Referred to in Other Sections

This section is referred to in sections 312, 864, 881, 901, 936, 951, 958, 970, 971, 1248 of this title.

§ 958. Rules for determining stock ownership

Section Referred to in Other Sections

This section is referred to in sections 318, 545, 679, 864, 904, 951, 952, 954, 956, 957, 959, 961, 964, 1246, 1248, 1249, 2107 of this title.

§ 959. Exclusion from gross income of previously taxed earnings and profits

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Coordination with amounts previously taxed under section 1248

For purposes of this section and section 960(b), any amount included in the gross income of any person as a dividend by reason of subsection (a) or (f) of section 1248 shall be treated as an amount included in the gross income of such person under section 951(a)(1)(A).

(As amended Pub. L. 98–369, div. A, title I, § 133(b)(1), July 18, 1984, 98 Stat. 668.)

Amendments

1984—Subsec. (e). Pub. L. 98–369 added subsec. (e).

Effective Date of 1984 Amendment

Section 133(d)(2), (3) of Pub. L. 98–369 provided that:

"(2) Subsections (b) and (c).—Except as provided in paragraph (3), the amendments made by subsections (b) and (c) [amending sections 959 and 1248 of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of the Internal Revenue Code of 1954 applies occurring after the date of the enactment of this Act [July 18, 1984].

"(3) Election of earlier date for certain transactions.—

"(A) In general.—If the appropriate election is made under subparagraph (B), the amendments made by subsection (b) [enacting sections 959(e) and 1248(j) of this title] shall apply with respect to transactions to which subsection (a) or (f) of section 1248 of such Code applies occurring after October 9, 1975.

"(B) Election.—

"(i) Subparagraph (A) shall apply with respect to transactions to which subsection (a) of section 1248 of such Code applies if the foreign corporation described in such subsection (or its successor in interest) so elects.

"(ii) Subparagraph (A) shall apply with respect to transactions to which subsection (f) of section 1248 of such Code applies if the domestic corporation described in section 1248(f)(1) of such Code (or its successor) so elects.

"(iii) Any election under clause (i) or (ii) shall be made not later than 180 days after the date of the enactment of this Act [July 18, 1984] and shall be made in such manner as the Secretary of the Treasury or his delegate shall prescribe."

SUBPART I—ADMISSIBILITY OF DOCUMENTATION MAINTAINED IN FOREIGN COUNTRIES

§ 982. Admissibility of documentation maintained in foreign countries

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Definitions and special rules

For purposes of this section—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Authority to extend 90-day period

The Secretary, and any court having jurisdiction over a proceeding under subsection (c)(2), may extend the 90-day period referred to in subsection (a).

[(4) Redesignated (3)]

[*See main edition for text of* (*e*)]

(As amended Pub. L. 98–369, div. A, title VII, § 714(k), July 18, 1984, 98 Stat. 963.)

Amendments

1984—Subsec. (d)(3), (4). Pub. L. 98–369 redesignated par. (4) as (3) and struck out former par. (3) which had provided that an item was to be treated as foreign connected if directly or indirectly from a source outside the United States, or the item (in whole or in part) purported to arise outside the United States, or was otherwise dependent on transactions occurring outside the United States.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

PART IV—DOMESTIC INTERNATIONAL SALES CORPORATIONS

SUBPART A—TREATMENT OF QUALIFYING CORPORATIONS

§ 991. Taxation of a domestic international sales corporation

Transition Rules for DISC's

Pub. L. 98–369, div. A, title VIII, § 805(b), July 18, 1984, 98 Stat. 1001, provided that:

"(1) Close of 1984 taxable years of DISC's.—

"(A) In general.—For purposes of applying the Internal Revenue Code of 1954, the taxable year of each DISC which begins before January 1, 1985, and which (but for this paragraph) would include January 1, 1985, shall close on December 31, 1984. For purposes of such Code, the requirements of section 992(a)(1)(B) of such Code (relating to percentage of qualified export assets on last day of the taxable year) shall not apply to any taxable year ending on December 31, 1984.

"(B) Underpayments of estimated tax.—To the extent provided in regulations prescribed by the Secretary of the Treasury or his delegate, no addition to tax shall be made under section 6654 or 6655 of such Code with respect to any underpayment of any installment required to be paid before April 13, 1985, to the extent the underpayment was created or increased by reason of subparagraph (A).

"(2) Exemption of accumulated DISC income from tax.—

"(A) In general.—For purposes of applying the Internal Revenue Code of 1954 with respect to actual distributions made after December 31, 1984, by a DISC or former DISC which was a DISC on December 31, 1984, any accumulated DISC income of a DISC or former DISC (within the meaning of section 996(f)(1) of such Code) which is derived before January 1, 1985, shall be treated as previously taxed income (within the meaning of section 996(f)(2) of such Code) with respect to which there had previously been a deemed distribution to which section 996(e)(1) of such Code applied.

"(B) Exception for distribution of amounts previously disqualified.—Subparagraph (A) shall not apply to the distribution of any accumulated DISC income of a DISC or former DISC to which section 995(b)(2) of such Code applied by reason of any revocation or disqualification (other than a revocation which under regulations prescribed by the Secretary results solely from the provisions of this title [title VIII, §§ 801 to 805 of Pub. L. 98-369, see Effective Date note set out under section 921 of this title].

"(3) INSTALLMENT TREATMENT OF CERTAIN DEEMED DISTRIBUTIONS OF SHAREHOLDERS.—

"(A) IN GENERAL.—Notwithstanding section 995(b) of such Code, if a shareholder of a DISC elects the application of this paragraph, any qualified distribution shall be treated, for purposes of such Code, as received by such shareholder in 10 equal installments on the last day of each of the 10 taxable years of such shareholder which begins after the first taxable year of such shareholder beginning in 1984. The preceding sentence shall apply without regard to whether the DISC exists after December 31, 1984.

"(B) QUALIFIED DISTRIBUTION.—The term 'qualified distribution' means any distribution which a shareholder is deemed to have received by reason of section 995(b) of such Code with respect to income derived by the DISC in the first taxable year of the DISC beginning—

"(i) in 1984, and

"(ii) after the date in 1984 on which the taxable year of such shareholder begins.

"(C) SHORTER PERIOD FOR INSTALLMENTS.—The Secretary of the Treasury or his delegate may by regulations provide for the election by any shareholder to be treated as receiving a qualified distribution over such shorter period as the taxpayer may elect.

"(D) ELECTIONS.—Any election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

"(4) TREATMENT OF TRANSFERS FROM DISC TO FSC.—Except to the extent provided in regulations, section 367 of such Code shall not apply to transfers made before January 1, 1986 (or, if later, the date 1 year after the date on which the corporation ceases to be a DISC), to a FSC of qualified export assets (as defined in section 993(b) of such Code) held on August 4, 1983, by a DISC in a transaction described in section 351 or 368(a)(1) of such Code.

"(5) DEEMED TERMINATION OF A DISC.—Under regulations prescribed by the Secretary, if any controlled group of corporations of which a DISC is a member establishes a FSC, then any DISC which is a member of such group shall be treated as having terminated its DISC status.

"(6) DEFINITIONS.—For purposes of this subsection, the terms 'DISC' and 'former DISC' have the respective meanings given to such terms by section 992 of such Code."

SPECIAL RULE FOR EXPORT TRADE CORPORATIONS

Pub. L. 98-369, div. A, title VIII, § 805(c), July 18, 1984, 98 Stat. 1002, provided that:

"(1) IN GENERAL.—If, before January 1, 1985, any export trade corporation—

"(A) makes an election under section 927(f)(1) of the Internal Revenue Code of 1954 to be treated as a FSC, or

"(B) elects not to be treated as an export trade corporation with respect to taxable years beginning after December 31, 1984,

rules similar to the rules of paragraphs (2) and (4) of subsection (b) [section 805(b)(2) and (4) of Pub. L. 98-369, set out as a note above] shall apply to such export trade corporation.

"(2) TREATMENT OF TRANSFERS TO FSC.—In the case of any export trade corporation which—

"(A) makes an election described in paragraph (1), and

"(B) transfers before January 1, 1986, any portion of its property to a FSC in a transaction described in section 351 or 368(a)(1),

then, subject to such rules as the Secretary of the Treasury or his delegate may prescribe based on principles similar to the principles of section 505(a) and (b) of the Revenue Act of 1971 [section 505(a) and (b) of Pub. L. 92-178, set out as a note under section 970 of this title], no income, gain, or loss shall be recognized on such transfer or on the distribution of any stock of the FSC received (or treated as received) in connection with such transfer.

"(3) EXPORT TRADE CORPORATION.—For purposes of this subsection, the term 'export trade corporation' has the meaning given such term by section 971 of the Internal Revenue Code of 1954."

SUBMISSION OF ANNUAL REPORTS TO CONGRESS

Section 506 of Pub. L. 92-178, which directed, that commencing with calendar year 1972, the Secretary of the Treasury submit annual reports to Congress on the effect and operation of title V, §§ 501 to 507, of Pub. L. 92-178, was probably intended by Congress to be repealed by Pub. L. 98-369, div. A, title VIII, § 804(b)(1), July 18, 1984, 98 Stat. 1000, which directed that section 506 of Pub. L. 92-178 relating to submission of annual reports to Congress be repealed. Section 804(b)(2) of Pub. L. 98-369 provided that the repeal is applicable to reports for calendar years after 1984.

§ 992. Requirements of a domestic international sales corporation

(a) Definition of "DISC" and "former DISC"

(1) DISC

For purposes of this title, the term "DISC" means, with respect to any taxable year, a corporation which is incorporated under the laws of any State and satisfies the following conditions for the taxable year:

[*See main edition for text of* (A) *and* (B)]

(C) such corporation does not have more than one class of stock and the par or stated value of its outstanding stock is at least $2,500 on each day of the taxable year,

(D) the corporation has made an election pursuant to subsection (b) to be treated as a DISC and such election is in effect for the taxable year, and

(E) such corporation is not a member of any controlled group of which a FSC is a member.

[*See main edition for text of* (2) *and* (3); (*b*) *to* (*e*)]

(As amended Pub. L. 98-369, div. A, title VIII, § 802(c)(1), July 18, 1984, 98 Stat. 999.)

AMENDMENTS

1984—Subsec. (a)(1)(E). Pub. L. 98-369 added subpar. (E).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 246, 751, 861, 901, 904, 991, 995, 996, 1014, 1504, 6501 of this title.

§ 993. Definitions

(a) Qualified export receipts

[See main edition for text of (1) and (2)]

(3) Definition of controlled group

For purposes of this part, the term "controlled group" has the meaning assigned to the term "controlled group of corporations" by section 1563(a), except that the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears therein, and section 1563(b) shall not apply.

[See main edition for text of (b) to (g)]

(As amended Pub. L. 98-369, div. A, title VIII, § 802(c)(2), July 18, 1984, 98 Stat. 999.)

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-369 substituted "the term 'controlled group of corporations' by" for "such term by".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

§ 994. Inter-company pricing rules

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 927 of this title.

SUBPART B—TREATMENT OF DISTRIBUTIONS TO SHAREHOLDERS

§ 995. Taxation of DISC income to shareholders

[See main edition for text of (a)]

(b) Deemed distributions

(1) Distributions in qualified years

A shareholder of a DISC shall be treated as having received a distribution taxable as a dividend with respect to his stock in an amount which is equal to his pro rata share of the sum (or, if smaller, the earnings and profits for the taxable year) of—

[See main edition for text of (A) to (D)]

(E) the taxable income of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000,

(F) the sum of—

(i) one-seventeenth of the excess of the taxable income of the DISC for the taxable year, before reduction for any distributions during the year, over the sum of the amounts deemed distributed for the taxable year under subparagraphs (A), (B), (C), (D), and (E),

[See main edition for text of (ii) and (iii), (G)]

Distributions described in this paragraph shall be deemed to be received on the last day of the taxable year of the DISC in which the income was derived. In the case of a distribution described in subparagraph (G), earnings and profits for the taxable year shall include accumulated earnings and profits.

[See main edition for text of (2) and (3)]

(4) Aggregation of qualified export receipts

(A) In general

For purposes of applying paragraph (1)(E), all DISC's which are members of the same controlled group shall be treated as a single corporation.

(B) Allocation

The dollar amount under paragraph (1)(E) shall be allocated among the DISC's which are members of the same controlled group in a manner provided in regulations prescribed by the Secretary.

[See main edition for text of (c) and (d)]

(e) Certain transfers of DISC assets

If—

(1) a corporation owns, directly or indirectly, all of the stock of a subsidiary and a DISC,

(2) the subsidiary has been engaged in the active conduct of a trade or business (within the meaning of section 355(b)) throughout the 5-year period ending on the date of the transfer and continues to be so engaged thereafter, and

(3) during the taxable year of the subsidiary in which its stock is transferred and its preceding taxable year, such trade or business gives rise to qualified export receipts of the subsidiary and the DISC,

then, under such terms and conditions as the Secretary by regulations shall prescribe, transfers of assets, stock, or both, will be deemed to be a reorganization within the meaning of section 368, a transaction to which section 355 applies, an exchange of stock to which section 351 applies, or a combination thereof. The preceding sentence shall apply only to the extent that the transfer or transfers involved are for the purpose of preventing the separation of the ownership of the stock in the DISC from the ownership of the trade or business which (during the base period) produced the export gross receipts of the DISC.

(f) Interest on DISC-related deferred tax liability

(1) In general

A shareholder of a DISC shall pay for each taxable year interest in an amount equal to the product of—

(A) the shareholder's DISC-related deferred tax liability for such year, and

(B) the base period T-bill rate.

(2) Shareholder's DISC-related deferred tax liability

For purposes of this subsection—

(A) In general

The term "shareholder's DISC-related deferred tax liability" means, with respect to any taxable year of a shareholder of a DISC, the excess of—

(i) the amount which would be the tax liability of the shareholder for the taxable year if the deferred DISC income of such shareholder for such taxable year were included in gross income as ordinary income, over

(ii) the actual amount of the tax liability of such shareholder for such taxable year.

Determinations under the preceding sentence shall be made without regard to carrybacks to such taxable year.

(B) Adjustments for losses, credits, and other items

The Secretary shall prescribe regulations which provide such adjustments—

(i) to the accounts of the DISC, and

(ii) to the amount of any carryover or carryback of the shareholder,

as may be necessary or appropriate in the case of net operating losses, credits, and carryovers, and carrybacks of losses and credits.

(C) Tax liability

The term "tax liability" means the amount of the tax imposed by this chapter for the taxable year reduced by credits allowable against such tax (other than credits allowable under sections 31, 32, and 34).

(3) [1] Deferred DISC income

For purposes of this subsection—

(A) In general

The term "deferred DISC income" means, with respect to any taxable year of a shareholder, the excess of—

(i) the shareholder's pro rata share of accumulated DISC income (for periods after 1984) of the DISC as of the close of the computation year, over

(ii) the amount of the distributions-in-excess-of-income for the taxable year of the DISC following the computation year.

(B) Computation year

For purposes of applying subparagraph (A) with respect to any taxable year of a shareholder, the computation year is the taxable year of the DISC which ends with (or within) the taxable year of the shareholder which precedes the taxable year of the shareholder for which the amount of deferred DISC income is being determined.

(C) Distributions-in-excess-of-income

For purposes of subparagraph (A), the term "distributions-in-excess-of-income" means, with respect to any taxable year of a DISC, the excess (if any) of—

(i) the amount of actual distributions to the shareholder out of accumulated DISC income, over

(ii) the shareholder's pro rata share of the DISC income for such taxable year.

(3) [1] Base period T-bill rate

For purposes of this subsection, the term "base period T-bill rate" means the annual rate of interest determined by the Secretary to be equivalent to the average investment yield of United States Treasury bills with maturities of 52 weeks which were auctioned during the 1-year period ending on September 30 of the calendar year ending with (or of the most recent calendar year ending before) the close of the taxable year of the shareholder.

(4) Short years

The Secretary shall prescribe such regulations as may be necessary for the application of this subsection to short years of the DISC, the shareholder, or both.

(5) Payment and assessment and collection of interest

The interest accrued during any taxable year which a shareholder is required to pay under paragraph (1) shall be treated, for purposes of this title, as interest payable under section 6601 and shall be paid by the shareholder at the time the tax imposed by this chapter for such taxable year is required to be paid.

[(g) Redesignated (e)]

(As amended Pub. L. 98–369, div. A, title I, § 68(d), title VIII, § 802(a), (b), July 18, 1984, 98 Stat. 588, 997, 999.)

AMENDMENTS

1984—Subsec. (b)(1)(E). Pub. L. 98–369, § 802(b)(1), substituted "of the DISC attributable to qualified export receipts of the DISC for the taxable year which exceed $10,000,000" for "for the taxable year attributable to base period export gross receipts (as defined in subsection (e))".

Subsec. (b)(1)(F)(i). Pub. L. 98–369, § 68(d), substituted "one-seventeenth" for "one/half".

Subsec. (b)(4). Pub. L. 98–369, § 802(b)(2), added par. (4).

Subsec. (e). Pub. L. 98–369, § 802(a)(1), (2), redesignated subsec. (g) as (e). Former subsec. (e), which related to definitions and special rules relating to computation of taxable income attributable to base period export gross receipts, was struck out.

Subsec. (f). Pub. L. 98–369, § 802(a)(1), (3), added subsec. (f). Former subsec. (f), which related to small DISCs, was struck out.

Subsec. (g). Pub. L. 98–369, § 802(a)(2), redesignated subsec. (g) as (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 68(d) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1984, see section 68(e)(1) of Pub. L. 98–369, set out as a note under section 291 of this title.

Amendment by section 802(a) and (b) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, set out as an Effective Date note under section 921 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 246, 751, 861, 923, 927, 996, 999, 1014 of this title.

§ 996. Rules for allocation in the case of distributions and losses

[See main edition for text of (a) to (f)]

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[1] So in original. There are two pars. designated "(3)".

(g) Effectively connected income

In the case of a shareholder who is a nonresident alien individual or a foreign corporation, trust, or estate, gains referred to in section 995(c) and all distributions out of accumulated DISC income including deemed distributions shall be treated as gains and distributions which are effectively connected with the conduct of a trade or business conducted through a permanent establishment of such shareholder within the United States and which are derived from sources within the United States.

(As amended Pub. L. 98-369, div. A, title VIII, § 801(d)(10), July 18, 1984, 98 Stat. 997.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-369 inserted "and which are derived from sources within the United States".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to distributions on or after June 22, 1984, see section 805(a)(3) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

PART V—INTERNATIONAL BOYCOTT DETERMINATIONS

§ 999. Reports by taxpayers; determinations

[See main edition for text of (a) and (b)]

(c) International boycott factor

(1) International boycott factor

For purposes of sections 908(a), 952(a)(3), and 995(b)(1)(F)(i), the international boycott factor is a fraction, determined under regulations prescribed by the Secretary, the numerator of which reflects the world-wide operations of a person (or, in the case of a controlled group (within the meaning of section 993(a)(3)) which includes that person, of the group) which are operations in or related to a group of countries associated in carrying out an international boycott in or with which that person or a member of that controlled group has participated or cooperated in the taxable year, and the denominator of which reflects the world-wide operations of that person or group.

(2) Specifically attributable taxes and income

If the taxpayer clearly demonstrates that the foreign taxes paid and income earned for the taxable year are attributable to specific operations, then, in lieu of applying the international boycott factor for such taxable year, the amount of the credit disallowed under section 908(a), the addition to subpart F income under section 952(a)(3), and the amount of deemed distribution under section 995(b)(1)(F)(i) for the taxable year, if any, shall be the amount specifically attributable to the operations in which there was participation in or cooperation with an international boycott under section 999(b)(1).

[See main edition for text of (3); (d) to (f)]

(As amended Pub. L. 98-369, div. A, title VIII, § 802(c)(3), July 18, 1984, 98 Stat. 999.)

AMENDMENTS

1984—Subsec. (c)(1), (2). Pub. L. 98-369 substituted "995(b)(1)(F)(i)" for "995(b)(1)(F)(ii)" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

REPORTS BY THE SECRETARY

Section 1067 of Pub. L. 94-455, as amended by Pub. L. 98-369, div. A, title IV, § 441(c)(1), July 18, 1984, 98 Stat. 815, provided that:

"(a) GENERAL RULE.—As soon after the close of each 4-year period as the data become available, the Secretary shall transmit a report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate setting forth for such 4-year period—

"(1) the number of reports filed under section 999(a) of the Internal Revenue Code of 1954 for taxable years ending with or within each calendar year in such 4-year period,

"(2) the number of such reports with respect to each such calendar year on which the taxpayer indicated international boycott participation or cooperation (within the meaning of section 999(b)(3) of such Code), and

"(3) a detailed description of the manner in which the provisions of such Code relating to international boycott activity have been administered during such 4-year period.

"(b) 4-YEAR PERIOD.—For purposes of subsection (a), the term '4-year period' means the period consisting of 4 calendar years beginning with calendar year 1982 and each subsequent fourth calendar year."

[Section 441(c)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [amending note set out above] shall apply to reports for periods after December 31, 1981."]

Subchapter O—Gain or Loss on Disposition of Property

PART I—DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

§ 1001. Determination of amount of and recognition of gain or loss

[See main edition for text of (a) to (d)]

(e) Certain term interests

(1) In general

In determining gain or loss from the sale or other disposition of a term interest in property, that portion of the adjusted basis of such interest which is determined pursuant to section 1014, 1015, or 1041 (to the extent that such adjusted basis is a portion of the entire adjusted basis of the property) shall be disregarded.

[See main edition for text of (2) and (3); (f)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 421(b)(4), 98 Stat. 794.)

AMENDMENTS

1984—Subsec. (e)(1). Pub. L. 98-369 inserted reference to section 1041.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

Cross References

Recognition of gain or loss on transfer of obsolete vessels under Merchant Marine Act, see section 1160 of Title 46, Appendix, Shipping.

PART II—BASIS RULES OF GENERAL APPLICATION

§ 1011. Adjusted basis for determining gain or loss

Cross References

Basis for determining gain or loss on new vessel acquired in exchange for obsolete vessel under Merchant Marine Act, see section 1160 of Title 46, Appendix, Shipping.

§ 1014. Basis of property acquired from a decedent

Section Referred to in Other Sections

This section is referred to in sections 168, 179, 338, 382, 551, 644, 1001, 1223, 1246, 2032A, 2614 of this title.

§ 1015. Basis of property acquired by gifts and transfers in trust

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Gifts between spouses

In the case of any property acquired by gift in a transfer described in section 1041(a), the basis of such property in the hands of the transferee shall be determined under section 1041(b)(2) and not this section.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 421(b)(5), 98 Stat. 794.)

Amendments

1984—Subsec. (e). Pub. L. 98-369 added subsec. (e).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

§ 1016. Adjustments to basis

(a) General rule

Proper adjustment in respect of the property shall in all cases be made—

[*See main edition for text of* (*1*) *to* (*16*)]

(17) in the case of any evidence of indebtedness referred to in section 811(b) (relating to amortization of premium and accrual of discount in the case of life insurance companies), to the extent of the adjustments required under section 811(b) (or the corresponding provisions of prior income tax laws) for the taxable year and all prior taxable years;

[*See main edition for text of* (*18*) *to* (*20*)]

(21) to the extent provided in section 23(e), in the case of property with respect to which a credit has been allowed under section 23;

[*See main edition for text of* (*22*) *and* (*23*)]

(24) to the extent provided in section 48(q) in the case of expenditures with respect to which a credit has been allowed under section 38,[1]

(25) for amounts allowed as deductions under section 58(i) (relating to optional 10-year writeoff of certain tax preferences),[1]

(26) to the extent provided in section 1059 (relating to reduction in basis for extraordinary dividends),[1] and

(27) in the case of qualified replacement property, the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale or exchange of any property, to the extent provided in section 1042(c).

(b) Substituted basis

Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in subsection (a) shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 43(a)(2), 53(d)(3), title II, § 211(b)(14), title IV, § 474(r)(23), title V, § 541(b)(2), 98 Stat. 558, 568, 756, 844, 890.)

Amendments

1984—Subsec. (a)(17). Pub. L. 98-369, § 211(b)(14), substituted "section 811(b)" for "section 818(b)" in two places.

Subsec. (a)(21). Pub. L. 98-369, § 474(r)(23), substituted "section 23(e)" for "section 44C(e)" and "section 23" for "section 44C".

Subsec. (a)(26). Pub. L. 98-369, § 53(d)(3), added par. (26).

Subsec. (a)(27). Pub. L. 98-369, § 541(b)(2), added par. (27).

Subsec. (b). Pub. L. 98-369, § 43(a)(2), struck out "The term 'substituted basis' as used in this section means a basis determined under any provision of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses), or under any corresponding provision of a prior income tax law, providing that the basis shall be determined (1) by reference to the basis in the hands of a transferor, donor, or grantor, or (2) by reference to other property held at any time by the person for whom the basis is to be determined." See section 7701(a)(42) of this title.

Effective Date of 1984 Amendment

Amendment by section 43(a)(2) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98–369, set out as an Effective Date note under section 1271 of this title.

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[1] So in original. The comma probably should be a semicolon.

Amendment by section 53(d)(3) of Pub. L. 98–369 applicable to distribution after Mar. 1, 1984, in taxable years ending after such date, see section 53(e)(1) of Pub. L. 98–369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 211(b)(14) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(23) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 541(b)(2) of Pub. L. 98–369 applicable to sales of securities in taxable years beginning after July 18, 1984, see section 541(c) of Pub. L. 98-369, set out as an Effective Date note under section 1042 of this title.

Section Referred to in Other Sections

This section is referred to in sections 75, 126, 167, 168, 174, 177, 291, 312, 372, 616, 818, 1011, 1015, 1034, 1053, 1250, 6362 of this title; title 43 section 1620.

§ 1023. Cross references

References in Text

Section 511 of the Merchant Marine Act, 1936, referred to in par. (1), is classified to section 1161 of Title 46, Appendix, Shipping.

PART III—COMMON NONTAXABLE EXCHANGES

Sec.	
1041.	Transfers of property between spouses or incident to divorce.
1042.	Sales of stock to employees.[1]

Amendments

1984—Pub. L. 98–369, div. A, title IV, § 421(c), title V, § 541(b)(3), July 18, 1984, 98 Stat. 794, 890, added items 1041 and 1042.

§ 1031. Exchange of property held for productive use or investment

(a) Nonrecognition of gain or loss from exchanges solely in kind

(1) In general

No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment.

(2) Exception

This subsection shall not apply to any exchange of—

(A) stock in trade or other property held primarily for sale,

(B) stocks, bonds, or notes,

(C) other securities or evidences of indebtedness or interest,

(D) interests in a partnership,

(E) certificates of trust or beneficial interests, or

(F) choses in action.

(3) Requirement that property be identified and that exchange be completed not more than 180 days after transfer of exchanged property

For purposes of this subsection, any property received by the taxpayer shall be treated as property which is not like-kind property if—

(A) such property is not identified as property to be received in the exchange before the day which is 45 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(B) such property is received after the earlier of—

(i) the day which is 180 days after the date on which the taxpayer transfers the property relinquished in the exchange, or

(ii) the due date (determined with regard to extension) for the transferor's return of the tax imposed by this chapter for the taxable year in which the transfer of the relinquished property occurs.

[See main edition for text of (b) to (e)]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title I, § 77(a), 98 Stat. 595.)

Amendments

1984—Subsec. (a). Pub. L. 98–369, § 77(a), in amending subsec. generally, designated existing provisions as par. (1), as so designated, substituted "No gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like kind which is to be held either for productive use in a trade or business or for investment" for "No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment", and added pars. (2) and (3).

Effective Date of 1984 Amendment

Section 77(b) of Pub. L. 98–369 provided that:

"(1) In general.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending subsec. (a) of this section] shall apply to transfers made after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) Binding contract exception for transfer of partnership interests.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall not apply in the case of any exchange pursuant to a binding contract in effect on March 1, 1984, and at all times thereafter before the exchange.

"(3) Requirement that property be identified within 45 days and that exchange be completed within 180 days.—Paragraph (3) of section 1031(a) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall apply—

"(A) to transfers after the date of the enactment of this Act [July 18, 1984], and

"(B) to transfers on or before such date of enactment if the property to be received in the exchange is not received before January 1, 1987.

In the case of any transfer on or before the date of the enactment of this Act which the taxpayer treated as part of a like-kind exchange, the period for assessing any deficiency of tax attributable to the amendment made by subsection (a) [amending subsec. (a) of this section] shall not expire before January 1, 1988.

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[1] So in original. Does not conform to section catchline.

"(4) SPECIAL RULE WHERE PROPERTY IDENTIFIED IN BINDING CONTRACT.—If the property to be received in the exchange is identified in a binding contract in effect on June 13, 1984, and at all times thereafter before the transfer, paragraph (3) shall be applied—

"(A) by substituting 'January 1, 1989' for 'January 1, 1987', and

"(B) by substituting 'January 1, 1990' for 'January 1, 1988'.

"(5) SPECIAL RULE FOR LIKE-KIND EXCHANGE OF PARTNERSHIP INTERESTS.—Paragraph (2)(D) of section 1031(a) of the Internal Revenue Code of 1954 (as amended by subsection (a)) shall not apply to any exchange of an interest as general partner pursuant to a plan of reorganization of ownership interest under a contract which took effect on March 29, 1984, and which was executed on or before March 31, 1984, but only if all the exchanges contemplated by the reorganization plan are completed on or before December 31, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 83, 168, 425, 453, 454, 1037, 1245, 1250, 2032A of this title.

§ 1032. Exchange of stock for property

(a) Nonrecognition of gain or loss

No gain or loss shall be recognized to a corporation on the receipt of money or other property in exchange for stock (including treasury stock) of such corporation. No gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option to buy or sell its stock (including treasury stock).

[*See main edition for text of* (*b*)]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title I, § 57(a), 98 Stat. 574.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98–369 added provision that no gain or loss shall be recognized by a corporation with respect to any lapse or acquisition of an option to buy or sell its stock (including treasury stock).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 57(b) of Pub. L. 98–369 provided that: "The amendment made by subsection (a) [amending subsec. (a) of this section] shall apply to options acquired or lapsed after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

§ 1033. Involuntary conversions

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Condemnation of real property held for productive use in trade or business or for investment

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Election to treat outdoor advertising displays as real property

(A) In general

A taxpayer may elect, at such time and in such manner as the Secretary may prescribe, to treat property which constitutes an outdoor advertising display as real property for purposes of this chapter. The election provided by this subparagraph may not be made with respect to any property with respect to which the investment credit determined under section 46(a) is or has been claimed or with respect to which an election under section 179(a) (relating to election to expense certain depreciable business assets) is in effect.

[*See main edition for text of* (*B*) *to* (*D*), (*4*); (*h*)]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title IV, § 474(r)(24), 98 Stat. 844.)

AMENDMENTS

1984—Subsec. (g)(3)(A). Pub. L. 98–369 substituted "the investment credit determined under section 46(a)" for "the credit allowed by section 38 (relating to investment in certain depreciable property)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(24) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 121, 168, 337, 361, 453, 1016, 1071, 1223, 1245, 1250, 1351, 2032A, 6212, 6504 of this title; title 25 sections 1716, 1729, 1754.

§ 1034. Rollover of gain on sale of principal residence

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Members of Armed Forces

(1) In general

The running of any period of time specified in subsection (a) or (c) (other than the 2 years referred to in subsection (c)(4)) shall be suspended during any time that the taxpayer (or his spouse if the old residence and the new residence are each used by the taxpayer and his spouse as their principal residence) serves on extended active duty with the Armed Forces of the United States after the date of the sale of the old residence, except that any such period of time as so suspended shall not extend beyond the date 4 years after the date of the sale of the old residence.

(2) Members stationed outside the United States or required to reside in Government quarters

In the case of any taxpayer who, during any period of time the running of which is suspended by paragraph (1)—

(A) is stationed outside of the United States, or

(B) after returning from a tour of duty outside of the United States and pursuant to a determination by the Secretary of Defense that adequate off-base housing is not available at a remote base site, is required to reside in on-base Government quarters,

any such period of time as so suspended shall not expire before the last day described in subparagraph (A) or (B), as the case may be, except that any such period of time as so suspended shall not extend beyond the date which is 8 years after the date of the sale of the old residence.

(3) Extended active duty defined

For purposes of this subsection, the term "extended active duty" means any period of active duty pursuant to a call or order to such duty for a period in excess of 90 days or for an indefinite period.

[*See main edition for text of* (*i*) *to* (*l*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1053(a), 98 Stat. 1045.)

AMENDMENTS

1984—Subsec. (h). Pub. L. 98-369, in amending subsec. generally, divided existing unnumbered provisions into pars. (1) and (3), and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1053(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (h) of this section] shall apply to sales of old residences (within the meaning of section 1034 of the Internal Revenue Code of 1954) after the date of the enactment of this Act [July 18, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23, 25, 55, 57, 121, 280A, 483, 512, 1016, 1038, 1223, 1250, 1274, 6212, 6504 of this title.

§ 1035. Certain exchanges of insurance policies

[*See main edition for text of* (*a*)]

(b) Definitions

For the purpose of this section—

(1) Endowment contract

A contract of endowment insurance is a contract with an insurance company subject to tax under subchapter L which depends in part on the life expectancy of the insured, but which may be payable in full in a single payment during his life.

[*See main edition for text of* (*2*) *and* (*3*); (*c*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title II, §§ 211(b)(15), 224(a), 98 Stat. 756, 776.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-369, § 224(a), which directed the substitution of "an insurance company subject to tax under subchapter L" for "a life insurance company as defined in section 801", was executed by making such substitution for "a life insurance company as defined in section 816" to reflect the probable intent of Congress and the earlier amendment by Pub. L. 98-369, § 211(b)(15), which substituted "as defined in section 816" for "as defined in section 801".

Pub. L. 98-369, § 211(b)(15), substituted "section 816" for "section 801".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 211(b)(5) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Section 224(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (b)(1) of this section] shall apply to all exchanges whether before, on, or after the date of the enactment of this Act [July 18, 1984]."

§ 1037. Certain exchanges of United States obligations

[*See main edition for text of* (*a*)]

(b) Application of original issue discount rules

(1) Exchanges involving obligations issued at a discount

In any case in which gain has been realized but not recognized because of the provisions of subsection (a) (or so much of section 1031(b) as relates to subsection (a) of this section), to the extent such gain is later recognized by reason of a disposition or redemption of an obligation received in an exchange subject to such provisions, the first sentence of section 1271(c)(2) shall apply to such gain as though the obligation disposed of or redeemed were the obligation surrendered to the Government in the exchange rather than the obligation actually disposed of or redeemed. For purposes of this paragraph and subpart A of part V of subchapter P, if the obligation surrendered in the exchange is a nontransferable obligation described in subsection (a) or (c) of section 454—

[*See main edition for text of* (*A*) *and* (*B*)]

(2) Exchanges of transferable obligations issued at not less than par

In any case in which subsection (a) (or so much of section 1031(b) or (c) as relates to subsection (a) of this section) has applied to the exchange of a transferable obligation which was issued at not less than par for another transferable obligation, the issue price of the obligation received from the Government in the exchange shall be considered for purposes of applying subpart A of part V of subchapter P to be the same as the issue price of the obligation surrendered to the Government in the exchange, increased by the amount of other consideration (if any) paid to the United States as a part of the exchange.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-369, div. A, title I, § 42(a)(11), July 18, 1984, 98 Stat. 557.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 42(a)(11)(C), substituted "original issue discount rules" for "section 1232" in heading.

Subsec. (b)(1). Pub. L. 98-369, § 42(a)(11)(A), (B), substituted "section 1271(c)(2)" for "section 1232(a)(2)(B)", and "subpart A of part V of subchapter P" for "section 1232".

Subsec. (b)(2). Pub. L. 98-369, § 42(a)(11)(B), substituted "subpart A of part V of subchapter P" for "section 1232".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

§ 1041. Transfers of property between spouses or incident to divorce

(a) General rule

No gain or loss shall be recognized on a transfer of property from an individual to (or in trust for the benefit of)—

(1) a spouse, or

(2) a former spouse, but only if the transfer is incident to the divorce.

(b) Transfer treated as gift; transferee has transferor's basis

In the case of any transfer of property described in subsection (a)—

(1) for purposes of this subtitle, the property shall be treated as acquired by the transferee by gift, and

(2) the basis of the transferee in the property shall be the adjusted basis of the transferor.

(c) Incident to divorce

For purposes of subsection (a)(2), a transfer of property is incident to the divorce if such transfer—

(1) occurs within 1 year after the date on which the marriage ceases, or

(2) is related to the cessation of the marriage.

(d) Special rule where spouse is nonresident alien

Paragraph (1) of subsection (a) shall not apply if the spouse of the individual making the transfer is a nonresident alien.

(Added Pub. L. 98-369, div. A, title IV, § 421(a), July 18, 1984, 98 Stat. 793.)

EFFECTIVE DATE

Section 421(d) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending sections 47, 72, 101, 453, 453B, 1001, 1015, and 1239 of this title] shall apply to transfers after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) ELECTION TO HAVE AMENDMENTS APPLY TO TRANSFERS AFTER 1983.—If both spouses or former spouses make an election under this paragraph, the amendments made by this section shall apply to all transfers made by such spouses (or former spouses) after December 31, 1983.

"(3) EXCEPTION FOR TRANSFERS PURSUANT TO EXISTING DECREES.—Except in the case of an election under paragraph (2), the amendments made by this section shall not apply to transfers under any instrument in effect on or before the date of the enactment of this Act unless both spouses (or former spouses) elect to have such amendments apply to transfers under such instrument.

"(4) ELECTION.—Any election under paragraph (2) or (3) shall be made in such manner, at such time, and subject to such conditions, as the Secretary of the Treasury or his delegate may by regulations prescribe."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 453B, 1001, 1015, 2210 of this title.

§ 1042. Sales of stock to stock ownership plans or certain cooperatives

(a) Nonrecognition of gain

If—

(1) the taxpayer elects the application of this section with respect to any sale of qualified securities,

(2) the taxpayer purchases qualified replacement property within the replacement period, and

(3) the requirements of subsection (b) are met with respect to such sale,

then the gain (if any) on such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost to the taxpayer of such qualified replacement property.

(b) Requirements to qualify for nonrecognition

A sale of qualified securities meets the requirements of this subsection if—

(1) Sale to employee organizations

The qualified securities are sold to—

(A) an employee stock ownership plan (as defined in section 4975(e)(7)), or

(B) an eligible worker-owned cooperative.

(2) Employees must own 30 percent of stock after sale

The plan or cooperative referred to in paragraph (1) owns, immediately after the sale, at least 30 percent of the total value of the employer securities (within the meaning of section 409(*l*)) outstanding as of such time.

(3) Plan maintained for benefit of employees

No portion of the assets of the plan or cooperative attributable to employer securities (within the meaning of section 409(*l*)) acquired by the plan or cooperative described in paragraph (1) accrue under such plan, or are allocated by such cooperative, for the benefit of—

(A) the taxpayer,

(B) any person who is a member of the family of the taxpayer (within the meaning of section 267(c)(4)), or

(C) any other person who owns (after application of section 318(a)) more than 25 percent in value of any class of outstanding employer securities (within the meaning of section 409(*l*)).

(4) Written statement required

(A) In general

The taxpayer files with the Secretary the written statement described in subparagraph (B).

(B) Statement

A statement is described in this subparagraph if it is a verified written statement of—

(i) the employer whose employees are covered by the plan described in paragraph (1), or

(ii) any authorized officer of the cooperative described in paragraph (1),

consenting to the application of section 4978(a) with respect to such employer or cooperative.

(c) Definitions; special rules

For purposes of this section.—[3]

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[3] So in original. The period probably should not appear.

(1) Qualified securities

The term "qualified securities" means employer securities (as defined in section 409(*l*)) which—

(A) are issued by a domestic corporation that has no securities outstanding that are readily tradable on an established securities market,

(B) at the time of the sale described in subsection (a)(1), have been held by the taxpayer for more than 1 year, and

(C) were not received by the taxpayer in—

(i) a distribution from a plan described in section 401(a), or

(ii) a transfer pursuant to an option or other right to acquire stock to which section 83, 422, 422A, 423, or 424 applies.

(2) Eligible worker-owned cooperative

The term "eligible worker-owned cooperative" means any organization—

(A) to which part I of subchapter T applies,

(B) a majority of the membership of which is composed of employees of such organization,

(C) a majority of the voting stock of which is owned by members,

(D) a majority of the board of directors of which is elected by the members on the basis of 1 person 1 vote, and

(E) a majority of the allocated earnings and losses of which are allocated to members on the basis of—

(i) patronage,

(ii) capital contributions, or

(iii) some combination of clauses (i) and (ii).

(3) Replacement period

The term "replacement period" means the period which begins 3 months before the date on which the sale of qualified securities occurs and which ends 12 months after the date of such sale.

(4) Qualified replacement property

The term "qualified replacement property" means any securities (as defined in section 165(g)(2)) issued by a domestic corporation which does not, for the taxable year in which such stock is issued, have passive investment income (as defined in section 1362(d)(3)(D)) that exceeds 25 percent of the gross receipts of such corporation for such taxable year.

(5) Securities acquired by underwriter

No acquisition of securities by an underwriter in the ordinary course of his trade or business as an underwriter, whether or not guaranteed, shall be treated as a sale for purposes of subsection (a).

(6) Time for filing election

An election under subsection (a) shall be filed not later than the last day prescribed by law (including extensions thereof) for filing the return of tax imposed by this chapter for the taxable year in which the sale occurs.

(d) Basis of qualified replacement property

The basis of the taxpayer in qualified replacement property purchased by the taxpayer during the replacement period shall be reduced by the amount of gain not recognized by reason of such purchase and the application of subsection (a). If more than one item of qualified replacement property is purchased, the basis of each of such items shall be reduced by an amount determined by multiplying the total gain not recognized by reason of such purchase and the application of subsection (a) by a fraction—

(1) the numerator of which is the cost of such item of property, and

(2) the denominator of which is the total cost of all such items of property.

(e) Statute of limitations

If any gain is realized by the taxpayer on the sale or exchange of any qualified securities and there is in effect an election under subsection (a) with respect to such gain, then—

(1) the statutory period for the assessment of any deficiency with respect to such gain shall not expire before the expiration of 3 years from the date the Secretary is notified by the taxpayer (in such manner as the Secretary may by regulations prescribe) of—

(A) the taxpayer's cost of purchasing qualified replacement property which the taxpayer claims results in nonrecognition of any part of such gain,

(B) the taxpayer's intention not to purchase qualified replacement property within the replacement period, or

(C) a failure to make such purchase within the replacement period, and

(2) such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(Added Pub. L. 98-369, div. A, title V, § 541(a), July 18, 1984, 98 Stat. 887.)

EFFECTIVE DATE

Section 541(c) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting this section and amending sections 1016 and 1223 of this title] shall apply to sales of securities in taxable years beginning after the date of enactment of this Act [July 18, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1016, 1223, 4978 of this title.

PART IV—SPECIAL RULES

Sec.
1059. Corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends.
1060. Cross references.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, § 53(d), July 18, 1984, 98 Stat. 568, added item 1059 and renumbered former item 1059 as 1060.

§ 1059. Corporate shareholder's basis in stock reduced by nontaxed portion of extraordinary dividends

(a) General rule

If any corporation—

(1) receives an extraordinary dividend with respect to any share of stock, and

(2) sells or otherwise disposes of such stock before such stock has been held for more than 1 year,

the basis of such corporation in such stock shall be reduced by the nontaxed portion of such dividend. If the nontaxed portion of such dividend exceeds such basis, such excess shall be treated as gain from the sale or exchange of such stock.

(b) Nontaxed portion

For purposes of this section—

(1) In general

The nontaxed portion of any dividend is the excess (if any) of—

(A) the amount of such dividend, over

(B) the taxable portion of such dividend.

(2) Taxable portion

The taxable portion of any dividend is—

(A) the portion of such dividend includible in gross income, reduced by

(B) the amount of any deduction allowable with respect to such dividend under section 243, 244, or 245.

(c) Extraordinary dividend defined

For purposes of this section—

(1) In general

The term "extraordinary dividend" means any dividend with respect to a share of stock if the amount of such dividend equals or exceeds the threshold percentage of the taxpayer's adjusted basis in such share of stock (determined without regard to this section).

(2) Threshold percentage

The term "threshold percentage" means—

(A) 5 percent in the case of stock which is preferred as to dividends, and

(B) 10 percent in the case of any other stock.

(3) Aggregation of dividends

(A) Aggregation within 85-day period

All dividends—

(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

(ii) which have ex-dividend dates within the same period of 85 consecutive days,

shall be treated as 1 dividend.

(B) Aggregation within 1 year where dividends exceed 20 percent of adjusted basis

All dividends—

(i) which are received by the taxpayer (or a person described in subparagraph (C)) with respect to any share of stock, and

(ii) which have ex-dividend dates during the same period of 365 consecutive days,

shall be treated as extraordinary dividends if the aggregate of such dividends exceeds 20 percent of the taxpayer's adjusted basis in such stock (determined without regard to this section).

(C) Substituted basis transactions

In the case of any stock, a person is described in this subparagraph if—

(i) the basis of such stock in the hands of such person is determined in whole or in part by reference to the basis of such stock in the hands of the taxpayer, or

(ii) the basis of such stock in the hands of the taxpayer is determined in whole or in part by reference to the basis of such stock in the hands of such person.

(d) Special rules

For purposes of this section—

(1) Time for reduction

Any reduction in basis under subsection (a) by reason of any distribution which is an extraordinary dividend shall occur at the beginning of the ex-dividend date for such distribution.

(2) Distributions in kind

To the extent any dividend consists of property other than cash, the amount of such dividend shall be treated as the fair market value of such property (as of the date of the distribution) reduced as provided in section 301(b)(2).

(3) Determination of holding period

For purposes of determining the holding period of stock under subsection (a)(2), rules similar to the rules of paragraphs (3) and (4) of section 246(c) shall apply; except that "1 year" shall be substituted for the number of days specified in subparagraph (B) of section 246(c)(3).

(4) Ex-dividend date

The term "ex-dividend date" means the date on which the share of stock becomes ex-dividend.

(5) Extension to certain property distributions

In the case of any distribution of property (other than cash) to which section 301 applies—

(A) such distribution shall be treated as a dividend without regard to whether the corporation has earnings and profits, and

(B) the amount so treated shall be reduced by the amount of any reduction in basis under section 301(c)(2) by reason of such distribution.

(e) Regulations

The Secretary shall prescribe such regulations as may be appropriate to carry out the purposes of this section, including regulations providing for the application of this section in the case of stock dividends, stock splits, reorganizations, and other similar transactions.

(Added Pub. L. 98-369, div. A, title I, § 53(a), July 18, 1984, 98 Stat. 565.)

PRIOR PROVISIONS

A prior section 1059 was renumbered section 1060 of this title.

EFFECTIVE DATE

Section 53(e) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as provided in this subsection, the amendments made by this section [enacting this section and amending sections 246, 1016, and 7701 of this title] shall apply to distributions after March 1, 1984, in taxable years ending after such date.

"(2) SUBSECTION (b).—The amendments made by subsection (b) [amending section 246 of this title] shall apply to stock acquired after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(3) RELATED PERSON PROVISIONS.—The amendment made by subsection (c) [amending section 7701 of this title] shall take effect on the date of the enactment of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 246, 263, 1016 of this title.

§ 1060. Cross references

(1) For nonrecognition of gain in connection with the transfer of obsolete vessels to the Maritime Administration under section 510 of the Merchant Marine Act, 1936, see subsection (e) of that section, as amended August 4, 1939 (46 U.S.C. 1160).

(2) For recognition of gain or loss in connection with the construction of new vessels, see section 511 of such Act, as amended (46 U.S.C. 1161).

(3) For nonrecognition of gain in connection with vessels exchanged with the Maritime Administration under section 8 of the Merchant Ship Sales Act of 1946, see subsection (a) of that section (50 U.S.C. App. 1741).

(Aug. 16, 1954, ch. 736, 68A Stat. 311, § 1054, renumbered § 1055, Sept. 14, 1960, Pub. L. 86-779, § 8(b), 74 Stat. 1003; renumbered § 1056, Apr. 10, 1963, Pub. L. 88-9, § 1(b), 77 Stat. 7; renumbered § 1057, Oct. 4, 1976, Pub. L. 94-455, title II, § 212(a)(1), 90 Stat. 1545; renumbered § 1058, Oct. 4, 1976, Pub. L. 94-455, title X, § 1015(c), 90 Stat. 1618; renumbered § 1059, Aug. 15, 1978, Pub. L. 95-345, § 2(d)(1), 92 Stat. 482; renumbered § 1060, July 18, 1984, Pub. L. 98-369, div. A, title I, § 53(a), 98 Stat. 565.)

REFERENCES IN TEXT

Sections 510 and 511 of the Merchant Marine Act, 1936, referred to in pars. (1) and (2), are classified to sections 1160 and 1161 of Title 46, Appendix, Shipping.

PART VII—WASH SALES; STRADDLES

§ 1091. Loss from wash sales of stock or securities

(a) Disallowance of loss deduction

In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business.

[See main edition for text of (b) *to* (d)*]*

(e) Certain short sales of stock or securities

Rules similar to the rules of subsection (a) shall apply to any loss realized on the closing of a short sale of stock or securities if, within a period beginning 30 days before the date of such closing and ending 30 days after such date—

(1) substantially identical stock or securities were sold, or

(2) another short sale of substantially identical stock or securities was entered into.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 106(a), (b), 98 Stat. 629.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 106(b), substituted "no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction made in the ordinary course of such business" for "no deduction for the loss shall be allowed under section 165(c)(2); nor shall such deduction be allowed a corporation under section 165(a) unless it is a dealer in stocks or securities, and the loss is sustained in a transaction made in the ordinary course of business".

Subsec. (e). Pub. L. 98-369, § 106(a), added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 106(c) of Pub. L. 98-369 provided that:

"(1) SUBSECTION (a).—The amendment made by subsection (a) [enacting subsec. (e) of this section] shall apply to short sales of stock or securities after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) SUBSECTION (b).—The amendment made by subsection (b) [amending subsec. (a) of this section] shall apply to sales after December 31, 1984, in taxable years ending after such date."

§ 1092. Straddles

(a) Recognition of loss in case of straddles, etc.

[See main edition for text of (1)*]*

(2) Special rule for identified straddles

[See main edition for text of (A)*]*

(B) Identified straddle

The term "identified straddle" means any straddle—

(i) which is clearly identified on the taxpayer's records as an identified straddle before the earlier of—

(I) the close of the day on which the straddle is acquired, or

(II) such time as the Secretary may prescribe by regulations.

[See main edition for text of (ii) *and* (iii), (3)*]*

(b) Regulations

(1) In general

The Secretary shall prescribe such regulations with respect to gain or loss on positions which are a part of a straddle as may be appropriate to carry out the purposes of this section and section 263(g). To the extent consistent with such purposes, such regulations shall include rules applying the principles of subsections (a) and (d) of section 1091 and of subsections (b) and (d) of section 1233.

(2) Regulations relating to mixed straddles

(A) Elective provisions in lieu of section 1233(d) principles

The regulations prescribed under paragraph (1) shall provide that—

(i) the taxpayer may offset gains and losses from positions which are part of mixed straddles—

(I) by straddle-by-straddle identification, or

(II) by the establishment (with respect to any class of activities) of a mixed straddle account for which gains and losses would be recognized (and offset) on a periodic basis,

(ii) such offsetting will occur before the application of section 1256, and section 1256(a)(3) will only apply to net gain or net loss attributable to section 1256 contracts, and

(iii) the principles of section 1233(d) shall not apply with respect to any straddle identified under clause (i)(I) or part of an account established under clause (i)(II).

(B) Limitation on net gain or net loss from mixed straddle account

In the case of any mixed straddle account referred to in subparagraph (A)(i)(II)—

(i) Not more than 50 percent of net gain may be treated as long-term capital gain

In no event shall more than 50 percent of the net gain from such account for any taxable year be treated as long-term capital gain.

(ii) Not more than 40 percent of net loss may be treated as short-term capital loss

In no event shall more than 40 percent of the net loss from such account for any taxable year be treated as short-term capital loss.

(C) Authority to treat certain positions as mixed straddles

The regulations prescribed under paragraph (1) may treat as a mixed straddle positions not described in section 1256(d)(4).

(c) Straddle defined

For purposes of this section—

[*See main edition for text of (1) to (3)*]

(4) Exception for certain straddles consisting of qualified covered call options and the optioned stock

(A) In general

If—

(i) all the offsetting positions making up any straddle consist of 1 or more qualified covered call options and the stock to be purchased from the taxpayer under such options, and

(ii) such straddle is not part of a larger straddle,

such straddle shall not be treated as a straddle for purposes of this section and section 263(g).

(B) Qualified covered call option defined

For purposes of subparagraph (A), the term "qualified covered call option" means any option granted by the taxpayer to purchase stock held by the taxpayer (or stock acquired by the taxpayer in connection with the granting of the option) but only if—

(i) such option is traded on a national securities exchange which is registered with the Securities and Exchange Commission or other market which the Secretary determines has rules adequate to carry out the purposes of this paragraph,

(ii) such option is granted more than 30 days before the day on which the option expires,

(iii) such option is not a deep-in-the-money option,

(iv) such option is not granted by an options dealer (within the meaning of section 1256(g)(8)) in connection with his activity of dealing in options, and

(v) gain or loss with respect to such option is not ordinary income or loss.

(C) Deep-in-the-money option

For purposes of subparagraph (B), the term "deep-in-the-money option" means an option having a strike price lower than the lowest qualified bench mark.

(D) Lowest qualified bench mark

(i) In general

Except as otherwise provided in this subparagraph, for purposes of subparagraph (C), the term "lowest qualified bench mark" means the highest available strike price which is less than the applicable stock price.

(ii) Special rule where option is for period more than 90 days and strike price exceeds $50

In the case of an option—

(I) which is granted more than 90 days before the date on which such option expires, and

(II) with respect to which the strike price is more than $50,

the lowest qualified bench mark is the second highest available strike price which is less than the applicable stock price.

(iii) 85 percent rule where applicable stock price $25 or less

If—

(I) the applicable stock price is $25 or less, and

(II) but for this clause, the lowest qualified bench mark would be less than 85 percent of the applicable stock price,

the lowest qualified bench mark shall be treated as equal to 85 percent of the applicable stock price.

(iv) Limitation where applicable stock price $150 or less

If—

(I) the applicable stock price is $150 or less, and

(II) but for this clause, the lowest qualified bench mark would be less than the applicable stock price reduced by $10,

the lowest qualified bench mark shall be treated as equal to the applicable stock price reduced by $10.

(E) Special year-end rule

Subparagraph (A) shall not apply to any straddle for purposes of section 1092(a) if—

(i) the qualified covered call options referred to in such subparagraph are closed during any taxable year,

(ii) gain on disposition of the stock to be purchased from the taxpayer under such options is includible in gross income for a later taxable year, and

(iii) such stock was not held by the taxpayer for 30 days or more after the closing of such options.

For purposes of the preceding sentence, the rules of paragraphs (3) (other than subparagraph (B) thereof) and (4) of section 246(c) shall apply in determining the period for which the taxpayer holds the stock.

(F) Strike price

For purposes of this paragraph, the term "strike price" means the price at which the option is exercisable.

(G) Applicable stock price

For purposes of subparagraph (D), the term "applicable stock price" means, with respect to any stock for which an option has been granted—

(i) the closing price of such stock on the most recent day on which such stock was traded before the date on which such option was granted, or

(ii) the opening price of such stock on the day on which such option was granted, but only if such price is greater than 110 percent of the price determined under clause (i).

(H) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this paragraph. Such regulations may include modifications to the provisions of this paragraph which are appropriate to take account of changes in the practices of option exchanges or to prevent the use of options for tax avoidance purposes.

(d) Definitions and special rules

For purposes of this section—

(1) Personal property

The term "personal property" means any personal property of a type which is actively traded.

(2) Position

The term "position" means an interest (including a futures or forward contract or option) in personal property.

(3) Special rules for stock

For purposes of paragraph (1)—

(A) In general

Except as provided in subparagraph (B), the term "personal property" does not include stock.

(B) Exceptions

The term "personal property" includes—

(i) any stock which is part of a straddle at least 1 of the offsetting positions of which is—

(I) an option with respect to such stock or substantially identical stock or securities, or

(II) under regulations, a position with respect to substantially similar or related property (other than stock), and

(ii) any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder.

(C) Special rules

(i) For purposes of subparagraph (B), subsection (c) and paragraph (4) shall be applied as if stock described in clause (i) or (ii) of subparagraph (B) were personal property.

(ii) For purposes of determining whether subsection (e) applies to any transaction with respect to stock described in clause (ii) of subparagraph (B), all includible corporations of an affiliated group (within the meaning of section 1504(a)) shall be treated as 1 taxpayer.

(4) Positions held by related persons, etc.

(A) In general

In determining whether 2 or more positions are offsetting, the taxpayer shall be treated as holding any position held by a related person.

(B) Related person

For purposes of subparagraph (A), a person is a related person to the taxpayer if with respect to any period during which a position is held by such person, such person—

(i) is the spouse of the taxpayer, or

(ii) files a consolidated return (within the meaning of section 1501) with the taxpayer for any taxable year which includes a portion of such period.

(C) Certain flowthrough entities

If part or all of the gain or loss with respect to a position held by a partnership, trust, or other entity would properly be taken into account for purposes of this chapter by a taxpayer, then, except to the extent otherwise provided in regulations, such position shall be treated as held by the taxpayer.

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(5) Special rule for section 1256 contracts

(A) General rule

In the case of a straddle at least 1 (but not all) of the positions of which are section 1256 contracts, the provisions of this section shall apply to any section 1256 contract and any other position making up such straddle.

(B) Special rule for identified straddles

For purposes of subsection (a)(2) (relating to identified straddles), subparagraph (A) and section 1256(a)(4) shall not apply to a straddle all of the offsetting positions of which consist of section 1256 contracts.

(6) Section 1256 contract

The term "section 1256 contract" has the meaning given such term by section 1256(b).

[*See main edition for text of (e)*]

(f) Treatment of gain or loss and suspension of holding period where taxpayer grantor of qualified covered call option

If a taxpayer holds any stock and grants a qualified covered call option to purchase such stock with a strike price less than the applicable stock price—

(1) Treatment of loss

Any loss with respect to such option shall be treated as long-term capital loss if, at the time such loss is realized, gain on the sale or exchange of such stock would be treated as long-term capital gain.

(2) Suspension of holding period

Except for purposes of section 851(b)(3), the holding period of such stock shall not include any period during which the taxpayer is the grantor of such option.

(g) Cross reference

For provision requiring capitalization of certain interest and carrying charges where there is a straddle, see section 263(g).

(As amended Pub. L. 98-369, div. A, title I, §§ 101(a)-(d), 102(e)(2), 103(a), 107(a), July 18, 1984, 98 Stat. 616, 618, 619, 624, 627, 629.)

AMENDMENTS

1984—Subsec. (a)(2)(B)(i). Pub. L. 98-369, § 107(a), designated existing provisions as subcl. (I) and added subcl. (II).

Subsec. (b). Pub. L. 98-369, § 103(a), amended subsec. (b) generally, substituting provisions dealing with regulations for provisions dealing with character of gain or loss and wash sales.

Subsec. (c)(4). Pub. L. 98-369, § 101(a)(2), added par. (4).

Subsec. (d)(1). Pub. L. 98-369, § 101(b)(1), struck out "(other than stock)" before "of a type".

Subsec. (d)(2). Pub. L. 98-369, § 101(a)(1), redesignated former subpar. (A) as the entire par. (2), and struck out former subpar. (B) which provided that the term "position" includes any stock option which is a part of a straddle and which is an option to buy or sell stock which is actively traded, but does not include a stock option which (i) is traded on a domestic exchange or on a similar foreign exchange designated by the Secretary, and (ii) is of a type with respect to which the maximum period during which such option may be exercised is less than the minimum period for which a capital asset must be held for gain to be treated as long-term capital gain under section 1222(3).

Subsec. (d)(3), (4). Pub. L. 98-369, § 101(b)(2), added par. (3) and redesignated former pars. (3) and (4) as (4) and (5), respectively.

Subsec. (d)(5). Pub. L. 98-369, § 101(d), which directed the general amendment of par. (4) was executed to par. (5), to reflect the probable intent of Congress in view of the redesignation of par. (4) as (5) by section 101(b)(2) of Pub. L. 98-369, by substituting provisions relating to special rules for section 1256 contracts for provisions relating to special rules for regulated futures contracts.

Pub. L. 98-369, § 101(b)(2), redesignated former par. (4) as (5). Former par. (5) redesignated (6).

Subsec. (d)(6). Pub. L. 98-369, § 102(e)(2), which directed the general amendment of par. (5) was executed to par. (6), to reflect the probable intent of Congress in view of the redesignation of par. (5) as (6) by section 101(b)(2) of Pub. L. 98-369, by substituting references to section 1256 contracts for references to regulated futures contracts wherever appearing in heading and text.

Pub. L. 98-369, § 101(b)(2), redesignated former par. (5) as (6).

Subsecs. (f), (g). Pub. L. 98-369, § 101(c), added subsec. (f) and redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 101(e) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [amending subsecs. (c), (d), (f), and (g) of this section] shall apply to positions established after December 31, 1983, in taxable years ending after such date.

"(2) SPECIAL RULE FOR OFFSETTING POSITION STOCK.—In the case of any stock of a corporation formed or availed of to take positions in personal property which offset positions taken by any shareholder, the amendments made by this section shall apply to positions established on or after May 23, 1983, in taxable years ending on or after such date.

"(3) SUBSECTION (c).—The amendment made by subsection (c) [amending subsecs. (f) and (g) of this section] shall apply to positions established after June 30, 1984, in taxable years ending after such date.

"(4) SUBSECTION (d).—The amendment made by subsection (d) [amending subsec. (d)(5) of this section] shall apply to positions established after the date of the enactment of this Act in taxable years ending after such date."

Amendment by section 102(e)(2) of Pub. L. 98-369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98-369, set out as a note under section 1256 of this title.

Section 103(b), (c) of Pub. L. 98-369 provided that:

"(b) REQUIREMENT THAT REGULATIONS BE ISSUED WITHIN 6 MONTHS AFTER THE DATE OF ENACTMENT.—The Secretary of the Treasury or his delegate shall prescribe initial regulations under section 1092(b) of the Internal Revenue Code of 1954 (including regulations relating to mixed straddles) not later than the date 6 months after the date of the enactment of this Act [July 18, 1984].

"(c) EFFECTIVE DATE OF REGULATIONS WITH RESPECT TO MIXED STRADDLES.—The regulations described in subsection (b) with respect to the application of section 1233 of the Internal Revenue Code of 1954 to mixed straddles shall not apply to mixed straddles all of the positions of which were established before January 1, 1984."

Section 107(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1092, 1236, and 1256 of this title] shall apply to positions entered into after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date."

Treatment of Certain Losses on Straddles Entered Into Before Effective Date of Economic Recovery Tax Act of 1981

Section 108 of Pub. L. 98-369 provided that:

"(a) General Rule.—For purposes of the Internal Revenue Code of 1954, in the case of any disposition of 1 or more positions—

"(1) which were entered into before 1982 and form part of a straddle, and

"(2) to which the amendments made by title V of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34, see Effective Date note above] do not apply, any loss from such disposition shall be allowed for the taxable year of the disposition if such position is part of a transaction entered into for profit.

"(b) Presumption That Transaction Entered Into for Profit.—For purposes of subsection (a), any position held by a commodities dealer or any person regularly engaged in investing in regulated futures contracts shall be rebuttably presumed to be part of a transaction entered into for profit.

"(c) Net Loss Allowed Whether or Not Transaction Entered Into for Profit.—If any loss with respect to a position described in paragraphs (1) and (2) of subsection (a) is not allowable as a deduction (after applying subsections (a) and (b)), such loss shall be allowed in determining the gain or loss from dispositions of other positions in the straddle to the extent required to accurately reflect the taxpayer's net gain or loss from all positions in such straddle.

"(d) Other Rules.—Except as otherwise provided in subsections (a) and (c) and in sections 1233 and 1234 of such Code, the determination of whether there is recognized gain or loss with respect to a position, and the amount and timing of such gain or loss, and the treatment of such gain or loss as long-term or short-term shall be made without regard to whether such position constitutes part of a straddle.

"(e) Straddle.—For purposes of this section, the term 'straddle' has the meaning given to such term by section 1092(c) of the Internal Revenue Code of 1954 as in effect on the day after the date of the enactment of the Economic Recovery Tax Act of 1981 [Aug. 13, 1981], and shall include a straddle all the positions of which are regulated futures contracts.

"(f) Commodities Dealer.—For purposes of this section, the term 'commodities dealer' has the meaning given to such term by section 1402(i)(2)(B) of the Internal Revenue Code of 1954 (as added by this subtitle).

"(g) Regulated Futures Contracts.—For purposes of this section, the term 'regulated futures contracts' has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1954 (as in effect before the date of enactment of this Act [July 18, 1984]).

"(h) Syndicates.—Subsection (b) shall not apply to any syndicate (as defined in section 1256(e)(3)(B) of the Internal Revenue Code of 1954)."

Section Referred to in Other Sections

This section is referred to in sections 246, 263, 1233, 1234A, 1256, 6621, 6653 of this title.

Subchapter P—Capital Gains and Losses

Part

V. Special rules for bonds and other debt instruments.

Amendments

1984—Pub. L. 98-369, div. A, title I, § 42(b)(1), July 18, 1984, 98 Stat. 557, added item for part V.

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 822, 832, 1011, 1012 of this title.

PART I—TREATMENT OF CAPITAL GAINS

§ 1201. Alternative tax for corporations

[*See main edition for text of* (a)]

(b) Cross references

For computation of the alternative tax—

(1) in the case of life insurance companies, see section 801(a)(2);

[*See main edition for text of* (2) *and* (3); (c)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title II, § 211(b)(16), 98 Stat. 756.)

Amendments

1984—Subsec. (b)(1). Pub. L. 98-369 substituted "section 801(a)(2)" for "section 802(a)(2)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Section Referred to in Other Sections

This section is referred to in sections 12, 57, 527, 594, 691, 801, 821, 831, 852, 857, 882, 904, 1374, 1381, 6154, 6425, 6655 of this title.

§ 1202. Deduction for capital gains

Section Referred to in Other Sections

This section is referred to in sections 57, 62, 172, 223, 642, 643, 691, 871, 1402 of this title; title 42 section 411.

PART II—TREATMENT OF CAPITAL LOSSES

§ 1211. Limitation on capital losses

Section Referred to in Other Sections

This section is referred to in sections 165, 221, 691, 1212, 1222, 1231 of this title.

§ 1212. Capital loss carrybacks and carryovers

[*See main edition for text of* (a) *and* (b)]

(c) Carryback of losses from section 1256 contracts to offset prior gains from such contracts

(1) In general

If a taxpayer (other than a corporation) has a net section 1256 contracts loss for the taxable year and elects to have this subsection apply to such taxable year, the amount of such net section 1256 contracts loss—

(A) shall be a carryback to each of the 3 taxable years preceding the loss year, and

(B) to the extent that, after the application of paragraphs (2) and (3), such loss is allowed as a carryback to any such preceding taxable year—

(i) 40 percent of the amount so allowed shall be treated as a short-term capital loss from section 1256 contracts, and

(ii) 60 percent of the amount so allowed shall be treated as a long-term capital loss from section 1256 contracts.

(2) Amount carried to each taxable year

The entire amount of the net section 1256 contracts loss for any taxable year shall be carried to the earliest of the taxable years to which such loss may be carried back under paragraph (1). The portion of such loss which shall be carried to each of the 2 other taxable years to which such loss may be carried back shall be the excess (if any) of such loss over the portion of such loss which, after the application of paragraph (3), was allowed as a carryback for any prior taxable year.

(3) Amount which may be used in any prior taxable year

An amount shall be allowed as a carryback under paragraph (1) to any prior taxable year only to the extent—

(A) such amount does not exceed the net section 1256 contract gain for such year, and

(B) the allowance of such carryback does not increase or produce a net operating loss (as defined in section 172(c)) for such year.

(4) Net section 1256 contracts loss

For purposes of paragraph (1), the term "net section 1256 contracts loss" means the lesser of—

(A) the net capital loss for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(B) the sum of the amounts which, but for paragraph (6)(A), would be treated as capital losses in the succeeding taxable year under subparagraphs (A) and (B) of subsection (b)(1).

(5) Net section 1256 contract gain

For purposes of paragraph (1)—

(A) In general

The term "net section 1256 contract gain" means the lesser of—

(i) the capital gain net income for the taxable year determined by taking into account only gains and losses from section 1256 contracts, or

(ii) the capital gain net income for the taxable year.

(B) Special rule

The net section 1256 contract gain for any taxable year before the loss year shall be computed without regard to the net section 1256 contracts loss for the loss year or for any taxable year thereafter.

(6) Coordination with carryforward provisions of subsection (b)(1)

(A) Carryforward amount reduced by amount used as carryback

For purposes of applying subsection (b)(1), if any portion of the net section 1256 contracts loss for any taxable year is allowed as a carryback under paragraph (1) to any preceding taxable year—

(i) 40 percent of the amount allowed as a carryback shall be treated as a short-term capital gain for the loss year, and

(ii) 60 percent of the amount allowed as a carryback shall be treated as a long-term capital gain for the loss year.

(B) Carryover loss retains character as attributable to regulated futures contract [1]

Any amount carried forward as a short-term or long-term capital loss to any taxable year under subsection (b)(1) (after the application of subparagraph (A)) shall, to the extent attributable to losses from section 1256 contracts, be treated as loss from section 1256 contracts for such taxable year.

(7) Other definitions and special rules

For purposes of this subsection—

(A) Section 1256 contract

The term "section 1256 contract" means any section 1256 contract (as defined in section 1256(b)) to which section 1256 applies.

(B) Exclusion for estates and trusts

This subsection shall not apply to any estate or trust.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 102(e)(3), 98 Stat. 624.)

REPEAL OF SUBSECTION (b)(3)

Pub. L. 98-369, div. A, title X, § 1002, July 18, 1984, 98 Stat. 1012, provided that, applicable to taxable years beginning after Dec. 31, 1986, subsection (b)(3) of this section is repealed.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 102(e)(3)(A), (B), substituted "net section 1256 contracts loss" for "net commodity futures loss" and "section 1256 contracts" for "regulated futures contracts" wherever appearing.

Subsec. (c)(3)(A), (5). Pub. L. 98-369, § 102(e)(3)(D), substituted "net section 1256 contract gain" for "net commodity futures gain" wherever appearing.

Subsec. (c)(7)(A). Pub. L. 98-369, § 102(e)(3)(C), substituted "section 1256 contract" for "regulated futures contract" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(e)(3) of Pub. L. 98-369 applicable to positions established after July 18, 1984, in taxable years after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98-369, set out as a note under section 1256 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 108, 165, 170, 246, 381, 383, 461, 514, 535, 613A, 642, 805, 822, 832, 871, 877, 904, 1222, 1247, 1314, 1341, 1351, 1398, 6411 of this title.

PART III—GENERAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

§ 1221. Capital asset defined

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 189, 267, 311, 341, 367, 595, 707, 751, 818, 856, 857, 864, 995, 1092, 1223, 1231, 1234, 1248, 1362 of this title.

§ 1222. Other terms relating to capital gains and losses

For purposes of this subtitle—

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[1] So in original. Probably should be "section 1256 contract".

(1) Short-term capital gain

The term "short-term capital gain" means gain from the sale or exchange of a capital asset held for not more than 6 months, if and to the extent such gain is taken into account in computing gross income.

(2) Short-term capital loss

The term "short-term capital loss" means loss from the sale or exchange of a capital asset held for not more than 6 months, if and to the extent that such loss is taken into account in computing taxable income.

(3) Long-term capital gain

The term "long-term capital gain" means gain from the sale or exchange of a capital asset held for more than 6 months, if and to the extent such gain is taken into account in computing gross income.

(4) Long-term capital loss

The term "long-term capital loss" means loss from the sale or exchange of a capital asset held for more than 6 months, if and to the extent that such loss is taken into account in computing taxable income.

[*See main edition for text of* (5) *to* (11)]

For purposes of this subtitle, in the case of futures transactions in any commodity subject to the rules of a board of trade or commodity exchange, the length of the holding period taken into account under this section or under any other section amended by section 1402 of the Tax Reform Act of 1976 shall be determined without regard to the amendments made by subsections (a) and (b) of such section 1402.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1001(a), 98 Stat. 1011.)

AMENDMENTS

1984—Pars. (1) to (4). Pub. L. 98-369 substituted "6 months" for "1 year".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 265 of this title.

§ 1223. Holding period of property

For purposes of this subtitle—

[*See main edition for text of* (1) *to* (10)]

(11) In the case of a person acquiring property from a decedent or to whom property passed from a decedent (within the meaning of section 1014(b)), if—

(A) the basis of such property in the hands of such person is determined under section 1014, and

(B) such property is sold or otherwise disposed of by such person within 6 months after the decedent's death,

then such person shall be considered to have held such property for more than 6 months.

(12) If—

(A) property is acquired by any person in a transfer to which section 1040 applies,

(B) such property is sold or otherwise disposed of by such person within 6 months after the decedent's death, and

(C) such sale or disposition is to a person who is a qualified heir (as defined in section 2032A(e)(1)) with respect to the decedent,

then the person making such sale or other disposition shall be considered to have held such property for more than 6 months.

(13) In determining the period for which the taxpayer has held qualified replacement property (within the meaning of section 1042(b)) the acquisition of which resulted under section 1042 in the nonrecognition of any part of the gain realized on the sale of qualified securities (within the meaning of section 1042(b)), there shall be included the period for which such qualified securities had been held by the taxpayer.

(14) Cross references

(A) For special holding period provision relating to certain partnership distributions, see section 735(b).

(B) For special holding period provision relating to distributions of appreciated property to corporations, see section 301(e).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 54(c), title V, § 541(b)(1), title X, § 1001(b)(14), 98 Stat. 569, 890, 1011.)

AMENDMENTS

1984—Pars. (11), (12). Pub. L. 98-369, § 1001(b)(14), substituted "6 months" for "1 year".

Par. (13). Pub. L. 98-369, § 541(b)(1), added par. (13). Former par. (13) redesignated (14).

Par. (14). Pub. L. 98-369, § 541(b)(1), redesignated former par. (13) as (14).

Pub. L. 98-369, § 54(c), designated existing cross reference as subpar. (A) and added subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 541(b)(1) of Pub. L. 98-369 applicable to sales of securities in taxable years beginning after July 18, 1984, see section 541(c) of Pub. L. 98-369, set out as an Effective Date note under section 1042 of this title.

Amendment by section 1001(b)(14) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 246, 341, 735, 818, 1034, 1233, 1246, 1250 of this title.

PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

Sec.

[1232 to 1232B. Repealed.]
[1251. Repealed.]
1256. Section 1256 contracts marked to market.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, §§ 42(b)(2), 102(e)(6), title IV, § 492(c), July 18, 1984, 98 Stat. 557, 624, 854, struck out items 1232 "Bonds and other evidence of indebtedness", 1232A "Original issue discount", 1232B "Tax treatment of stripped bonds", 1251 "Gain from disposition of property used in farming where farm losses offset nonfarm income", and substituted "Section 1256 contracts" for "Regulated futures contracts" in item 1256.

§ 1231. Property used in the trade or business and involuntary conversions

(a) General rule

(1) Gains exceed losses

If—

(A) the section 1231 gains for any taxable year, exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall be treated as long-term capital gains or long-term capital losses, as the case may be.

(2) Gains do not exceed losses

If—

(A) the section 1231 gains for any taxable year, do not exceed

(B) the section 1231 losses for such taxable year,

such gains and losses shall not be treated as gains and losses from sales or exchanges of capital assets.

(3) Section 1231 gains and losses

For purposes of this subsection—

(A) Section 1231 gain

The term "section 1231 gain" means—

(i) any recognized gain on the sale or exchange of property used in the trade or business, and

(ii) any recognized gain from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) into other property or money of—

(I) property used in the trade or business, or

(II) any capital asset which is held for more than 6 months and is held in connection with a trade or business or a transaction entered into for profit.

(B) Section 1231 loss

The term "section 1231 loss" means any recognized loss from a sale or exchange or conversion described in subparagraph (A).

(4) Special rules

For purposes of this subsection—

(A) In determining under this subsection whether gains exceed losses—

(i) the section 1231 gains shall be included only if and to the extent taken into account in computing gross income, and

(ii) the section 1231 losses shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply.

(B) Losses (including losses not compensated for by insurance or otherwise) on the destruction, in whole or in part, theft or seizure, or requisition or condemnation of—

(i) property used in the trade or business, or

(ii) capital assets which are held for more than 6 months and are held in connection with a trade or business or a transaction entered into for profit,

shall be treated as losses from a compulsory or involuntary conversion.

(C) In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any—

(i) property used in the trade or business, or

(ii) any capital asset which is held for more than 6 months and is held in connection with a trade or business or a transaction entered into for profit,

this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions.

(b) Definition of property used in the trade or business

For purposes of this section—

(1) General rule

The term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 6 months, and real property used in the trade or business, held for more than 6 months, which is not—

[*See main edition for text of* (*A*) *to* (*D*), (*2*) *and* (*3*)]

(4) Unharvested crop

In the case of an unharvested crop on land used in the trade or business and held for more than 6 months, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted) at the same time and to the same person, the crop shall be considered as "property used in the trade or business."

(c) Recapture of net ordinary losses

(1) In general

The net section 1231 gain for any taxable year shall be treated as ordinary income to the extent such gain does not exceed the non-recaptured net section 1231 losses.

(2) Non-recaptured net section 1231 losses

For purposes of this subsection, the term "non-recaptured net section 1231 losses" means the excess of—

(A) the aggregate amount of the net section 1231 losses for the 5 most recent preceding taxable years beginning after December 31, 1981, over

(B) the portion of such losses taken into account under paragraph (1) for such preceding taxable years.

(3) Net section 1231 gain

For purposes of this subsection, the term "net section 1231 gain" means the excess of—

(A) the section 1231 gains, over
(B) the section 1231 losses.

(4) Net section 1231 loss

For purposes of this subsection, the term "net section 1231 loss" means the excess of—
(A) the section 1231 losses, over
(B) the section 1231 gains.

(5) Special rules

For purposes of determining the amount of the net section 1231 gain or loss for any taxable year, the rules of paragraph (4) of subsection (a) shall apply.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 176(a), title VII, § 711(c)(2)(A)(iii), title X, § 1001(b)(15), 98 Stat. 709, 944, 1012.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 1001(b)(15), substituted "6 months" for "1 year" wherever appearing.

Pub. L. 98-369, § 711(c)(2)(A)(iii), amended subsec. (a) generally, substituting pars. (1) to (4), for

"If, during the taxable year, the recognized gains on sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets held for more than 1 year into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered as gains and losses from sales or exchanges of capital assets held for more than 1 year. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For purposes of this subsection—

"(1) in determining under this subsection whether gains exceed losses, the gains described therein shall be included only if and to the extent taken into account in computing gross income and the losses described therein shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply; and

"(2) losses (including losses not compensated for by insurance or otherwise) upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of (A) property used in the trade or business or (B) capital assets held for more than 1 year shall be considered losses from a compulsory or involuntary conversion.

In the case of any involuntary conversion (subject to the provisions of this subsection but for this sentence) arising from fire, storm, shipwreck, or other casualty, or from theft, of any property used in the trade or business or of any capital asset held for more than 1 year, this subsection shall not apply to such conversion (whether resulting in gain or loss) if during the taxable year the recognized losses from such conversions exceed the recognized gains from such conversions."

Subsec. (b)(1), (4). Pub. L. 98-369, § 1001(b)(15), substituted "6 months" for "1 year".

Subsec. (c). Pub. L. 98-369, § 176(a), added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 176(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (c) of this section] shall apply to net section 1231 gains for taxable years beginning after December 31, 1984."

Amendment of subsec. (a) by section 711(c)(2)(A)(iii) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 711(c)(2)(A)(v) of Pub. L. 98-369, set out as a note under section 165 of this title.

Amendment by section 1001(b)(15) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 57, 64, 118, 170, 268, 272, 341, 451, 543, 702, 724, 735, 751, 755, 818, 904, 1223, 1366 of this title.

[§§ 1232 to 1232B. Repealed. Pub. L. 98-369, div. A, title I, § 42(a)(1), July 18, 1984, 98 Stat. 556]

Section 1232, acts Aug. 16, 1954, ch. 736, 68A Stat. 326; Sept. 2, 1958, Pub. L. 85-866, title I, §§ 50(a), 51, 72 Stat. 1642, 1643; June 25, 1959, Pub. L. 86-69, § 3(e), 73 Stat. 140; Sept. 2, 1964, Pub. L. 88-563, § 5, 78 Stat. 845; Dec. 30, 1969, Pub. L. 91-172, title IV, § 413(a), (b), 83 Stat. 609, 611; Oct. 4, 1976, Pub. L. 94-455, title XIV, § 1402(b)(1)(S), (2), title XIX, §§ 1901(b)(3)(I), (14)(D), 1904(b)(10)(C), 90 Stat. 1732, 1793, 1796, 1817; Aug. 13, 1981, Pub. L. 97-34, title V, § 505(b), 95 Stat. 331; Sept. 3, 1982, Pub. L. 97-248, title II, §§ 231(c), 232(b), title III, § 310(b)(6), 96 Stat. 499, 501, 599; Jan. 12, 1983, Pub. L. 97-448, title III, § 306(a)(9)(B), (C)(i), (ii), 96 Stat. 2403, 2404; July 18, 1984, Pub. L. 98-369, div. A, title X, § 1001(b)(16), (d), 98 Stat. 1012, related to bonds and other evidences of indebtedness. See section 1271 et seq. of this title.

Section 1232A, added Pub. L. 97-248, title II, § 231(a), Sept. 3, 1982, 96 Stat. 496, and amended Pub. L. 98-369, div. A, title II, § 211(b)(17), July 18, 1984, 98 Stat. 756, related to original issue discount. See section 1271 et seq. of this title.

Section 1232B, added Pub. L. 97-248, title II, § 232(a), Sept. 3, 1982, 96 Stat. 499, related to stripped bonds. See section 1286 of this title.

EFFECTIVE DATE OF REPEAL

Repeal of sections applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

§ 1233. Gains and losses from short sales

[*See main edition for text of* (*a*)]

(b) Short-term gains and holding periods

If gain or loss from a short sale is considered as gain or loss from the sale or exchange of a capital asset under subsection (a) and if on the date of such short sale substantially identical property has been held by the taxpayer for not more than 6 months (determined without regard to the effect, under paragraph (2) of this subsection, of such short sale on the holding period), or if substantially identical property is acquired by the taxpayer after such short sale and on or before the date of the closing thereof—

(1) any gain on the closing of such short sale shall be considered as a gain on the sale or exchange of a capital asset held for not more than 6 months (notwithstanding the period of time any property used to close such short sale has been held); and

[*See main edition for text of* (*2*)]

For purposes of this subsection, the acquisition of an option to sell property at a fixed price shall be considered as a short sale, and the exercise or failure to exercise such option shall be considered as a closing of such short sale.

[*See main edition for text of* (*c*)]

(d) Long-term losses

If on the date of such short sale substantially identical property has been held by the taxpayer for more than 6 months, any loss on the closing of such short sale shall be considered as a loss on the sale or exchange of a capital asset held for more than 6 months (notwithstanding the period of time any property used to close such short sale has been held, and notwithstanding section 1234).

(e) Rules for application of section

[*See main edition for text of* (*1*) *to* (*3*)]

(4)(A) In the case of a taxpayer who is a dealer in securities (within the meaning of section 1236)—

(i) if, on the date of a short sale of stock, substantially identical property which is a capital asset in the hands of the taxpayer has been held for not more than 6 months, and

(ii) if such short sale is closed more than 20 days after the date on which it was made,

subsection (b)(2) shall apply in respect of the holding period of such substantially identical property.

[*See main edition for text of* (*B*); (*f*) *and* (*g*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1001(b)(7), 98 Stat. 1012.)

AMENDMENTS

1984—Subsecs. (b), (d), (e)(4)(A)(i). Pub. L. 98-369 substituted "6 months" for "1 year" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

§ 1234. Options to buy or sell

[*See main edition for text of* (*a*)]

(b) Treatment of grantor of option in the case of stock, securities, or commodities

(1) General rule

In the case of the grantor of the option, gain or loss from any closing transaction with respect to, and gain on lapse of, an option in property shall be treated as a gain or loss from the sale or exchange of a capital asset held not more than 6 months.

[*See main edition for text of* (*2*) *and* (*3*)]

(c) Treatment of options on section 1256 contracts and cash settlement options

(1) Section 1256 contracts

Gain or loss shall be recognized on the exercise of an option on a section 1256 contract (within the meaning of section 1256(b)).

(2) Treatment of cash settlement options

(A) In general

For purposes of subsections (a) and (b), a cash settlement option shall be treated as an option to buy or sell property.

(B) Cash settlement option

For purposes of subparagraph (A), the term "cash settlement option" means any option which on exercise settles in (or could be settled in) cash or property other than the underlying property.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 105(a), title X, § 1001(b)(18), 98 Stat. 629, 1012.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-369, § 1001(b)(18), substituted "6 months" for "1 year".

Subsec. (c). Pub. L. 98-369, § 105(a), added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 105(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (c) of this section] shall apply to options purchased or granted after October 31, 1983, in taxable years ending after such date."

Amendment by section 1001(b)(18) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

§ 1234A. Gains or losses from certain terminations

Gain or loss attributable to the cancellation, lapse, expiration, or other termination of—

[*See main edition for text of* (*1*)]

(2) a section 1256 contract (as defined in section 1256) not described in paragraph (1) which is a capital asset in the hands of the taxpayer,

shall be treated as gain or loss from the sale of a capital asset. The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement).

(As amended Pub. L. 98-369, div. A, title I, § 102(e)(4), (9), July 18, 1984, 98 Stat. 624, 625.)

AMENDMENTS

1984—Pub. L. 98-369, § 102(e)(9), added: "The preceding sentence shall not apply to the retirement of any debt instrument (whether or not through a trust or other participation arrangement)."

Par. (2). Pub. L. 98-369, § 102(e)(4), substituted "a section 1256 contract" for "a regulated futures contract".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(e)(4) of Pub. L. 98-369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, and amendment by section 102(e)(9) of Pub. L. 98-369, applicable as if included in the amendment made by section 507(a) of Pub. L. 97-34, as amended by section 105(e) of Pub. L. 97-448, see section 102(f), (g) of Pub. L. 98-369, set out as a note under section 1256 of this title.

§ 1235. Sale or exchange of patents

(a) General

A transfer (other than by gift, inheritance, or devise) of property consisting of all substantial rights to a patent, or an undivided interest therein which includes a part of all such rights, by any holder shall be considered the sale or exchange of a capital asset held for more than 6 months, regardless of whether or not payments in consideration of such transfer are—

[*See main edition for text of* (1) *and* (2); (b) *and* (c)]

(d) Related persons

Subsection (a) shall not apply to any transfer, directly or indirectly, between persons specified within any one of the paragraphs of section 267(b) or persons described in section 707(b); except that, in applying section 267(b) and (c) and section 707(b) for purposes of this section—

(1) the phrase "25 percent or more" shall be substituted for the phrase "more than 50 percent" each place it appears in section 267(b) or 707(b), and

[*See main edition for text of* (2); (e)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 174(b)(5)(C), title X, § 1001(b)(19), 98 Stat. 707, 1012.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 1001(b)(19), substituted "6 months" for "1 year".

Subsec. (d). Pub. L. 98-369, § 174(b)(5)(C), substituted "section 267(b) or persons described in section 707(b)" for "section 267(b)" and "section 267(b) and (c) and section 707(b)" for "section 267(b) and (c)" in introductory provisions, and substituted "section 267(b) or 707(b)" for "section 267(b)" in par. (1).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 174(b)(5)(C) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1983, in taxable years ending after that date, see section 174(c)(2)(A) of Pub. L. 98-369, set out as a note under section 267 of this title.

Amendment by section 1001(b)(19) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 483, 871, 1274, 1441 of this title.

§ 1236. Dealers in securities

(a) Capital gains

Gain by a dealer in securities from the sale or exchange of any security shall in no event be considered as gain from the sale or exchange of a capital asset unless—

(1) the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for investment; and

(2) the security was not, at any time after the close of such day (or such earlier time), held by such dealer primarily for sale to customers in the ordinary course of his trade or business.

[*See main edition for text of* (b) *to* (e)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 107(b), 98 Stat. 630.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 107(b)(1), substituted "the security was, before the close of the day on which it was acquired (or such earlier time as the Secretary may prescribe by regulations), clearly identified in the dealer's records as a security held for investment; and" for "the security was, before the close of the day on which it was acquired (before the close of the following day in the case of an acquisition before January 1, 1982), clearly identified in the dealer's records as a security held for investment or if acquired before October 20, 1951, was so identified before November 20, 1951; and".

Subsec. (a)(2). Pub. L. 98-369, § 107(b)(2), added "(or such earlier time)" after "such day".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to positions entered into after July 18, 1984, in taxable years ending after that date, see section 107(e) of Pub. L. 98-369, set out as a note under section 1092 of this title.

§ 1239. Gain from sale of depreciable property between certain related taxpayers

[*See main edition for text of* (a)]

(b) Related persons

For purposes of subsection (a), the term "related persons" means—

(1) a person and all entities which are 80-percent owned entities with respect to such person,

(2) a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, unless such beneficiary's interest in the trust is a remote contingent interest (within the meaning of section 318(a)(3)(B)(i)).

[*See main edition for text of* (c)]

(d) Employer and related employee association

For purposes of subsection (a), the term "related person" also includes—

(1) an employer and any person related to the employer (within the meaning of subsection (b)), and

(2) a welfare benefit fund (within the meaning of section 419(e)) which is controlled directly or indirectly by persons referred to in paragraph (1).

(e) Patent applications treated as depreciable property

For purposes of this section, a patent application shall be treated as property which, in the hands of the transferee, is of a character which is subject to the allowance for depreciation provided in section 167.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 175(a), (b), title IV, § 421(b)(6)(A), title V, § 557(a), 98 Stat. 708, 794, 898.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 421(b)(6), redesignated pars. (2) and (3) as (1) and (2), respectively. Former par. (1), defining a husband and wife as "related persons", was struck out.

Pub. L. 98-369, § 175(b), amended subsec. (b) generally, adding par. (3).

Subsec. (d). Pub. L. 98-369, § 557(a), added subsec. (d).

Subsec. (e). Pub. L. 98-369, § 175(a), added subsec. (e).

Effective Date of 1984 Amendment

Section 175(c) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting subsec. (e) and amending subsec. (b) of this section] shall apply to sales or exchanges after March 1, 1984, in taxable years ending after such date."

Amendment by section 421(b)(6) of Pub. L. 98-369 applicable to transfers after July 18, 1984, in taxable years ending after such date, subject to election to have amendment apply to transfers after 1983 or to transfers pursuant to existing decrees, see section 421(d) of Pub. L. 98-369, set out as an Effective Date note under section 1041 of this title.

Section 557(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (d) of this section] shall apply to sales or exchanges after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Section Referred to in Other Sections

This section is referred to in section 453 of this title.

§ 1244. Losses on small business stock

[See main edition for text of (a) and (b)]

(c) Section 1244 stock defined

(1) In general

For purposes of this section, the term "section 1244 stock" means stock in a domestic corporation if—

[See main edition for text of (A) to (C), (2) and (3)]

(d) Special rules

[See main edition for text of (1)]

(2) Recapitalizations, changes in name, etc.

To the extent provided in regulations prescribed by the Secretary, stock in a corporation, the basis of which (in the hands of a taxpayer) is determined in whole or in part by reference to the basis in his hands of stock in such corporation which meets the requirements of subsection (c)(1) (other than subparagraph (C) thereof), or which is received in a reorganization described in section 368(a)(1)(F) in exchange for stock which meets such requirements, shall be treated as meeting such requirements. For purposes of paragraphs (1)(C) and (3)(A) of subsection (c), a successor corporation in a reorganization described in section 368(a)(1)(F) shall be treated as the same corporation as its predecessor.

[See main edition for text of (3) and (4); (e)]

(As amended Pub. L. 98-369, div. A, title IV, § 481(a), July 18, 1984, 98 Stat. 847.)

Amendments

1984—Subsecs. (c)(1), (d)(2). Pub. L. 98-369 substituted "stock in a" for "common stock in a".

Effective Date of 1984 Amendment

Section 481(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsecs. (c)(1) and (d)(2) of this section] shall apply to stock issued after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Section Referred to in Other Sections

This section is referred to in section 1274 of this title.

§ 1245. Gain from dispositions of certain depreciable property

(a) General rule

[See main edition for text of (1) to (4)]

(5) Section 1245 recovery property

For purposes of this section, the term "section 1245 recovery property" means recovery property (within the meaning of section 168) other than—

(A) 18-year real property and low-income housing which is residential rental property (as defined in section 167(j)(2)(B)),

(B) 18-year real property and low-income housing which is described in section 168(f)(2),

(C) 18-year real property and low-income housing with respect to which an election under subsection (b)(3) of section 168 to use a different recovery percentage is in effect, and

(D) low-income housing (within the meaning of section 168(c)(2)(F)).

If only a portion of a building (or other structure) is section 1245 recovery property, gain from any disposition of such building (or other structure) shall be allocated first to the portion of the building (or other structure) which is section 1245 recovery property (to the extent of the amount which may be treated as ordinary income under this section) and then to the portion of the building or other structure which is not section 1245 recovery property.

[See main edition for text of (6); (b) to (d)]

(As amended Pub. L. 98-369, div. A, title I, § 111(e)(5), (10), July 18, 1984, 98 Stat. 633.)

Amendments

1984—Subsec. (a)(5)(A) to (C). Pub. L. 98-369, § 111(e)(5), substituted "18-year real property and low-income housing" for "15-year real property".

Subsec. (d)(5)(D). Pub. L. 98-369, § 111(e)(10), substituted "low-income housing (within the meaning of section 168(c)(2)(F))" for "15-year real property which is described in clause (i), (ii), (iii), or (iv) of section 1250(a)(1)(B)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable with respect to property placed in service by the taxpayer after Mar. 15, 1984, subject to certain exceptions, see section 111(g) of Pub. L. 98-369, set out as a note under section 168 of this title.

Effective Date of 1976 Amendment

Amendment of subsec. (a)(2)(D), (3)(D) by section 2122(b)(3)(A), (B), (C) of Pub. L. 94-455 applicable to taxable years beginning after Dec. 31, 1976, see section 2122(c) of Pub. L. 94-455, as amended, set out as an Effective Date note under section 190 of this title.

Section Referred to in Other Sections

This section is referred to in sections 48, 57, 108, 163, 167, 168, 169, 170, 291, 305, 341, 453, 453B, 465, 467, 512, 613, 617, 644, 751, 1017, 1250, 1252, 1255, 1276 of this title.

§ 1246. Gain on foreign investment company stock

(a) Treatment of gain as ordinary income

[*See main edition for text of (1) to (3)*]

(4) Holding period of stock must be more than 6 months

This section shall not apply with respect to the sale or exchange of stock where the holding period of such stock as of the date of such sale or exchange is 6 months or less.

(b) Definition of foreign investment company

For purposes of this section, the term "foreign investment company" means any foreign corporation which, for any taxable year beginning after December 31, 1962, is—

[*See main edition for text of (1)*]

(2) engaged (or holding itself out as being engaged) primarily in the business of investing, reinvesting, or trading in—

(A) securities (as defined in section 2(a)(36) of the Investment Company Act of 1940, as amended),

(B) commodities, or

(C) any interest (including a futures or forward contract or option) in property described in subparagraph (A) or (B),

at a time when 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or the total value of all classes of stock, was held directly (or indirectly through applying paragraphs (2) and (3) of section 958(a) and paragraph (4) of section 318(a)) by United States persons (as defined in section 7701(a)(30)).

[*See main edition for text of (c) to (g)*]

(As amended Pub. L. 98-369, div. A, title I, § 134(a), title X, § 1001(b)(20), July 18, 1984, 98 Stat. 668, 1012.)

References in Text

The Investment Company Act of 1940, as amended, referred to in subsec. (b)(1), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. Section 2(a)(36) of such Act, referred to in subsec. (b)(2), is classified to section 80a-2(a)(36) of Title 15. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

Amendments

1984—Subsec. (a)(4). Pub. L. 98-369, § 1001(b)(20), substituted "6 months" for "1 year".

Subsec. (b)(2). Pub. L. 98-369, § 134(a), in amending par. (2) generally, substituted reference to securities, as defined in section 2(a)(36) of the Investment Company Act of 1940, commodities, or any interest, including a futures or forward contract or option, in property described in subpars. (A) and (B) for reference to securities within the meaning of section 3(a)(1) of the Investment Company Act of 1940, as limited by pars. (2) through (10), except par. (6)(C), and pars. (12) through (15) of section 3(c) of such Act, and reference to pars. (2) and (3) of section 958(a) and par. (4) of section 318(a) for reference to section 958(a).

Effective Date of 1984 Amendment

Section 134(b) of Pub. L. 98-369 provided that:

"(1) In general.—Except as provided in paragraph (2), the amendment made by subsection (a) [amending subsec. (b)(2) of this section] shall apply to sales and exchanges (and distributions) on or after September 29, 1983, in taxable years ending on or after such date.

"(2) Stock held on September 29, 1983.—In the case of a sale or exchange (or distribution) not later than the date which is 1 year after the date of the enactment of this Act [July 18, 1984], the amendment made by subsection (a) shall not apply with respect to stock held by the taxpayer continuously from September 29, 1983, to the date of such sale or exchange (or distribution)."

Amendment by section 1001(b)(20) of Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

Section Referred to in Other Sections

This section is referred to in sections 312, 751, 904, 1223, 1247, 1248 of this title.

§ 1247. Election by foreign investment companies to distribute income currently

[*See main edition for text of (a) to (h)*]

(i) Loss on sale or exchange of certain stock held less than 1 year

If—

[*See main edition for text of (1)*]

(2) such share is held by the taxpayer for less than 6 months,

then any loss on the sale or exchange of such share shall, to the extent of the amount described in paragraph (1), be treated as loss from the sale or exchange of a capital asset held for more than 6 months.

(As amended Pub. L. 98-369, div. A, title X, § 1001(b)(21), July 18, 1984, 98 Stat. 1012.)

Amendments

1984—Subsec. (i)(2). Pub. L. 98-369 substituted "6 months" for "1 year".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

§ 1248. Gain from certain sales or exchanges of stock in certain foreign corporations

[*See main edition for text of (a)*]

(b) Limitation on tax applicable to individuals

In the case of an individual, if the stock sold or exchanged is a capital asset (within the meaning of section 1221) and has been held for more than 6 months, the tax attributable to an amount included in gross income as a dividend under subsection (a) shall not be greater than a tax equal to the sum of—

[*See main edition for text of (1)*]

(2) an amount equal to the tax that would result by including in gross income, as gain from the sale or exchange of a capital asset held for more than 6 months, an amount equal to the excess of (A) the amount included in gross income as a dividend under subsection (a), over (B) the amount determined under paragraph (1).

(c) Determination of earnings and profits

[*See main edition for text of* (*1*)]

(2) Earnings and profits of subsidiaries of foreign corporations

If—

[*See main edition for text of* (*A*) *and* (*B*)]

then, for purposes of this section, the earnings and profits of the foreign corporation the stock of which is sold or exchanged which are attributable to the stock sold or exchanged shall be deemed to include the earnings and profits of such other foreign corporation which—

[*See main edition for text of* (*C*)]

(D) were accumulated in taxable years of such other corporation beginning after December 31, 1962, and during the period or periods—

(i) such other corporation was a controlled foreign corporation, and

(ii) such person owned within the meaning of section 958(a) the stock of such other foreign corporation.

(d) Exclusions from earnings and profits

For purposes of this section, the following amounts shall be excluded, with respect to any United States person, from the earnings and profits of a foreign corporation:

[*See main edition for text of* (*1*) *to* (*5*)]

(6) Foreign trade income

Earnings and profits of the foreign corporation attributable to foreign trade income (within the meaning of section 923(b)) of a FSC.

[*See main edition for text of* (*e*) *and* (*f*)]

(g) Exceptions

This section shall not apply to—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) any amount to the extent that such amount is, under any other provision of this title, treated as—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) gain from the sale of an asset held for not more than 6 months.

[*See main edition for text of* (*h*)]

(i) Treatment of certain indirect transfers

(1) In general

If any shareholder of a 10-percent corporate shareholder of a foreign corporation exchanges stock of the 10-percent corporate shareholder for stock of the foreign corporation, for purposes of this section, the stock of the foreign corporation received in such exchange shall be treated as if it had been—

(A) issued to the 10-percent corporate shareholder, and

(B) then distributed by the 10-percent corporate shareholder to such shareholder in redemption of his stock.

(2) 10-percent corporate shareholder defined

For purposes of this subsection, the term "10-percent corporate shareholder" means any domestic corporation which, as of the day before the exchange referred to in paragraph (1), satisfies the stock ownership requirements of subsection (a)(2) with respect to the foreign corporation.

(j) Cross reference

For provision excluding amounts previously taxed under this section from gross income when subsequently distributed, see section 959(e).

(As amended Pub. L. 98–369, div. A, title I, § 133(a), (b)(2), (c), title VIII, § 801(d)(6), title X, § 1001(b)(22), July 18, 1984, 98 Stat. 667, 668, 996, 1012.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369, § 1001(b)(22), substituted "6 months" for "1 year".

Subsec. (c)(2)(D). Pub. L. 98–369, § 133(c), substituted "section 958(a)" for "section 958(a)(2)".

Subsec. (d)(6). Pub. L. 98–369, § 801(d)(6), added par. (6).

Subsec. (g)(3)(C). Pub. L. 98–369, § 1001(b)(22), substituted "6 months" for "1 year".

Subsec. (i). Pub. L. 98–369, § 133(a), added subsec. (i).

Subsec. (j). Pub. L. 98–369, § 133(b)(2), added subsec. (j).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 133(d)(1) of Pub. L. 98–369 provided that: "The amendment made by subsection (a) [enacting subsec. (i) of this section] shall apply to exchanges after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date."

Amendment by section 133(b)(2), (c) of Pub. L. 98–369 applicable with respect to transactions to which subsec. (a) or (f) of this section applies occurring after July 18, 1984, with election of earlier date for certain transactions, see section 133(d)(2), (3) of Pub. L. 98–369, set out as a note under section 959 of this title.

Amendment by section 801(d)(6) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, set out as an Effective Date note under section 921 of this title.

Amendment by section 1001(b)(22) of Pub. L. 98–369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98–369, set out as a note under section 166 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 301, 338, 751, 904, 959, 4916 of this title.

§ 1250. Gain from dispositions of certain depreciable realty

(a) General rule

Except as otherwise provided in this section—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Cross reference

For reduction in the case of corporations on capital gain treatment under this section, see section 291(a)(1).

[*See main edition for text of* (*b*) *to* (*i*)]

(As amended Pub. L. 98-369, div. A, title VII, § 712(a)(1)(B), July 18, 1984, 98 Stat. 946.)

Amendments

1984—Subsec. (a)(4). Pub. L. 98-369 added par. (4).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Section Referred to in Other Sections

This section is referred to in sections 48, 57, 163, 167, 168, 170, 189, 291, 341, 453, 453B, 467, 644, 751, 1017 of this title.

[§ 1251. Repealed. Pub. L. 98-369, div. A, title IV, § 492(a), July 18, 1984, 98 Stat. 853]

Section, added Pub. L. 91-172, title II, § 211(a), Dec. 30, 1969, 83 Stat. 566, and amended Pub. L. 92-178, title III, § 305(a), Dec. 10, 1971, 85 Stat. 524; Pub. L. 94-455, title II, § 206(a), (b)(1), (2), title XIV, § 1402(b)(1)(Z), (2), title XIX, §§ 1901(b)(3)(K), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1535, 1732, 1793, 1834; Pub. L. 97-354, § 5(a)(36), Oct. 19, 1982, 96 Stat. 1695; Pub. L. 98-369, div. A, title X, § 1001(b)(23), July 18, 1984, 98 Stat. 1012, related to gain from disposition of property used in farming where farm losses offset nonfarm income.

Effective Date of Repeal

Repeal of section applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 170 of this title.

§ 1252. Gain from disposition of farm land

(a) General rule

(1) Ordinary income

Except as otherwise provided in this section, if farm land which the taxpayer has held for less than 10 years is disposed of during a taxable year beginning after December 31, 1969, the lower of—

[*See main edition for text of* (*A*) *and* (*B*)]

shall be treated as ordinary income. Such gain shall be recognized notwithstanding any other provision of this subtitle.

[*See main edition for text of* (*2*) *and* (*3*); (*b*)]

(As amended Pub. L. 98-369, div. A, title IV, § 492(b)(5), July 18, 1984, 98 Stat. 854.)

Amendments

1984—Subsec. (a)(1). Pub. L. 98-369 struck out ", except that this section shall not apply to the extent section 1251 applies to such gain" after "of this subtitle" in last sentence.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 492(d) of Pub. L. 98-369, set out as a note under section 170 of this title.

§ 1256. Section 1256 contracts marked to market

(a) General rule

For purposes of this subtitle—

(1) each section 1256 contract held by the taxpayer at the close of the taxable year shall be treated as sold for its fair market value on the last business day of such taxable year (and any gain or loss shall be taken into account for the taxable year),

[*See main edition for text of* (*2*)]

(3) any gain or loss with respect to a section 1256 contract shall be treated as—

[*See main edition for text of* (*A*) *and* (*B*)]

(4) if all the offsetting positions making up any straddle consist of section 1256 contracts to which this section applies (and such straddle is not part of a larger straddle), sections 1092 and 263(g) shall not apply with respect to such straddle.

(b) Section 1256 contract defined

For purposes of this section, the term "section 1256 contract" means—

(1) any regulated futures contract,
(2) any foreign currency contract,
(3) any nonequity option, and
(4) any dealer equity option.

(c) Terminations, etc.

(1) In general

The rules of paragraphs (1), (2), and (3) of subsection (a) shall also apply to the termination (or transfer) during the taxable year of the taxpayer's obligation (or rights) with respect to a section 1256 contract by offsetting, by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse, or otherwise.

(2) Special rule where taxpayer takes delivery on or exercises part of straddle

If—

(A) 2 or more section 1256 contracts are part of a straddle (as defined in section 1092(c)), and

(B) the taxpayer takes delivery under or exercises any of such contracts,

then, for purposes of this section, each of the other such contracts shall be treated as terminated on the day on which the taxpayer took delivery.

[*See main edition for text of* (*3*)]

(d) Elections with respect to mixed straddles

(1) Election

The taxpayer may elect to have this section not to apply to all section 1256 contracts which are part of a mixed straddle.

[*See main edition for text of* (*2*) *and* (*3*)]

(4) Mixed straddle

For purposes of this subsection, the term "mixed straddle" means any straddle (as defined in section 1092(c))—

(A) at least 1 (but not all) of the positions of which are section 1256 contracts, and

(B) with respect to which each position forming part of such straddle is clearly identified, before the close of the day on which the first section 1256 contract forming part of the straddle is acquired (or such earlier time as the Secretary may prescribe by regulations), as being part of such straddle.

(e) Mark to market not to apply to hedging transactions

[*See main edition for text of* (*1*)]

(2) Definition of hedging transaction

For purposes of this subsection, the term "hedging transaction" means any transaction if—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) before the close of the day on which such transaction was entered into (or such earlier time as the Secretary may prescribe by regulations), the taxpayer clearly identifies such transaction as being a hedging transaction.

[*See main edition for text of* (*3*) *and* (*4*)]

(5) Limitation on losses from hedging transactions

(A) In general

(i) Limitation

Any hedging loss for a taxable year which is allocable to any limited partner or limited entrepreneur (within the meaning of paragraph (3)) shall be allowed only to the extent of the taxable income of such limited partner or entrepreneur for such taxable year attributable to the trade or business in which the hedging transactions were entered into. For purposes of the preceding sentence, taxable income shall be determined by not taking into account items attributable to hedging transactions.

(ii) Carryover of disallowed loss

Any hedging loss disallowed under clause (i) shall be treated as a deduction attributable to a hedging transaction allowable in the first succeeding taxable year.

(B) Exception where economic loss

Subparagraph (A)(i) shall not apply to any hedging loss to the extent that such loss exceeds the aggregate unrecognized gains from hedging transactions as of the close of the taxable year attributable to the trade or business in which the hedging transactions were entered into.

(C) Exception for certain hedging transactions

In the case of any hedging transaction relating to property other than stock or securities, this paragraph shall apply only in the case of a taxpayer described in section 465(a)(1).

(D) Hedging loss

The term "hedging loss" means the excess of—

(i) the deductions allowable under this chapter for the taxable year attributable to hedging transactions (determined without regard to subparagraph (A)(i)), over

(ii) income received or accrued by the taxpayer during such taxable year from such transactions.

(E) Unrecognized gain

The term "unrecognized gain" has the meaning given to such term by section 1092(a)(3).

(f) Special rules

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Capital gain treatment for traders in section 1256 contracts

(A) In general

For purposes of this title, gain or loss from trading of section 1256 contracts shall be treated as gain or loss from the sale or exchange of a capital asset.

(B) Exception for certain hedging transactions

Subparagraph (A) shall not apply to any section 1256 contract to the extent such contract is held for purposes of hedging property if any loss with respect to such property in the hands of the taxpayer would be ordinary loss.

(C) Treatment of underlying property

For purposes of determining whether gain or loss with respect to any property is ordinary income or loss, the fact that the taxpayer is actively engaged in dealing in or trading section 1256 contracts related to such property shall not be taken into account.

(4) Special rule for dealer equity options of limited partners or limited entrepreneurs

In the case of any gain or loss with respect to dealer equity options which are allocable to limited partners or limited entrepreneurs (within the meaning of subsection (e)(3))—

(A) paragraph (3) of subsection (a) shall not apply to any such gain or loss, and

(B) all such gains or losses shall be treated as short-term capital gains or losses, as the case may be.

(g) Definitions

For purposes of this section—

(1) Regulated futures contracts defined

The term "regulated futures contract" means a contract—

(A) with respect to which the amount required to be deposited and the amount which may be withdrawn depends on a system of marking to market, and

(B) which is traded on or subject to the rules of a qualified board or exchange.

(2) Foreign currency contract defined

(A) Foreign currency contract

The term "foreign currency contract" means a contract—

(i) which requires delivery of, or the settlement of which depends on the value of, a foreign currency which is a currency in which positions are also traded through regulated futures contracts,

(ii) which is traded in the interbank market, and

(iii) which is entered into at arm's length at a price determined by reference to the price in the interbank market.

(B) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of subparagraph (A), including regulations excluding from the application of subparagraph (A) any contract (or type of contract) if its application thereto would be inconsistent with such purposes.

(3) Nonequity option

The term "nonequity option" means any listed option which is not an equity option.

(4) Dealer equity option

The term "dealer equity option" means, with respect to an options dealer, any listed option which—

(A) is an equity option,

(B) is purchased or granted by such options dealer in the normal course of his activity of dealing in options, and

(C) is listed on the qualified board or exchange on which such options dealer is registered.

(5) Listed option

The term "listed option" means any option (other than a right to acquire stock from the issuer) which is traded on (or subject to the rules of) a qualified board or exchange.

(6) Equity option

(A) In general

Except as provided in subparagraph (B), the term "equity option" means any option—

(i) to buy or sell stock, or

(ii) the value of which is determined directly or indirectly by reference to any stock (or group of stocks) or stock index.

(B) Exception for certain options regulated by Commodities Futures Trading Commission

The term "equity option" does not include any option with respect to any group of stocks or stock index if—

(i) there is in effect a designation by the Commodities Futures Trading Commission of a contract market for a contract based on such group of stocks or index, or

(ii) the Secretary determines that such option meets the requirements of law for such a designation.

(7) Qualified board or exchange

The term "qualified board or exchange" means—

(A) a national securities exchange which is registered with the Securities and Exchange Commission,

(B) a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission, or

(C) any other exchange, board of trade, or other market which the Secretary determines has rules adequate to carry out the purposes of this section.

(8) Options dealer

(A) In general

The term "options dealer" means any person registered with an appropriate national securities exchange as a market maker or specialist in listed options.

(B) Persons trading in other markets

In any case in which the Secretary makes a determination under subparagraph (C) of paragraph (7), the term "options dealer" also includes any person whom the Secretary determines performs functions similar to the persons described in subparagraph (A). Such determinations shall be made to the extent appropriate to carry out the purposes of this section.

(As amended Pub. L. 98-369, div. A, title I, §§ 102(a), (b), (e)(1), (5), 104(a), 107(c), (d), title VII, § 722(a)(2), July 18, 1984, 98 Stat. 620, 621, 623, 624, 628, 630, 972.)

AMENDMENTS

1984—Pub. L. 98-369, § 102(e)(5), substituted "Section 1256 contracts" for "Regulated futures contracts" in section catchline.

Subsec. (a)(1), (3), (4). Pub. L. 98-369, § 102(a)(1), substituted "section 1256 contract" for "regulated futures contract" and "section 1256 contracts" for "regulated futures contracts" wherever appearing.

Subsec. (b). Pub. L. 98-369, § 102(a)(2), in par. (1), substituted "any regulated futures contract" for "with respect to which the amount required to be deposited and the amount which may be withdrawn depends on the system of marking to market; and", in par. (2), substituted "any foreign currency contract," for "which is traded on or subject to the rules of a domestic board of trade designated as a contract market by the Commodity Futures Trading Commission or of any board of trade or exchange which the Secretary determines has rules adequate to carry out the purposes of this section. Such term includes any foreign currency contract.", and added pars. (3) and (4).

Subsec. (c)(1). Pub. L. 98-369, § 102(a)(1)(A), (e)(1)(A), substituted "section 1256 contracts" for "regulated futures contracts", and "by taking or making delivery, by exercise or being exercised, by assignment or being assigned, by lapse," for "by taking or making delivery,".

Subsec. (c)(2). Pub. L. 98-369, § 102(e)(1)(C), substituted "takes delivery on or exercises" for "takes delivery on" in heading.

Subsec. (c)(2)(A). Pub. L. 98-369, § 102(a)(1)(B), substituted "section 1256 contracts" for "regulated futures contracts".

Subsec. (c)(2)(B). Pub. L. 98-369, § 102(e)(1)(B), substituted "takes delivery under or exercises" for "takes delivery under".

Subsec. (d)(1), (4)(A). Pub. L. 98-369, § 102(a)(1)(B), substituted "section 1256 contracts" for "regulated futures contracts".

Subsec. (d)(4)(B). Pub. L. 98-369, § 102(a)(1)(A), substituted "section 1256 contract" for "regulated futures contract".

Pub. L. 98-369, § 107(c), added "(or such earlier time as the Secretary may prescribe by regulations)".

Subsec. (e)(2)(C). Pub. L. 98-369, § 107(d), added "(or such earlier time as the Secretary may prescribe by regulations".

Subsec. (e)(5). Pub. L. 98-369, § 104(a), added par. (5).

Subsec. (f)(3), (4). Pub. L. 98-369, § 102(b), added pars. (3) and (4).

Subsec. (g). Pub. L. 98-369, § 102(a)(3), in amending subsec. (g) generally, inserted provisions relating to regulated futures contracts as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (2), and added pars. (3) to (8).

Subsec. (g)(1)(A). Pub. L. 98-369, § 722(a)(2), added ", or the settlement of which depends on the value of," after "delivery of".

Effective Date of 1984 Amendment

Section 102(f)-(i) of Pub. L. 98-369 provided that:

"(f) Effective Dates.—

"(1) In general.—Except as otherwise provided in this subsection or subsection (g), the amendments made by this section [amending sections 263, 1092, 1212, 1234A, 1256, 1362, 1374, 1402 of this title, section 411 of Title 42, The Public Health and Welfare, and enacting a provision set out as a note under section 1362 of this title] shall apply to positions established after the date of the enactment of this Act [July 18, 1984], in taxable years ending after such date.

"(2) Special rule for options on regulated futures contracts.—In the case of any option with respect to a regulated futures contract (within the meaning of section 1256 of the Internal Revenue Code of 1954), the amendments made by this section shall apply to positions established after October 31, 1983, in taxable years ending after such date.

"(3) Special rule for self-employment tax.—Except as provided in subsection (g)(2), the amendments made by subsection (c) [enacting section 1402(i) of this title and section 411(h) of Title 42] shall apply to taxable years beginning after the date of the enactment of this Act [July 18, 1984].

"(4) Gains or losses from certain terminations.—The amendment made by subsection (d)(9) [probably means subsec. (e)(9), which amended section 1234A of this title] shall apply as if included in the amendment made by section 505(a) [probably means section 507(a)] of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34], as amended by section 105(e) of the Technical Corrections Act of 1982 [Pub. L. 97-448].

"(g) Elections With Respect to Property Held on or Before the Date of the Enactment of This Act.—At the election of the taxpayer—

"(1) the amendments made by this section [amending sections 263, 1092, 1212, 1234A, 1256, 1362, 1374, and 1402 of this title, section 411 of Title 42, The Public Health and Welfare, and enacting a provision set out as a note under section 1362 of this title] shall apply to all section 1256 contracts held by the taxpayer on the date of the enactment of this Act [July 18, 1984], effective for periods after such date in taxable years ending after such date, or

"(2) in lieu of an election under paragraph (1), the amendments made by this section shall apply to all section 1256 contracts held by the taxpayer at any time during the taxable year of the taxpayer which includes the date of the enactment of this Act.

"(h) Elections for Installment Payment of Tax Attributable to Stock Options.—

"(1) In general.—If the taxpayer makes an election under subsection (g)(2) and under this subsection—

"(A) the taxpayer may pay part or all the tax for the taxable year referred to in subsection (g)(2) in 2 or more (but not exceeding 5) equal installments, and

"(B) the maximum amount of tax which may be paid in installments under this subsection shall be the excess of—

"(i) the tax for such taxable year determined by taking into account subsection (g)(2), over

"(ii) the tax for such taxable year determined by taking into account subsection (g)(2) and by treating—

"(I) all section 1256 contracts which are stock options, and

"(II) any stock which was a part of a straddle including any such stock options,

as having been acquired for a purchase price equal to their fair market value on the last business day of the preceding taxable year. Stock options and stock shall be taken into account under subparagraph (B)(ii) only if such options or stock were held on the last day of the preceding taxable year and only if income on such options or stock would have been ordinary income if such options or stock were sold at a gain on such last day.

"(2) Date for payment of installment.—

"(A) If an election is made under this subsection, the first installment under paragraph (1) shall be paid on or before the due date for filing the return for the taxable year described in paragraph (1), and each succeeding installment shall be paid on or before the date which is 1 year after the date prescribed for payment of the preceding installment.

"(B) If a bankruptcy case or insolvency proceeding involving the taxpayer is commenced before the final installment is paid, the total amount of any unpaid installments shall be treated as due and payable on the day preceding the day on which such case or proceeding is commenced.

"(3) Interest imposed.—For purposes of section 6601 of the Internal Revenue Code of 1954, the time for payment of any tax with respect to which an election is made under this subsection shall be determined without regard to this subsection.

"(4) Form of election.—An election under this subsection shall be made not later than the time for filing the return for the taxable year described in paragraph (1) and shall be made in the manner and form required by regulations prescribed by Secretary of the Treasury or his delegate. The election shall set forth—

"(A) the amount determined under paragraph (1)(B) and the number of installments elected by the taxpayer,

"(B) the property described in paragraph (1)(B)(ii), and the date on which such property was acquired,

"(C) the fair market value of the property described in paragraph (1)(B)(ii) on the last business day of the taxable year preceding the taxable year described in paragraph (1), and

"(D) such other information for purposes of carrying out the provisions of this subsection as may be required by such regulations.

"(5) Delay of identification requirement.—Section 1256(e)(2)(C) of the Internal Revenue Code of 1954 shall not apply to any stock option or stock acquired on or before the 60th day after the date of the enactment of this Act [July 18, 1984].

"(i) Definitions.—For purposes of subsections (g) and (h)—

"(1) Section 1256 contract.—The term 'section 1256 contract' has the meaning given to such term by section 1256(b) of the Internal Revenue Code of 1954 (as amended by this section).

"(2) Stock option.—The term 'stock option' means any option to buy or sell stock."

Section 104(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (e)(5) of this section] shall apply to taxable years beginning after December 31, 1984."

Amendment by section 107 of Pub. L. 98-369 applicable to positions entered into after July 18, 1984, in taxable years ending after that date, see section 107(e) of Pub. L. 98-369 set out as a note under section 1092 of this title.

Amendment by section 722(a)(2) of Pub. L. 98-369 effective as if included in the provisions of the Technical Corrections Act of 1984, Pub. L. 97-448, to which such amendment relates, see section 722(a)(6) of Pub. L. 98-369, set out as a note under section 57 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 461, 1092, 1212, 1223, 1234, 1234A, 1281, 1374, 1402 of this title; title 42 section 411.

PART V—SPECIAL RULES FOR BONDS AND OTHER DEBT INSTRUMENTS

Subpart
A. Original issue discount.
B. Market discount.[1]
C. Discount on short-term obligations.
D. Miscellaneous provisions.

SUBPART A—ORIGINAL ISSUE DISCOUNT

Sec.
1271. Treatment of amounts received on retirement or sale or exchange of debt instruments.
1272. Current inclusion in income of original issue discount.
1273. Determination of amount of original issue discount.
1274. Determination of issue price in the case of certain debt instruments issued for property.
1275. Other definitions and special rules.

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 312, 1037, 1278 of this title.

§ 1271. Treatment of amounts received on retirement or sale or exchange of debt instruments

(a) General rule

For purposes of this title—

(1) Retirement

Amounts received by the holder on retirement of any debt instrument shall be considered as amounts received in exchange therefor.

(2) Ordinary income on sale or exchange where intention to call before maturity

(A) In general

If at the time of original issue there was an intention to call a debt instrument before maturity, any gain realized on the sale or exchange thereof which does not exceed an amount equal to—

(i) the original issue discount, reduced by

(ii) the portion of original issue discount previously includible in the gross income of any holder (without regard to subsection (a)(6) or (b)(4) of section 1272 (or the corresponding provisions of prior law)),

shall be treated as ordinary income.

(B) Exceptions

This paragraph (and paragraph (2) of subsection (c)) shall not apply to—

(i) any tax-exempt obligation, or

(ii) any holder who has purchased the debt instrument at a premium.

(3) Certain short-term Government obligations

(A) In general

On the sale or exchange of any short-term Government obligation, any gain realized which does not exceed an amount equal to the ratable share of the acquisition discount shall be treated as ordinary income.

(B) Short-term Government obligation

For purposes of this paragraph, the term "short-term Government obligation" means any obligation of the United States or any of its possessions, or of a State or any political subdivision thereof, or of the District of Columbia which is—

(i) issued on a discount basis, and

(ii) payable without interest at a fixed maturity date not more than 1 year from the date of issue.

Such term does not include any tax-exempt obligation.

(C) Acquisition discount

For purposes of this paragraph, the term "acquisition discount" means the excess of the stated redemption price at maturity over the taxpayer's basis for the obligation.

(D) Ratable share

For purposes of this paragraph, the ratable share of the acquisition discount is an amount which bears the same ratio to such discount as—

(i) the number of days which the taxpayer held the obligation, bears to

(ii) the number of days after the date the taxpayer acquired the obligation and up to (and including) the date of its maturity.

(b) Exceptions

This section shall not apply to—

(1) Natural persons

Any obligation issued by a natural person.

(2) Obligations issued before July 2, 1982, by certain issuers

Any obligation issued before July 2, 1982, by an issuer which—

(A) is not a corporation, and

(B) is not a government or political subdivision thereof.

(c) Transition rules

(1) Special rule for certain obligations issued before January 1, 1955

Paragraph (1) of subsection (a) shall apply to a debt instrument issued before January 1, 1955, only if such instrument was issued with interest coupons or in registered form, or was in such form on March 1, 1954.

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[1] So in original. Does not conform to Subpart B heading.

(2) Special rule for certain obligations with respect to which original issue discount not currently includible

(A) In general

On the sale or exchange of debt instruments issued by a government or political subdivision thereof after December 31, 1954, and before July 2, 1982, or by a corporation after December 31, 1954, and on or before May 27, 1969, any gain realized which does not exceed—

(i) an amount equal to the original issue discount, or

(ii) if at the time of original issue there was no intention to call the debt instrument before maturity, an amount which bears the same ratio to the original issue discount as the number of complete months that the debt instrument was held by the taxpayer bears to the number of complete months from the date of original issue to the date of maturity,

shall be considered as ordinary income.

(B) Subsection (a)(2)(A) not to apply

Subsection (a)(2)(A) shall not apply to any debt instrument referred to in subparagraph (A) of this paragraph.

(C) Cross reference

For current inclusion of original issue discount, see section 1272.

(d) Double inclusion in income not required

This section and sections 1272 and 1286 shall not require the inclusion of any amount previously includible in gross income.

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 532.)

EFFECTIVE DATE

Section 44 of subtitle C (§§ 41-44) of title I of division A of Pub. L. 98-369, as amended by Pub. L. 98-612, § 2, Oct. 31, 1984, 98 Stat. 3182, provided that:

"(a) GENERAL RULE.—Except as otherwise provided in this section, the amendments made by this subtitle [enacting sections 1271 to 1288 and 6706, amending sections 103A, 163, 165, 249, 341, 405, 409, 453B, 483, 751, 811, 871, 881, 1016, 1037, 1351, 1441, 6049, 7701, and 7805, and repealing sections 1232, 1232A, and 1232B of this title] shall apply to taxable years ending after the date of the enactment of this Act [July 18, 1984].

"(b) TREATMENT OF DEBT INSTRUMENTS RECEIVED IN EXCHANGE FOR PROPERTY.—

"(1) IN GENERAL.—

"(A) Except as otherwise provided in this subsection, section 1274 of the Internal Revenue Code of 1954 (as added by section 41) and the amendment made by section 41(b) (relating to amendment of section 483) shall apply to sales or exchanges after December 31, 1984.

"(B) Section 1274 of such Code and the amendment made by section 41(b) shall not apply to any sale or exchange pursuant to a written contract which was binding on March 1, 1984, and at all times thereafter before the sale or exchange.

"(2) REVISION OF SECTION 482 REGULATIONS.—Not later than 180 days after the date of the enactment of this Act [July 18, 1984], the Secretary of the Treasury or his delegate shall modify the safe harbor interest rates applicable under the regulations prescribed under section 482 of the Internal Revenue Code of 1954 so that such rates are consistent with the rates applicable under section 483 of such Code by reason of the amendments made by section 41.

"(3) CLARIFICATION OF INTEREST ACCRUAL; FAIR MARKET VALUE RULE IN CASE OF POTENTIALLY ABUSIVE SITUATIONS.—

"(A) IN GENERAL.—

"(i) CLARIFICATION OF INTEREST ACCRUAL.—In the case of any sale or exchange—

"(I) after March 1, 1984, and before January 1, 1985, nothing in section 483 of the Internal Revenue Code of 1954 shall permit any interest to be deductible before the period to which such interest is properly allocable, or

"(II) after June 8, 1984, and before January 1, 1985, notwithstanding section 483 of the Internal Revenue Code of 1954 or any other provision of law, no interest shall be deductible before the period to which such interest is properly allocable.

"(ii) FAIR MARKET RULE.—In the case of any sale or exchange after March 1, 1984, and before January 1, 1985, such section 483 shall be treated as including provisions similar to the provisions of section 1274(b)(3) of such Code (as added by section 41).

"(B) EXCEPTION FOR BINDING CONTRACTS.—Subparagraph (A) shall not apply to any sale or exchange pursuant to a written contract which was binding on March 1, 1984, and at all times thereafter before the sale or exchange.

"(C) INTEREST ACCRUAL RULE NOT TO APPLY WHERE SUBSTANTIALLY EQUAL ANNUAL PAYMENTS.—Clause (i) of subparagraph (A) shall not apply to any debt instrument with substantially equal annual payments.

"(4) SPECIAL RULES FOR SALES BEFORE JULY 1, 1985.—

"(A) IN GENERAL.—In the case of any sale or exchange before July 1, 1985, of property other than new section 38 property—

"(i) sections 483(c)(1)(B) and 1274(c)(3) of the Internal Revenue Code of 1954 shall be applied by substituting the testing rate determined under subparagraph (B) for 110 percent of the applicable Federal rate determined under section 1274(d) of such Code, and

"(ii) sections 483(b) and 1274(b) of such Code shall be applied by substituting the imputation rate determined under subparagraph (C) for 120 percent of the applicable Federal rate determined under section 1274(d) of such Code.

"(B) TESTING RATE.—For purposes of this paragraph—

"(i) IN GENERAL.—The testing rate determined under this subparagraph is the sum of—

"(I) 9 percent, plus

"(II) if the borrowed amount exceeds $2,000,000, the excess determined under clause (ii) multiplied by a fraction the numerator of which is the borrowed amount to the extent it exceeds $2,000,000, and the denominator of which is the borrowed amount.

"(ii) EXCESS.—For purposes of clause (i), the excess determined under this clause is the excess of 110 percent of the applicable Federal rate determined under section 1274(d) of such Code over 9 percent.

"(C) IMPUTATION RATE.—For purposes of this paragraph—

"(i) IN GENERAL.—The imputation rate determined under this subparagraph is the sum of—

"(I) 10 percent, plus

"(II) if the borrowed amount exceeds $2,000,000, the excess determined under clause (ii) multiplied by a fraction the numerator of which is the borrowed amount to the extent it exceeds $2,000,000, and the denominator of which is the borrowed amount.

"(ii) Excess.—For purposes of clause (i), the excess determined under this clause is the excess of 120 percent of the applicable Federal rate determined under section 1274(d) of such Code over 10 percent.

"(D) Borrowed amount.—For purposes of this paragraph, the term 'borrowed amount' means the stated principal amount.

"(E) Aggregation rules.—For purposes of this paragraph—

"(i) all sales or exchanges which are part of the same transaction (or a series of related transactions) shall be treated as one sale or exchange, and

"(ii) all debt instruments arising from the same transaction (or a series of related transactions) shall be treated as one debt instrument.

"(F) Cash method of accounting.—In the case of any sale or exchange before July 1, 1985, of property (other than new section 38 property) used in the active business of farming and in which the borrowed amount does not exceed $2,000,000—

"(i) section 1274 of the Internal Revenue Code of 1954 shall not apply, and

"(ii) interest on the obligation issued in connection with such sale or exchange shall be taken into account by both buyer and seller on the cash receipts and disbursements method of accounting.

The Secretary of the Treasury or his delegate may by regulation prescribe rules to prevent the mismatching of interest income and interest deductions in connection with obligations on which interest is computed on the cash receipts and disbursements method of accounting.

"(5) General rule for assumptions of loans.—Except as provided in paragraphs (6) and (7), if any person—

"(A) assumes, in connection with the sale or exchange of property, any debt obligation, or

"(B) acquires any property subject to any debt obligation,

sections 1274 and 483 of the Internal Revenue Code of 1954 shall apply to such debt obligation by reason of such assumption (or such acquisition).

"(6) Exception for assumptions of loans made on or before October 15, 1984.—

"(A) In general.—If any person—

"(i) assumes, in connection with the sale or exchange of property, any debt obligation described in subparagraph (B) and issued on or before October 15, 1984, or

"(ii) acquires any property subject to any such debt obligation issued on or before October 15, 1984,

sections 1274 and 483 of the Internal Revenue Code of 1954 shall not be applied to such debt obligation by reason of such assumption (or such acquisition) unless the terms and conditions of such debt obligation are modified in connection with the assumption (or acquisition).

"(B) Obligations described in this subparagraph.—A debt obligation is described in this subparagraph if such obligation—

"(i) was issued on or before October 15, 1984, and

"(ii) was assumed (or property was taken subject to such obligation) in connection with the sale or exchange of property (including a deemed sale under section 338 (a)) the sales price of which is greater than $100,000,000.

"(C) Regulations.—The Secretary shall prescribe such regulations as may be appropriate to effect the purpose of this paragraph and paragraph (5), including regulations relating to tax-exempt obligations, government subsidized loans, or other instruments.

"(D) Certain exempt transactions.—The Secretary shall prescribe regulations under which any transaction shall be exempt from the application of this paragraph if such exemption is not likely to significantly reduce the tax liability of the purchaser by reason of the overstatement of the adjusted basis of the acquired asset.

"(7) Exception for assumptions of loans with respect to certain property.—

"(A) In general.—If any person—

"(i) assumes, in connection with the sale or exchange of property described in subparagraph (B), any debt obligation, or

"(ii) acquires any such property subject to any such debt obligation,

sections 1274 and 483 of the Internal Revenue Code of 1954 shall not be applied to such debt obligation by reason of such assumption (or such acquisition) unless the terms and conditions of such debt obligation are modified in connection with the assumption (or acquisition).

"(B) Sales or exchanges to which this paragraph applies.—This paragraph shall apply to any of the following sales or exchanges:

"(i) Residences.—Any sale or exchange of a residence by an individual, an estate, or a testamentary trust, but only if—

"(I) either—

"(aa) such residence on the date of such sale or exchange (or in the case of an estate or testamentary trust, on the date of death of the decedent) was the principal residence (within the meaning of section 1034) of the individual or decedent, or

"(bb) during the 2-year period ending on such date, no substantial portion of such residence was of a character subject to an allowance under this title [probably means the Internal Revenue Code of 1954] for depreciation (or amortization in lieu thereof) in the hands of such individual or decedent, and

"(II) such residence was not at any time, in the hands of such individual, estate, testamentary trust, or decedent, described in section 1221(1) (relating to inventory, etc.).

"(ii) Farms.—Any sale or exchange by a qualified person of—

"(I) real property which was used as a farm (within the meaning of section 6420(c)(2)) at all times during the 3-year period ending on the date of such sale or exchange, or

"(II) tangible personal property which was used in the active conduct of the trade or business of farming on such farm and is sold in connection with the sale of such farm,

but only if such property is sold or exchanged for use in the active conduct of the trade or business of farming by the transferee of such property.

"(iii) Trades or businesses.—

"(I) In general.—Any sale or exchange by a qualified person of any trade or business.

"(II) Application with subparagraph (b).—This subparagraph shall not apply to any sale or exchange of any property described in subparagraph (B).

"(III) New section 38 property.—This subparagraph shall not apply to the sale or exchange of any property which, in the hands of the transferee, is new section 38 property.

"(iv) Sale of business real estate.—Any sale or exchange of any real property used in an active trade or business by a person who would be a qualified person if he disposed of his entire interest.

This subparagraph shall not apply to any transaction described in the last sentence of paragraph (6)(B) (relating to transaction in excess of $100,000,000).

"(C) Definitions.—For purposes of this paragraph—

"(i) Qualified person defined.—The term 'qualified person' means—

"(I) a person who—

"(aa) is an individual, estate, or testamentary trust,

"(bb) is a corporation which immediately prior to the date of the sale or exchange has 35 or fewer shareholders, or

"(cc) is a partnership which immediately prior to the date of the sale or exchange has 35 or fewer partners,

"(II) is a 10-percent owner of a farm or a trade or business,

"(III) pursuant to a plan, disposes of—

"(aa) an interest in a farm or farm property, or

"(bb) his entire interest in a trade or business and all substantially similar trades or businesses, and

"(IV) the ownership interest of whom may be readily established by reason of qualified allocations (of the type described in section 168(j)(9)(B), one class of stock, or the like).

"(ii) 10-percent owner defined.—The term '10-percent owner' means a person having at least a 10-percent ownership interest, applying the attribution rules of section 318 (other than subsection (a)(4)).

"(iii) Trade or business defined.—

"(I) In general.—The term 'trade or business' means any trade or business, including any line of business, qualifying as an active trade or business within the meaning of section 355.

"(II) Rental of real property.—For purposes of this clause, the holding of real property for rental shall not be treated as an active trade or business.

"(c) Market Discount Rules.—

"(1) Ordinary income treatment.—Section 1276 of the Internal Revenue Code of 1954 (as added by section 41) shall apply to obligations issued after the date of the enactment of this Act [July 18, 1984] in taxable years ending after such date.

"(2) Interest deferral rules.—Section 1277 of such Code (as added by section 41) shall apply to obligations acquired after the date of the enactment of this Act in taxable years ending after such date.

"(d) Rules Relating to Discount on Short-Term Obligations.—Subpart C of part V of subchapter P of chapter 1 of such Code (as added by section 41) shall apply to obligations acquired after the date of the enactment of this Act [July 18, 1984].

"(e) 5-Year Spread of Adjustments Required by Reason of Accrual of Discount on Certain Short-Term Obligations.—

"(1) Election to have section 1281 apply to all obligations held during taxable year.—A taxpayer may elect for his first taxable year ending after the date of the enactment of this Act [July 18, 1984] to have section 1281 of the Internal Revenue Code of 1954 apply to all short-term obligations described in subsection (b) of such section which were held by the taxpayer at any time during such first taxable year.

"(2) 5-year spread.—

"(A) In general.—In the case of any taxpayer who makes an election under paragraph (1)—

"(i) the provisions of section 1281 of the Internal Revenue Code of 1954 (as added by section 41) shall be treated as a change in the method of accounting of the taxpayer,

"(ii) such change shall be treated as having been made with the consent of the Secretary, and

"(iii) the net amount of the adjustments required by section 481(a) of such Code to be taken into account by the taxpayer in computing taxable income (hereinafter in this paragraph referred to as the 'net adjustments') shall be taken into account during the spread period with the amount taken into account in each taxable year in such period determined under subparagraph (B).

"(B) Amount taken into account during each year of spread period.—

"(i) First year.—The amount taken into account for the first taxable year in the spread period shall be the sum of—

"(I) one-fifth of the net adjustments, and

"(II) the excess (if any) of—

"(a) the cash basis income over the accrual basis income, over

"(b) one-fifth of the net adjustments.

"(ii) For subsequent years in spread period.—The amount taken into account in the second or any succeeding taxable year in the spread period shall be the sum of—

"(I) the portion of the net adjustments not taken into account in the preceding taxable year of the spread period divided by the number of remaining taxable years in the spread period (including the year for which the determination is being made), and

"(II) the excess (if any) of—

"(a) the excess of the cash basis income over the accrual basis income, over

"(b) one-fifth of the net adjustments, multiplied by 5 minus the number of years remaining in the spread period (not including the current year).

The excess described in subparagraph (B)(ii)(II)(a) shall be reduced by any amount taken into account under this subclause or clause (i)(II) in any prior year.

"(C) Spread period.—For purposes of this paragraph, the term 'spread period' means the period consisting of the 5 taxable years beginning with the year for which the election is made under paragraph (1).

"(D) Cash basis income.—For purposes of this paragraph, the term 'cash basis income' means for any taxable year the aggregate amount which would be includible in the gross income of the taxpayer with respect to short-term obligations described in subsection (b) of section 1281 of such Code if the provisions of section 1281 of such Code did not apply to such taxable year and all prior taxable years within the spread period.

"(E) Accrual basis income.—For purposes of this paragraph, the term 'accrual basis income' means for any taxable year the aggregate amount includible in gross income under section 1281(a) of such Code for such a taxable year and all prior taxable years within the spread period.

"(f) Treatment of Original Issue Discount on Tax-Exempt Obligations.—Section 1288 of such Code (as added by section 41) shall apply to obligations issued after September 3, 1982, and acquired after March 1, 1984.

"(g) Repeal of Capital Asset Requirement.—Section 1272 of such Code (as added by section 41) shall not apply to any obligation issued before December 31, 1984, which is not a capital asset in the hands of the taxpayer.

"(h) Reporting Requirements.—Section 1275(c) of such Code (as added by section 41) and the amendments made by section 41(c) [enacting section 6706 of this title] shall take effect on the day 30 days after the date of the enactment of this Act [July 18, 1984].

"(i) Other Miscellaneous Changes.—

"(1) Accrual period.—In the case of any obligation issued after July 1, 1982, and before January 1, 1985, the accrual period, for purposes of section 1272(a) of the Internal Revenue Code of 1954 (as amended by section 41(a)), shall be a 1-year period (or shorter period to maturity) beginning on the day in the calendar year which corresponds to the date of original issue of the obligation.

"(2) CHANGE IN REDUCTION FOR PURCHASE AFTER ORIGINAL ISSUE.—Section 1272(a)(6) of such Code (as so amended) shall not apply to any purchase on or before the date of the enactment of this Act [July 18, 1984], and the rules of section 1232A(a)(6) of such Code (as in effect on the day before the date of the enactment of this Act) shall continue to apply to such purchase.

"(j) CLARIFICATION THAT PRIOR EFFECTIVE DATE RULES NOT AFFECTED.—Nothing in the amendment made by section 41(a) shall affect the application of any effective date provision (including any transitional rule) for any provision which was a predecessor to any provision contained in part V of subchapter P of chapter 1 of the Internal Revenue Code of 1954 (as added by section 41)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 1037, 1283, 1286 of this title.

§ 1272. Current inclusion in income of original issue discount

(a) Original issue discount on debt instruments issued after July 1, 1982, included in income on basis of constant interest rate

(1) General rule

For purposes of this title, there shall be included in the gross income of the holder of any debt instrument having original issue discount issued after July 1, 1982, an amount equal to the sum of the daily portions of the original issue discount for each day during the taxable year on which such holder held such debt instrument.

(2) Exceptions

Paragraph (1) shall not apply to—

(A) Tax-exempt obligations

Any tax-exempt obligation.

(B) United States savings bonds

Any United States savings bond.

(C) Short-term obligations

Any debt instrument which has a fixed maturity date not more than 1 year from the date of issue.

(D) Obligations issued by natural persons before March 2, 1984

Any obligation issued by a natural person before March 2, 1984.

(E) Loans between natural persons

(i) In general

Any loan made by a natural person to another natural person if—

(I) such loan is not made in the course of a trade or business of the lender, and

(II) the amount of such loan (when increased by the outstanding amount of prior loans by such natural person to such other natural person) does not exceed $10,000.

(ii) Clause (i) not to apply where tax avoidance a principal purpose

Clause (i) shall not apply if the loan has as 1 of its principal purposes the avoidance of any Federal tax.

(iii) Treatment of husband and wife

For purposes of this subparagraph, a husband and wife shall be treated as 1 person. The preceding sentence shall not apply where the spouses lived apart at all times during the taxable year in which the loan is made.

(3) Determination of daily portions

For purposes of paragraph (1), the daily portion of the original issue discount on any debt instrument shall be determined by allocating to each day in any accrual period its ratable portion of the increase during such accrual period in the adjusted issue price of the debt instrument. For purposes of the preceding sentence, the increase in the adjusted issue price for any accrual period shall be an amount equal to the excess (if any) of—

(A) the product of—

(i) the adjusted issue price of the debt instrument at the beginning of such accrual period, and

(ii) the yield to maturity (determined on the basis of compounding at the close of each accrual period and properly adjusted for the length of the accrual period), over

(B) the sum of the amounts payable as interest on such debt instrument during such accrual period.

(4) Adjusted issue price

For purposes of this subsection, the adjusted issue price of any debt instrument at the beginning of any accrual period is the sum of—

(A) the issue price of such debt instrument, plus

(B) the adjustments under this subsection to such issue price for all periods before the first day of such accrual period.

(5) Accrual period

Except as otherwise provided in regulations prescribed by the Secretary, the term "accrual period" means a 6-month period (or shorter period from the date of original issue of the debt instrument) which ends on a day in the calendar year corresponding to the maturity date of the debt instrument or the date 6 months before such maturity date.

(6) Reduction where subsequent holder pays acquisition premium

(A) Reduction

For purposes of this subsection, in the case of any purchase after its original issue of a debt instrument to which this subsection applies, the daily portion for any day shall be reduced by an amount equal to the amount which would be the daily portion for such day (without regard to this paragraph) multiplied by the fraction determined under subparagraph (B).

(B) Determination of fraction

For purposes of subparagraph (A), the fraction determined under this subparagraph is a fraction—

(i) the numerator of which is the excess (if any) of—

(I) the cost of such debt instrument incurred by the purchaser, over

(II) the issue price of such debt instrument, increased by the portion of original issue discount previously includible in the gross income of any holder (computed without regard to this paragraph), and

(ii) the denominator of which is the sum of the daily portions for such debt instrument for all days after the date of such purchase and ending on the stated maturity date (computed without regard to this paragraph).

(b) Ratable inclusion retained for corporate debt instruments issued before July 2, 1982

(1) General rule

There shall be included in the gross income of the holder of any debt instrument issued by a corporation after May 27, 1969, and before July 2, 1982—

(A) the ratable monthly portion of original issue discount, multiplied by

(B) the number of complete months (plus any fractional part of a month determined under paragraph (3)) such holder held such debt instrument during the taxable year.

(2) Determination of ratable monthly portion

Except as provided in paragraph (4), the ratable monthly portion of original issue discount shall equal—

(A) the original issue discount, divided by

(B) the number of complete months from the date of original issue to the stated maturity date of the debt instrument.

(3) Month defined

For purposes of this subsection—

(A) Complete month

A complete month commences with the date of original issue and the corresponding day of each succeeding calendar month (or the last day of a calendar month in which there is no corresponding day).

(B) Transfers during month

In any case where a debt instrument is acquired on any day other than a day determined under subparagraph (A), the ratable monthly portion of original issue discount for the complete month (or partial month) in which such acquisition occurs shall be allocated between the transferor and the transferee in accordance with the number of days in such complete (or partial) month each held the debt instrument.

(4) Reduction where subsequent holder pays acquisition premium

(A) Reduction

For purposes of this subsection, the ratable monthly portion of original issue discount shall not include its share of the acquisition premium.

(B) Share of acquisition premium

For purposes of subparagraph (A), any month's share of the acquisition premium is an amount (determined at the time of the purchase) equal to—

(i) the excess of—

(I) the cost of such debt instrument incurred by the holder, over

(II) the issue price of such debt instrument, increased by the portion of original issue discount previously includible in the gross income of any holder (computed without regard to this paragraph),

(ii) divided by the number of complete months (plus any fractional part of a month) from the date of such purchase to the stated maturity date of such debt instrument.

(c) Exceptions

This section shall not apply to any holder—

(1) who has purchased the debt instrument at a premium, or

(2) which is a life insurance company to which section 811(b) applies.

(d) Definition and special rule

(1) Purchase defined

For purposes of this section, the term "purchase" means—

(A) any acquisition of a debt instrument, where

(B) the basis of the debt instrument is not determined in whole or in part by reference to the adjusted basis of such debt instrument in the hands of the person from whom acquired.

(2) Basis adjustment

The basis of any debt instrument in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to this section.

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 533.)

Effective Date

Section applicable to taxable years ending after July 18, 1984, but not applicable to any obligation issued before Dec. 31, 1984, which is not a capital asset in the hands of the taxpayer, and subsec. (a)(6) of this section not applicable to any purchase on or before July 18, 1984, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

Section Referred to in Other Sections

This section is referred to in sections 163, 483, 871, 1271, 1275, 1276, 1278, 1286, 1288, 6049, 7872 of this title.

§ 1273. Determination of amount of original issue discount

(a) General rule

For purposes of this subpart—

(1) In general

The term "original issue discount" means the excess (if any) of—

(A) the stated redemption price at maturity, over

(B) the issue price.

(2) Stated redemption price at maturity

The term "stated redemption price at maturity" means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate, and payable unconditionally at fixed periodic intervals of 1 year or less during the entire term of the debt instrument).

(3) ¼ of 1 percent de minimis rule

If the original issue discount determined under paragraph (1) is less than—

(A) ¼ of 1 percent of the stated redemption price at maturity, multiplied by

(B) the number of complete years to maturity,

then the original issue discount shall be treated as zero.

(b) Issue price

For purposes of this subpart—

(1) Publicly offered debt instruments not issued for property

In the case of any issue of debt instruments—

(A) publicly offered, and

(B) not issued for property,

the issue price is the initial offering price to the public (excluding bond houses and brokers) at which price a substantial amount of such debt instruments was sold.

(2) Other debt instruments not issued for property

In the case of any issue of debt instruments not issued for property and not publicly offered, the issue price of each such instrument is the price paid by the first buyer of such debt instrument.

(3) Debt instruments issued for property where there is public trading

In the case of a debt instrument which is issued for property and which—

(A) is part of an issue a portion of which is traded on an established securities market, or

(B) is issued for stock or securities which are traded on an established securities market,

the issue price of such debt instrument shall be the fair market value of such property.

(4) Other cases

Except in any case—

(A) to which paragraph (1), (2), or (3) of this subsection applies, or

(B) to which section 1274 applies,

the issue price of a debt instrument which is issued for property shall be the stated redemption price at maturity.

(5) Property

In applying this subsection, the term "property" includes services and the right to use property, but such term does not include money.

(c) Special rules for applying subsection (b)

For purposes of subsection (b)—

(1) Initial offering price; price paid by the first buyer

The terms "initial offering price" and "price paid by the first buyer" include the aggregate payments made by the purchaser under the purchase agreement, including modifications thereof.

(2) Treatment of investment units

In the case of any debt instrument and an option, security, or other property issued together as an investment unit—

(A) the issue price for such unit shall be determined in accordance with the rules of this subsection and subsection (b) as if it were a debt instrument,

(B) the issue price determined for such unit shall be allocated to each element of such unit on the basis of the relationship of the fair market value of such element to the fair market value of all elements in such unit, and

(C) the issue price of any debt instrument included in such unit shall be the portion of the issue price of the unit allocated to the debt instrument under subparagraph (B).

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 536.)

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 103A, 163, 249, 811, 871, 881, 1274, 1275, 1283, 1286, 1288, 1351, 1441, 6049 of this title.

§ 1274. Determination of issue price in the case of certain debt instruments issued for property

(a) In general

In the case of any debt instrument to which this section applies, for purposes of this subpart, the issue price shall be—

(1) where there is adequate stated interest, the stated principal amount, or

(2) in any other case, the imputed principal amount.

(b) Imputed principal amount

For purposes of this section—

(1) In general

Except as provided in paragraph (3), the imputed principal amount of any debt instrument shall be equal to the sum of the present values of all payments due under such debt instrument.

(2) Determination of present value

For purposes of paragraph (1), the present value of a payment shall be determined in the manner provided by regulations prescribed by the Secretary—

(A) as of the date of the sale or exchange, and

(B) by using a discount rate equal to 120 percent of the applicable Federal rate, compounded semiannually.

(3) Fair market value rule in potentially abusive situations

(A) In general

In the case of any potentially abusive situation, the imputed principal amount of any debt instrument received in exchange for property shall be the fair market value of such property adjusted to take into account other consideration involved in the transaction.

(B) Potentially abusive situation defined

For purposes of subparagraph (A), the term "potentially abusive situation" means—

(i) a tax shelter (as defined in section 6661(b)(2)(C)(ii)), and

(ii) any other situation which, by reason of—

(I) recent sales transactions,

(II) nonrecourse financing,

(III) financing with a term in excess of the economic life of the property, or

(IV) other circumstances,

is of a type which the Secretary specifies by regulations as having potential for tax avoidance.

(c) Debt instruments to which section applies

(1) In general

Except as otherwise provided in this subsection, this section shall apply to any debt instrument given in consideration for the sale or exchange of property if—

(A) the stated redemption price at maturity for such debt instrument exceeds—

(i) where there is adequate stated interest, the stated principal amount, or

(ii) in any other case, the testing amount, and

(B) some or all of the payments due under such debt instrument are due more than 6 months after the date of such sale or exchange.

(2) Adequate stated interest

For purposes of this section, there is adequate stated interest with respect to any debt instrument if the stated principal amount for such debt instrument is less than or equal to the testing amount.

(3) Testing amount

For purposes of this section, the term "testing amount" means, with respect to any debt instrument, the imputed principal amount of such debt instrument which would be determined under subsection (b) (including paragraph (3) thereof) if a discount rate equal to 110 percent of the applicable Federal rate were used.

(4) Exceptions

This section shall not apply to—

(A) Sales for less than $1,000,000 of farms by individuals or small businesses

(i) In general

Any debt instrument arising from the sale or exchange of a farm (within the meaning of section 6420(c)(2))—

(I) by an individual, estate, or testamentary trust,

(II) by a corporation which as of the date of the sale or exchange is a small business corporation (as defined in section 1244(c)(3)), or

(III) by a partnership which as of the date of the sale or exchange meets requirements similar to those of section 1244(c)(3).

(ii) $1,000,000 limitation

Clause (i) shall apply only if it can be determined at the time of the sale or exchange that the sales price cannot exceed $1,000,000. For purposes of the preceding sentence, all sales and exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(B) Sales of principal residences

Any debt instrument arising from the sale or exchange by an individual of his principal residence (within the meaning of section 1034).

(C) Sales involving total payments of $250,000 or less

(i) In general

Any debt instrument arising from the sale or exchange of property if the sum of the following amounts does not exceed $250,000:

(I) the aggregate amount of the payments due under such debt instrument and all other debt instruments received as consideration for the sale or exchange, and

(II) the aggregate amount of any other consideration to be received for the sale or exchange.

(ii) Consideration other than debt instrument taken into account at fair market value

For purposes of clause (i), any consideration (other than a debt instrument) shall be taken into account at its fair market value.

(iii) Aggregation of transactions

For purposes of this subparagraph, all sales and exchanges which are part of the same transaction (or a series of related transactions) shall be treated as 1 sale or exchange.

(D) Debt instruments which are publicly traded or issued for publicly traded property

Any debt instrument to which section 1273(b)(3) applies.

(E) Certain sales of patents

In the case of any transfer described in section 1235(a) (relating to sale or exchange of patents), any amount contingent on the productivity, use, or disposition of the property transferred.

(F) Sales or exchanges to which section 483(e) applies

Any debt instrument to the extent section 483(e) (relating to certain land transfers between related persons) applies to such instrument.

(d) Determination of applicable Federal rate

For purposes of this section—

(1) Applicable Federal rate

(A) In general

In the case of a debt instrument with a term of:	The applicable Federal rate is:
Not over 3 years	The Federal short-term rate.
Over 3 years but not over 9 years	The Federal mid-term rate.
Over 9 years	The Federal long-term rate.

(B) Determination of rates

Within 15 days after the close of—

(i) the 6-month period ending on September 30 of any calendar year, or

(ii) the 6-month period ending on March 31 of any calendar year,

the Secretary shall determine the Federal short-term rate, mid-term rate, and long-term rate for such 6-month period.

(C) Effective date of determination

Any Federal rate determined under subparagraph (A) shall—

(i) apply during the 6-month period beginning on January 1 of the succeeding calendar year in the case of a determination made under subparagraph (B)(i), and

(ii) apply during the 6-month period beginning on July 1 of the calendar year in the case of a determination made under subparagraph (B)(ii).

(D) Federal rate for any 6-month period

For purposes of this paragraph—

(i) Federal short-term rate

The Federal short-term rate for any 6-month period shall be the rate determined by the Secretary based on the average market yield (during such 6-month period) on outstanding marketable obligations of the United States with remaining periods to maturity of 3 years or less.

(ii) Federal mid-term and long-term rates

The Federal mid-term rate and long-term rate shall be determined in accordance with the principles of clause (i).

(2) Rate applicable to any sale or exchange

In the case of any sale or exchange, the determination of the applicable Federal rate shall be made as of the first day on which there is a binding contract in writing for the sale or exchange.

(3) Term of debt instrument

In determining the term of a debt instrument for purposes of this subsection, under regulations prescribed by the Secretary, there shall be taken into account options to renew or extend.

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 538.)

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to sales or exchanges after Dec. 31, 1984, but not applicable to any sale or exchange pursuant to a written contract which was binding on Mar. 1, 1984, and at all times thereafter before the sale or exchange, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

TRANSITIONAL RULE FOR PURPOSES OF IMPUTED INTEREST RULES

Provisions respecting treatment of debt instruments received in exchange for property, relating to special rules for sales before July 1, 1985, general rule for assumptions of loans, exception for assumptions of loans made on or before Oct. 15, 1984, and exception for assumptions of loans with respect to certain property, see section 44(b)(4)-(7) of Pub. L. 98-369, as amended, set out as an Effective Date note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 103, 103A, 249, 280G, 467, 468, 483, 1273, 1275, 1288, 7872 of this title.

§ 1275. Other definitions and special rules

(a) Definitions

For purposes of this subpart—

(1) Debt instrument

(A) In general

Except as provided in subparagraph (B), the term "debt instrument" means a bond, debenture, note, or certificate or other evidence of indebtedness.

(B) Exception for certain annuity contracts

The term "debt instrument" shall not include any annuity contract to which section 72 applies and which—

(i) depends (in whole or in substantial part) on the life expectancy of 1 or more individuals, or

(ii) is issued by an insurance company subject to tax under subchapter L—

(I) in a transaction in which there is no consideration other than cash or another annuity contract meeting the requirements of this clause,

(II) pursuant to the exercise of an election under an insurance contract by a beneficiary thereof on the death of the insured party under such contract, or

(III) in a transaction involving a qualified pension or employee benefit plan.

(2) Issue date

(A) Publicly offered debt instruments

In the case of any debt instrument which is publicly offered, the term "date of original issue" means the date on which the issue was first issued to the public.

(B) Issues not publicly offered and not issued for property

In the case of any debt instrument to which section 1273(b)(2) applies, the term "date of original issue" means the date on which the debt instrument was sold by the issuer.

(C) Other debt instruments

In the case of any debt instrument not described in subparagraph (A) or (B), the term "date of original issue" means the date on which the debt instrument was issued in a sale or exchange.

(3) Tax-exempt obligation

The term "tax-exempt obligation" means any obligation if—

(A) the interest on such obligation is not includible in gross income under section 103, or

(B) the interest on such obligation is exempt from tax (without regard to the identity of the holder) under any other provision of law.

(4) [1] Special rule for determination of issue price in case of exchange of debt instruments in reorganizations

(A) In general

If—

(i) any debt instrument is issued pursuant to a plan of reorganization (within the meaning of section 368(a)(1)) for another debt instrument (hereinafter in this paragraph referred to as the "old debt instrument"), and

(ii) the amount which (but for this paragraph) would be the issue price of the debt instrument so issued is less than the adjusted issue price of the old debt instrument,

then the issue price of the debt instrument so issued shall be treated as equal to the adjusted issue price of the old debt instrument.

(B) Definitions

For purposes of this paragraph—

(i) Debt instrument

The term "debt instrument" includes an investment unit.

(ii) Adjusted issue price

(I) In general

The adjusted issue price of the old debt instrument is its issue price, increased by the portion of any original issue discount previously includible in the gross income of any holder (without regard to subsection (a)(6) or (b)(4) of section 1272 (or the corresponding provisions of prior law)).

(II) Special rule for applying section 163(e)

For purposes of section 163(e), the adjusted issue price of the old debt instrument is its issue price, increased by any original issue discount previously allowed as a deduction.

(4) [1] Treatment of obligations distributed to corporations

Any debt obligation of a corporation distributed by such corporation with respect to its stock shall be treated as if it had been issued by such corporation for property.

(b) Treatment of borrower in the case of certain loans for personal use

(1) Sections 1274 and 483 not to apply

In the case of the obligor under any debt instrument given in consideration for the sale or exchange of property, sections 1274 and 483 shall not apply if such property is personal use property.

(2) Original issue discount deducted on cash basis in certain cases

In the case of any debt instrument, if—

(A) such instrument—

(i) is incurred in connection with the acquisition or carrying of personal use property, and

(ii) has original issue discount (determined after the application of paragraph (1)), and

(B) the obligor under such instrument uses the cash receipts and disbursements method of accounting,

notwithstanding section 163(e), the original issue discount on such instrument shall be deductible only when paid.

(3) Personal use property

For purposes of this subsection, the term "personal use property" means any property substantially all of the use of which by the taxpayer is not in connection with a trade or business of the taxpayer or an activity described in section 212. The determination of whether property is described in the preceding sentence shall be made as of the time of issuance of the debt instrument.

(c) Information requirements

(1) Information required to be set forth on instrument

(A) In general

In the case of any debt instrument having original issue discount, the Secretary may by regulations require that—

(i) the amount of the original issue discount, and

(ii) the issue date,

be set forth on such instrument.

(B) Special rule for instruments not publicly offered

In the case of any issue of debt instruments not publicly offered, the regulations prescribed under subparagraph (A) shall not require the information to be set forth on the debt instrument before any disposition of such instrument by the first buyer.

(2) Information required to be submitted to Secretary

In the case of any issue of publicly offered debt instruments having original issue discount, the issuer shall (at such time and in such manner as the Secretary shall by regulation prescribe) furnish the Secretary the following information:

(A) The amount of the original issue discount.

(B) The issue date.

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[1] So in original. There are two pars. designated "(4)".

(C) Such other information with respect to the issue as the Secretary may by regulations require.

For purposes of the preceding sentence, any person who makes a public offering of stripped bonds (or stripped coupons) shall be treated as the issuer of a publicly offered debt instrument having original issue discount.

(3) Exceptions

This subsection shall not apply to any obligation referred to in section 1272(a)(2) (relating to exceptions from current inclusion of original issue discount).

(4) Cross reference

For civil penalty for failure to meet requirements of this subsection, see section 6706.

(d) Regulation authority

The Secretary may prescribe regulations providing that where, by reason of varying rates of interest, put or call options, indefinite maturities, contingent payments, assumptions of debt instruments, or other circumstances, the tax treatment under this subpart (or section 163(e)) does not carry out the purposes of this subpart (or section 163(e)), such treatment shall be modified to the extent appropriate to carry out the purposes of this subpart (or section 163(e)).

(Added and amended Pub. L. 98-369, div. A, title I, §§ 41(a), 61(c)(2), July 18, 1984, 98 Stat. 540, 581.)

AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98-369, § 61(c)(2), added the par. (4) relating to treatment of obligations disbributed to corporations.

EFFECTIVE DATE OF 1984 AMENDMENT

Enactment of subsec. (a)(4) of this section by section 61(c)(2) of Pub. L. 98-369 applicable with respect to distributions declared Mar. 15, 1984, in taxable years ending after that date, see section 61(e)(3) of Pub. L. 98-369, set out as a note under section 312 of this title.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, but subsec. (c) of this section effective on the day 30 days after July 18, 1984, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 163, 483, 1278, 1283, 1286, 1288, 6706 of this title.

SUBPART B—MARKET DISCOUNT ON BONDS

Sec.
1276. Disposition gain representing accrued market discount treated as ordinary income.
1277. Deferral of interest deduction allocable to accrued market discount.
1278. Definitions and special rules.

§ 1276. Disposition gain representing accrued market discount treated as ordinary income

(a) Ordinary income

(1) In general

Except as otherwise provided in this section, gain on the disposition of any market discount bond shall be treated as ordinary income to the extent it does not exceed the accrued market discount on such bond. Such gain shall be recognized notwithstanding any other provision of this subtitle.

(2) Dispositions other than sales, etc.

For purposes of paragraph (1), a person disposing of any market discount bond in any transaction other than a sale, exchange, or involuntary conversion shall be treated as realizing an amount equal to the fair market value of the bond.

(3) Gain treated as interest for certain purposes

Except for purposes of sections 871(a), 881, 1441, 1442, and 6049 (and such other provisions as may be specified in regulations), any amount treated as ordinary income under paragraph (1) shall be treated as interest for purposes of this title.

(b) Accrued market discount

For purposes of this section—

(1) Ratable accrual

Except as otherwise provided in this subsection or subsection (c), the accrued market discount on any bond shall be an amount which bears the same ratio to the market discount on such bond as—

(A) the number of days which the taxpayer held the bond, bears to

(B) the number of days after the date the taxpayer acquired the bond and up to (and including) the date of its maturity.

(2) Election of accrual on basis of constant interest rate (in lieu of ratable accrual)

(A) In general

At the election of the taxpayer with respect to any bond, the accrued market discount on such bond shall be the aggregate amount which would have been includible in the gross income of the taxpayer under section 1272(a) (determined without regard to paragraph (2) thereof) with respect to such bond for all periods during which the bond was held by the taxpayer if such bond had been—

(i) originally issued on the date on which such bond was acquired by the taxpayer,

(ii) for an issue price equal to the basis of the taxpayer in such bond immediately after its acquisition.

(B) Coordination where bond has original issue discount

In the case of any bond having original issue discount, for purposes of applying subparagraph (A)—

(i) the stated redemption price at maturity of such bond shall be treated as equal to its revised issue price, and

(ii) the determination of the portion of the original issue discount which would have been includible in the gross income of the taxpayer under section 1272(a) shall be made under regulations prescribed by the Secretary.

(C) Election irrevocable

An election under subparagraph (A), once made with respect to any bond, shall be irrevocable.

(c) Treatment of nonrecognition transactions

Under regulations prescribed by the Secretary—

(1) Transferred basis property

If a market discount bond is transferred in a nonrecognition transaction and such bond is transferred basis property in the hands of the transferee, for purposes of determining the amount of the accrued market discount with respect to the transferee—

(A) the transferee shall be treated as having acquired the bond on the date on which it was acquired by the transferor for an amount equal to the basis of the transferor, and

(B) proper adjustments shall be made for gain recognized by the transferor on such transfer (and for any original issue discount or market discount included in the gross income of the transferor).

(2) Exchanged basis property

If any market discount bond is disposed of by the taxpayer in a nonrecognition transaction and paragraph (1) does not apply to such transaction, any accrued market discount determined with respect to the property disposed of to the extent not theretofore treated as ordinary income under subsection (a)—

(A) shall be treated as accrued market discount with respect to the exchanged basis property received by the taxpayer in such transaction if such property is a market discount bond, and

(B) shall be treated as ordinary income on the disposition of the exchanged basis property received by the taxpayer in such exchange if such property is not a market discount bond.

(3) Paragraph (1) to apply to certain distributions by corporations or partnerships

For purposes of paragraph (1), if the basis of any market discount bond in the hands of a transferee is determined under section 334(c), 732(a), or 732(b), such property shall be treated as transferred basis property in the hands of such transferee.

(d) Special rules

Under regulations prescribed by the Secretary—

(1) rules similar to the rules of subsection (b) of section 1245 shall apply for purposes of this section; except that—

(A) paragraph (1) of such subsection shall not apply, and

(B) an exchange qualifying under section 354(a), 355(a), or 356(a) (determined without regard to subsection (a) of this section) shall be treated as an exchange described in paragraph (3) of such subsection, and

(2) appropriate adjustments shall be made to the basis of any property to reflect gain recognized under subsection (a).

(e) Section not to apply to market discount bonds issued on or before date of enactment of section

This section shall not apply to any market discount bond issued on or before the date of the enactment of this section.

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 543.)

REFERENCES IN TEXT

The date of the enactment of this section, referred to in subsec. (e), is the date of enactment of Pub. L. 98-369, which was approved July 18, 1984.

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations issued after July 18, 1984, in taxable years ending after such date, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 341, 453B, 1277, 1278 of this title.

§ 1277. Deferral of interest deduction allocable to accrued market discount

(a) General rule

Except as otherwise provided in this section, the net direct interest expense with respect to any market discount bond shall be allowed as a deduction for the taxable year only to the extent that such expense exceeds the portion of the market discount allocable to the days during the taxable year on which such bond was held by the taxpayer (as determined under the rules of section 1276(b)).

(b) Disallowed deduction allowed for later years

(1) Election to take into account in later year where net interest income from bond

(A) In general

If—

(i) there is net interest income for any taxable year with respect to any market discount bond, and

(ii) the taxpayer makes an election under this subparagraph with respect to such bond,

any disallowed interest expense with respect to such bond shall be treated as interest paid or accrued by the taxpayer during such taxable year to the extent such disallowed interest expense does not exceed the net interest income with respect to such bond.

(B) Determination of disallowed interest expense

For purposes of subparagraph (A), the amount of the disallowed interest expense—

(i) shall be determined as of the close of the preceding taxable year, and

(ii) shall not include any amount previously taken into account under subparagraph (A).

(C) Net interest income

For purposes of this paragaph,[1] the term "net interest income" means the excess of the amount determined under paragraph (2) of subsection (c) over the amount determined under paragraph (1) of subsection (c).

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[1] So in original. Should be "paragraph,".

(2) Remainder of disallowed interest expense allowed for year of disposition

(A) In general

Except as otherwise provided in this paragraph, the amount of the disallowed interest expense with respect to any market discount bond shall be treated as interest paid or accrued by the taxpayer in the taxable year in which such bond is disposed of.

(B) Nonrecognition transactions

If any market discount bond is disposed of in a nonrecognition transaction—

(i) the disallowed interest expense with respect to such bond shall be treated as interest paid or accrued in the year of disposition only to the extent of the amount of gain recognized on such disposition, and

(ii) the disallowed interest expense with respect to such property (to the extent not so treated) shall be treated as disallowed interest expense—

(I) in the case of a transaction described in section 1276(c)(1), of the transferee with respect to the transferred basis property, or

(II) in the case of a transaction described in section 1276(c)(2), with respect to the exchanged basis property.

(C) Disallowed interest expense reduced for amounts previously taken into account under paragraph 1 [2]

For purposes of this paragraph, the amount of the disallowed interest expense shall not include any amount previously taken into account under paragraph (1).

(3) Disallowed interest expense

For purposes of this subsection, the term "disallowed interest expense" means the aggregate amount disallowed under subsection (a) with respect to the market discount bond.

(c) Net direct interest expense

For purposes of this section, the term "net direct interest expense" means, with respect to any market discount bond, the excess (if any) of—

(1) the amount of interest paid or accrued during the taxable year on indebtedness which is incurred or continued to purchase or carry such bond, over

(2) the aggregate amount of interest (including original issue discount) includible in gross income for the taxable year with respect to such bond.

In the case of any financial institution to which section 585 or 593 applies, the determination of whether interest is described in paragraph (1) shall be made under principles similar to the principles of section 291(e)(1)(B)(ii). Under rules similar to the rules of section 265(5), short sale expenses shall be treated as interest for purposes of determining net direct interest expense.

(d) Special rule for gain recognized on disposition of market discount bonds issued on or before date of enactment of section

In the case of a market discount bond issued on or before the date of the enactment of this section, any gain recognized by the taxpayer on any disposition of such bond shall be treated as ordinary income to the extent the amount of such gain does not exceed the amount allowable with respect to such bond under subsection (b)(2) for the taxable year in which such bond is disposed of.

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 545.)

References in Text

The date of the enactment of this section, referred to in subsec. (d), is the date of enactment of Pub. L. 98-369, which was approved July 18, 1984.

Effective Date

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations acquired after July 18, 1984, in taxable years ending after such date, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

Section Referred to in Other Sections

This section is referred to in sections 263, 1278, 1282 of this title.

§ 1278. Definitions and special rules

(a) In general

For purposes of this part—

(1) Market discount bond

(A) In general

Except as provided in subparagraph (B), the term "market discount bond" means any bond having market discount.

(B) Exceptions

The term "market discount bond" shall not include—

(i) Short-term obligations

Any obligation with a fixed maturity date not exceeding 1 year from the date of issue.

(ii) Tax-exempt obligations

Any tax-exempt obligation (as defined in section 1275(a)(3)).

(iii) United States savings bonds

Any United States savings bond.

(iv) Installment obligations

Any installment obligation to which section 453B applies.

(2) Market discount

(A) In general

The term "market discount" means the excess (if any) of—

(i) the stated redemption price of the bond at maturity, over

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[2] So in original. Probably should be "(1)".

(ii) the basis of such bond immediately after its acquisition by the taxpayer.

(B) Coordination where bond has original issue discount

In the case of any bond having original issue discount, for purposes of subparagraph (A), the stated redemption price of such bond at maturity shall be treated as equal to its revised issue price.

(C) De minimis rule

If the market discount is less than ¼ of 1 percent of the stated redemption price of the bond at maturity multiplied by the number of complete years to maturity (after the taxpayer acquired the bond), then the market discount shall be considered to be zero.

(3) Bond

The term "bond" means any bond, debenture, note, certificate, or other evidence of indebtedness.

(4) Revised issue price

The term "revised issue price" means of[3] the sum of—

(A) the issue price of the bond, and

(B) the aggregate amount of the original issue discount includible in the gross income of all holders for periods before the acquisition of the bond by the taxpayer (determined without regard to section 1272 (a)(6) or (b)(4)).

(5) Original issue discount, etc.

The terms "original issue discount", "stated redemption price at maturity", and "issue price" have the respective meanings given such terms by subpart A of this part.

(b) Election to include market discount currently

(1) In general

If the taxpayer makes an election under this subsection—

(A) sections 1276 and 1277 shall not apply, and

(B) market discount on any market discount bond shall be included in the gross income of the taxpayer for the taxable years to which it is attributable (as determined under the rules of subsection (b) of section 1276).

Except for purposes of sections 871(a), 881, 1441, 1442, and 6049 (and such other provisions as may be specified in regulations), any amount included in gross income under subparagraph (B) shall be treated as interest for purposes of this title.

(2) Scope of election

An election under this subsection shall apply to all market discount bonds acquired by the taxpayer on or after the 1st day of the 1st taxable year to which such election applies.

(3) Period to which election applies

An election under this subsection shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(c) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subpart.

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 547.)

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 751 of this title.

SUBPART C—DISCOUNT ON SHORT-TERM OBLIGATIONS

Sec.

1281. Current inclusion in income of discount on certain short-term obligations.
1282. Deferral of interest deduction allocable to accrued discount.
1283. Definitions and special rules.

§ 1281. Current inclusion in income of discount on certain short-term obligations

(a) In general

In the case of any short-term obligation to which this section applies, for purposes of this title, there shall be included in the gross income of the holder an amount equal to the sum of the daily portions of the acquisition discount for each day during the taxable year on which such holder held such obligation.

(b) Short-term obligations to which section applies

(1) In general

This section shall apply to any short-term obligation which—

(A) is held by a taxpayer using an accrual method of accounting,

(B) is held primarily for sale to customers in the ordinary course of the taxpayer's trade or business,

(C) is held by a bank (as defined in section 581),

(D) is held by a regulated investment company or a common trust fund, or

(E) is identified by the taxpayer under section 1256(e)(2) as being part of a hedging transaction.

(2) Treatment of obligations held by pass-thru entities

(A) In general

This section shall apply also to—

(i) any short-term obligation which is held by a pass-thru entity which is formed or availed of for purposes of avoiding the provisions of this section, and

(ii) any short-term obligation which is acquired by a pass-thru entity (not described in clause (i)) during the required accrual period.

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[3] So in original. The word "of" probably should not appear.

(B) Required accrual period

For purposes of subparagraph (A), the term "required accrual period" means the period—

(i) which begins with the first taxable year for which the ownership test of subparagraph (C) is met with respect to the pass-thru entity (or a predecessor), and

(ii) which ends with the first taxable year after the taxable year referred to in clause (i) for which the ownership test of subparagraph (C) is not met and with respect to which the Secretary consents to the termination of the required accrual period.

(C) Ownership test

The ownership test of this subparagraph is met for any taxable year if, on at least 90 days during the taxable year, 20 percent or more of the value of the interests in the pass-thru entity are held by persons described in paragraph (1) or by other pass-thru entities to which subparagraph (A) applies.

(D) Pass-thru entity

The term "pass-thru entity" means any partnership, S corporation, trust, or other pass-thru entity.

(c) Cross reference

For special rules limiting the application of this section to original issue discount in the case of nongovernmental obligations, see section 1283(c).

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 548.)

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations acquired after that date, with certain elections available, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 1282, 1283 of this title.

§ 1282. Deferral of interest deduction allocable to accrued discount

(a) General rule

Except as otherwise provided in this section, the net direct interest expense with respect to any short-term obligation shall be allowed as a deduction for the taxable year only to the extent that such expense exceeds the sum of the daily portions of the acquisition discount for each day during the taxable year on which the taxpayer held such obligation.

(b) Section not to apply to obligations to which section 1281 applies

(1) In general

This section shall not apply to any short-term obligation to which section 1281 applies.

(2) Election to have section 1281 apply to all obligations

(A) In general

A taxpayer may make an election under this paragraph to have section 1281 apply to all short-term obligations acquired by the taxpayer on or after the 1st day of the 1st taxable year to which such election applies.

(B) Period to which election applies

An election under this paragraph shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(c) Certain rules made applicable

Rules similar to the rules of subsections (b) and (c) of section 1277 shall apply for purposes of this section.

(d) Cross reference

For special rules limiting the application of this section to original issue discount in the case of nongovernmental obligations, see section 1283(c).

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 549.)

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and to obligations acquired after that date, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263, 1283 of this title.

§ 1283. Definitions and special rules

(a) Definitions

For purposes of this subpart—

(1) Short-term obligation

(A) In general

Except as provided in subparagraph (B), the term "short-term obligation" means any bond, debenture, note, certificate, or other evidence of indebtedness which has a fixed maturity date not more than 1 year from the date of issue.

(B) Exceptions for tax-exempt obligations

The term "short-term obligation" shall not include any tax-exempt obligation (as defined in section 1275(a)(3)).

(2) Acquisition discount

The term "acquisition discount" means the excess of—

(A) the stated redemption price at maturity (as defined in section 1273), over

(B) the taxpayer's basis for the obligation.

(b) Daily portion

For purposes of this subpart—

(1) Ratable accrual

Except as otherwise provided in this subsection, the daily portion of the acquisition discount is an amount equal to—

(A) the amount of such discount, divided by

(B) the number of days after the day on which the taxpayer acquired the obligation and up to (and including) the day of its maturity.

(2) Election of accrual on basis of constant interest rate (in lieu of ratable accrual)

(A) In general

At the election of the taxpayer with respect to any obligation, the daily portion of the acquisition discount for any day is the portion of the acquisition discount accruing on such day determined (under regulations prescribed by the Secretary) on the basis of—

(i) the taxpayer's yield to maturity based on the taxpayer's cost of acquiring the obligation, and

(ii) compounding daily.

(B) Election irrevocable

An election under subparagraph (A), once made with respect to any obligation, shall be irrevocable.

(c) Special rules for nongovernmental obligations

(1) In general

In the case of any short-term obligation which is not a short-term Government obligation (as defined in section 1271(a)(3)(B))—

(A) sections 1281 and 1282 shall be applied by taking into account original issue discount in lieu of acquisition discount, and

(B) appropriate adjustments shall be made in the application of subsection (b) of this section.

(2) Election to have paragraph (1) not apply

(A) In general

A taxpayer may make an election under this paragraph to have paragraph (1) not apply to all obligations acquired by the taxpayer on or after the first day of the first taxable year to which such election applies.

(B) Period to which election applies

An election under this paragraph shall apply to the taxable year for which it is made and for all subsequent taxable years, unless the taxpayer secures the consent of the Secretary to the revocation of such election.

(d) Other special rules

(1) Basis adjustments

The basis of any short-term obligation in the hands of the holder thereof shall be increased by the amount included in his gross income pursuant to section 1281.

(2) Double inclusion in income not required

Section 1281 shall not require the inclusion of any amount previously includible in gross income.

(3) Coordination with other provisions

Section 454(b) and section 1271(a)(3) shall not apply to any short-term obligation to which section 1281 applies.

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 549.)

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and to obligations acquired after that date, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 751, 1281, 1282, 1288 of this title.

SUBPART D—MISCELLANEOUS PROVISIONS

Sec.

1286. Tax treatment of stripped bonds.

1287. Denial of capital gain treatment for gains on certain obligations not in registered form.

1288. Treatment of original issue discount on tax-exempt obligations.

§ 1286. Tax treatment of stripped bonds

(a) Inclusion in income as if bond and coupons were original issue discount bonds

If any person purchases after July 1, 1982, a stripped bond or a stripped coupon, then such bond or coupon while held by such purchaser (or by any other person whose basis is determined by reference to the basis in the hands of such purchaser) shall be treated for purposes of this part as a bond originally issued on the purchase date and having an original issue discount equal to the excess (if any) of—

(1) the stated redemption price at maturity (or, in the case of coupon, the amount payable on the due date of such coupon), over

(2) such bond's or coupon's ratable share of the purchase price.

For purposes of paragraph (2), ratable shares shall be determined on the basis of their respective fair market values on the date of purchase.

(b) Tax treatment of person stripping bond

For purposes of this subtitle, if any person strips 1 or more coupons from a bond and after July 1, 1982, disposes of the bond or such coupon—

(1) such person shall include in gross income an amount equal to the interest accrued on such bond while held by such person and before the time that such coupon or bond was disposed of (to the extent such interest has not theretofore been included in such person's gross income),

(2) the basis of the bond and coupons shall be increased by the amount of the accrued interest described in paragraph (1),

(3) the basis of the bond and coupons immediately before the disposition (as adjusted pursuant to paragraph (2)) shall be allocated among the items retained by such person and the items disposed of by such person on the basis of their respective fair market values, and

(4) for purposes of subsection (a), such person shall be treated as having purchased on the date of such disposition each such item which he retains for an amount equal to the basis allocated to such item under paragraph (3).

A rule similar to the rule of paragraph (4) shall apply in the case of any person whose basis in any bond or coupon is determined by reference to the basis of the person described in the preceding sentence.

(c) Retention of existing law for stripped bonds purchased before July 2, 1982

If a bond issued at any time with interest coupons—

(1) is purchased after August 16, 1954, and before January 1, 1958, and the purchaser does not receive all the coupons which first become payable more than 12 months after the date of the purchase, or

(2) is purchased after December 31, 1957, and before July 2, 1982, and the purchaser does not receive all the coupons which first become payable after the date of the purchase,

then the gain on the sale or other disposition of such bond by such purchaser (or by a person whose basis is determined by reference to the basis in the hands of such purchaser) shall be considered as ordinary income to the extent that the fair market value (determined as of the time of the purchase) of the bond with coupons attached exceeds the purchase price. If this subsection and section 1271(a)(2)(A) apply with respect to gain realized on the sale or exchange of any evidence of indebtedness, then section 1271(a)(2)(A) shall apply with respect to that part of the gain to which this subsection does not apply.

(d) Special rules for tax-exempt obligations

In the case of any tax-exempt obligation (as defined in section 1275(a)(3))—

(1) subsections (a) and (b)(1) shall not apply,

(2) the rules of subsection (b)(4) shall apply for purposes of subsection (c), and

(3) subsection (c) shall be applied without regard to the requirement that the bond be purchased before July 2, 1982.

(e) Definitions and special rules

For purposes of this section—

(1) Bond

The term "bond" means a bond, debenture, note, or certificate or other evidence of indebtedness.

(2) Stripped bond

The term "stripped bond" means a bond issued at any time with interest coupons where there is a separation in ownership between the bond and any coupon which has not yet become payable.

(3) Stripped coupon

The term "stripped coupon" means any coupon relating to a stripped bond.

(4) Stated redemption price at maturity

The term "stated redemption price at maturity" has the meaning given such term by section 1273(a)(2).

(5) Coupon

The term "coupon" includes any right to receive interest on a bond (whether or not evidenced by a coupon). This paragraph shall apply for purposes of subsection (c) only in the case of purchases after July 1, 1982.

(6) Purchase

The term "purchase" has the meaning given such term by section 1272(d)(1).

(f) Regulation authority

The Secretary may prescribe regulations providing that where, by reason of varying rates of interest, put or call options, or other circumstances, the tax treatment under this section does not accurately reflect the income of the holder of a stripped coupon or stripped bond, or of the person disposing of such bond or coupon, as the case may be, for any period, such treatment shall be modified to require that the proper amount of income be included for such period.

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 551.)

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 871, 1271 of this title.

§ 1287. Denial of capital gain treatment for gains on certain obligations not in registered form

(a) In general

If any registration-required obligation is not in registered form, any gain on the sale or other disposition of such obligation shall be treated as ordinary income (unless the issuance of such obligation was subject to tax under section 4701).

(b) Definitions

For purposes of subsection (a)—

(1) Registration-required obligation

The term "registration-required obligation" has the meaning given to such term by section 163(f)(2) except that clause (iv) of subparagraph (A), and subparagraph (B), of such section shall not apply.

(2) Registered form

The term "registered form" has the same meaning as when used in section 163(f).

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 552.)

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, except as otherwise provided, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 165 of this title.

§ 1288. Treatment of original issue discount on tax-exempt obligations

(a) General rule

Original issue discount on any tax-exempt obligation shall be treated as accruing—

(1) for purposes of section 163, in the manner provided by section 1272(a) (determined without regard to paragraph (6) thereof), and

(2) for purposes of determining the adjusted basis of the holder, in the manner provided by section 1272(a) (determined with regard to paragraph (6) thereof).

(b) Definitions and special rules

For purposes of this section—

(1) Original issue discount

The term "original issue discount" has the meaning given to such term by section 1273(a) without regard to paragraph (3) thereof. In applying section 483 or 1274, under regulations prescribed by the Secretary, appropriate adjustments shall be made to the applicable Federal rate to take into account the tax exemption for interest on the obligation.

(2) Tax-exempt obligation

The term "tax-exempt obligation" has the meaning given to such term by section 1275(a)(3).

(3) Short-term obligations

In applying this section to obligations with maturity of 1 year or less, rules similar to the rules of section 1283(b) shall apply.

(Added Pub. L. 98-369, div. A, title I, § 41(a), July 18, 1984, 98 Stat. 553.)

EFFECTIVE DATE

Section applicable to taxable years ending after July 18, 1984, and applicable to obligations issued after Sept. 3, 1982, and acquired after Mar. 1, 1984, see section 44 of Pub. L. 98-369, set out as a note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 163 of this title.

Subchapter Q—Readjustment of Tax Between Years and Special Limitations

PART I—INCOME AVERAGING

§ 1301. Limitation on tax

If an eligible individual has averagable income for the computation year, and if the amount of such income exceeds $3,000, then the tax imposed by section 1 for the computation year which is attributable to averagable income shall be 4 times the increase in tax under such section which would result from adding 25 percent of such income to 140 percent of average base period income.

(As amended Pub. L. 98-369, div. A, title I, § 173(b), (c)(1), July 18, 1984, 98 Stat. 704.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "4 times" for "5 times", "25 percent" for "20 percent", and "140 percent" for "120 percent".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 173(d) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 1301 and 1302 of this title] shall apply to computation years beginning after December 31, 1983, and to base period years applicable to such computation years."

§ 1302. Definition of averagable income; related definitions

(a) Averagable income

(1) In general

For purposes of this part, the term "averagable income" means the amount by which taxable income for the computation year (reduced as provided in paragraph (2)) exceeds 140 percent of average base period income.

[*See main edition for text of* (*2*)]

(b) Average base period income

For purposes of this part—

(1) In general

The term "average base period income" means ⅕ of the sum of the base period incomes for the base period.

[*See main edition for text of* (*2*) *and* (*3*)]

(c) Other related definitions

For purposes of this part—

[*See main edition for text of* (*1*)]

(2) Base period

The term "base period" means the 3 taxable years immediately preceding the computation year.

(3) Base period year

The term "base period year" means any of the 3 taxable years immediately preceding the computation year.

[*See main edition for text of* (*4*)]

(As amended Pub. L. 98-369, div. A, title I, § 173(a), (c)(2)-(4), July 18, 1984, 98 Stat. 703, 704.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 173(c)(2), substituted "140 percent" for "120 percent".

Subsec. (b)(1). Pub. L. 98-369, § 173(c)(3), substituted "⅕" for "one-fourth".

Subsec. (c)(2). Pub. L. 98-369, § 173(a), substituted "3 taxable years" for "4 taxable years".

Subsec. (c)(3). Pub. L. 98-369, § 173(c)(4), substituted "3 taxable years" for "4 taxable years".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to computation years beginning after Dec. 31, 1983, and to base period years applicable to such computation years, see section 173(d) of Pub. L. 98-369, set out as a note under section 1301 of this title.

PART VII—RECOVERIES OF FOREIGN EXPROPRIATION LOSSES

§ 1351. Treatment of recoveries of foreign expropriation losses

(a) Election

(1) In general

This section shall apply only to a recovery, by a domestic corporation subject to the tax imposed by section 11 or 801, of a foreign expropriation loss sustained by such corporation and only if such corporation was subject to the tax imposed by section 11 or 801, as the case may be, for the year of the loss and elects to have the provisions of this section apply with respect to such loss.

[*See main edition for text of (2); (b)*]

(c) Amount of recovery

[*See main edition for text of (1)*]

(2) Special rule for life insurance companies

The amount of any recovery of a foreign expropriation loss includes, in the case of a life insurance company, the amount of decrease of any item taken into account under section 807(c), to the extent such decrease is attributable to the release, by reason of such loss, of its liabilities with respect to such item.

[*See main edition for text of (d) to (g)*]

(h) Special rule for evidences of indebtedness

Bonds or other evidences of indebtedness received as a recovery of a foreign expropriation loss to which this section applies shall not be considered to have any original issue discount within the meaning of section 1273(a).

(i) Adjustments for succeeding years

For purposes of this subtitle, proper adjustment shall be made, under regulations prescribed by the Secretary, in—

(1) the credit under section 27 (relating to foreign tax credit),

(2) the credit under section 38 (relating to general business credit),

(3) the net operating loss deduction under section 172, or the operations loss deduction under section 810,

[*See main edition for text of (4) and (5)*]

for the taxable year of a recovery of a foreign expropriation loss to which this section applies, and for succeeding taxable years, to take into account items changed in making the computations under subsection (d) for taxable years prior to the taxable year of such recovery.

(As amended Pub. L. 98-369, div. A, title I, § 42(a)(12), title II, § 211(b)(18), title IV, § 474(r)(25), July 18, 1984, 98 Stat. 557, 756, 844.)

Amendments

1984—Subsec. (a)(1). Pub. L. 98-369, § 211(b)(18)(A), substituted "801" for "802" in two places.

Subsec. (c)(2). Pub. L. 98-369, § 211(b)(18)(B), substituted "section 807(c)" for "section 810(c)".

Subsec. (h). Pub. L. 98-369, § 42(a)(12), substituted "section 1273(a)" for "section 1232(a)(2)".

Subsec. (i)(1). Pub. L. 98-369, § 474(r)(25)(A), substituted "section 27" for "section 33".

Subsec. (i)(2). Pub. L. 98-369, § 474(r)(25)(B), substituted "section 38 (relating to general business credit)" for "section 38 (relating to investment credit)".

Subsec. (i)(3). Pub. L. 98-369, § 211(b)(18)(C), substituted "section 810" for "section 812".

Effective Date of 1984 Amendment

Amendment by section 42(a)(12) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 211(b)(18) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(25) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section Referred to in Other Sections

This section is referred to in sections 26, 80, 936, 6167 of this title.

Subchapter S—Tax Treatment of S Corporations and Their Shareholders

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1366, 1379, 6037 of this title.

PART I—IN GENERAL

§ 1361. S corporation defined

[*See main edition for text of (a) and (b)*]

(c) Special rules for applying subsection (b)

[*See main edition for text of (1) to (5)*]

(6) Ownership of stock in certain inactive corporations

For purposes of subsection (b)(2)(A), a corporation shall not be treated as a member of an affiliated group during any period within a taxable year by reason of the ownership of stock in another corporation if such other corporation—

(A) has not begun business at any time on or before the close of such period, and

(B) does not have gross income for such period.

(d) Special rule for qualified subchapter S trust

[*See main edition for text of (1)*]

(2) Election

[*See main edition for text of (A)*]

(B) Manner and time of election

(i) Separate election with respect to each corporation

An election under this paragraph shall be made separately with respect to each corporation the stock of which is held by the trust.

[*See main edition for text of (ii) and (iii), (C)*]

(D) Grace period

An election under this paragraph shall be effective up to 15 days and 2 months before the date of the election.

(3) Qualified subchapter S trust

For purposes of this subsection, the term "qualified subchapter S trust" means a trust—

(A) the terms of which require that—

(i) during the life of the current income beneficiary, there shall be only 1 income beneficiary of the trust,

(ii) any corpus distributed during the life of the current income beneficiary may be distributed only to such beneficiary,

(iii) the income interest of the current income beneficiary in the trust shall terminate on the earlier of such beneficiary's death or the termination of the trust, and

(iv) upon the termination of the trust during the life of the current income beneficiary, the trust shall distribute all of its assets to such beneficiary, and

(B) all of the income (within the meaning of section 643(b)) of which is distributed (or required to be distributed) currently to 1 individual who is a citizen or resident of the United States.

(4) Trust ceasing to be qualified

(A) Failure to meet requirements of paragraph (3)(A)

If a qualified subchapter S trust ceases to meet any requirement of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the date it ceases to meet such requirement.

(B) Failure to meet requirements of paragraph (3)(B)

If any qualified subchapter S trust ceases to meet any requirement of paragraph (3)(B) but continues to meet the requirements of paragraph (3)(A), the provisions of this subsection shall not apply to such trust as of the first day of the first taxable year beginning after the first taxable year for which it failed to meet the requirements of paragraph (3)(B).

(As amended Pub. L. 98-369, div. A, title VII, § 721(c), (f), July 18, 1984, 98 Stat. 967.)

AMENDMENTS

1984—Subsec. (c)(6). Pub. L. 98-369, § 721(c), amended par. (6) generally, substituting "during any period within a taxable year" for "during any taxable year" in the provisions preceding subpar. (A), and substituting "on or before the close of such period" for "on or after the date of its incorporation and before the close of such taxable year" in subpar. (A), and "does not have gross income for such period" for "does not have taxable income for the period included within such taxable year" in subpar. (B).

Subsec. (d)(2)(B)(i). Pub. L. 98-369, § 721(f)(3), substituted "corporation" for "S corporation" in heading and text.

Subsec. (d)(2)(D). Pub. L. 98-369, § 721(f)(1), substituted "15 days and 2 months" for "60 days".

Subsec. (d)(3). Pub. L. 98-369, § 721(f)(2), in amending par. (3) generally, redesignated subpar. (C) as (A), substituted a period for ", and" at the end of subpar. (B), and struck out former subpar. (A) which read "which owns stock in 1 or more S corporations".

Subsec. (d)(4). Pub. L. 98-369, § 721(f)(2), in amending par. (4) generally, redesignated existing provisions as subpar. (A), added "Failure to meet requirements of paragraph (3)(A)" as the subpar. heading, substituted "of paragraph (3)(A)" for "under paragraph (3)", and added subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 721(y) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, any amendment made by this section [amending sections 48, 108, 267, 318, 465, 1361 to 1363, 1367, 1368, 1371, 1374, 1375, 1378, 1379, 6362, and 6659 and provisions set out as a note under section 1361 of this title] shall take effect as if included in the Subchapter S Revision Act of 1982 [Pub. L. 97-354].

"(2) AMENDMENT MADE BY SUBSECTION (b)(2).—Subparagraph (C) of section 108(d)(7) of the Internal Revenue Code of 1954 (as amended by subsection (b)(2)) shall apply to contributions to capital after December 31, 1980, in taxable years ending after such date.

"(3) AMENDMENT MADE BY SUBSECTION (g)(1).—If—

"(A) any portion of a qualified stock purchase is pursuant to a binding contract entered into on or after October 19, 1982, and before the date of the enactment of this Act [July 18, 1984], and

"(B) the purchasing corporation establishes by clear and convincing evidence that such contract was negotiated on the contemplation that, with respect to the deemed sale under section 338 of the Internal Revenue Code of 1954, paragraph (2) of section 1362(e) of such Code would apply,

then the amendment made by paragraph (1) of subsection (g) [enacting section 1362(e)(6)(C) of this title] shall not apply to such qualified stock purchase.

"(4) AMENDMENTS MADE BY SUBSECTION (*l*).—The amendments made by subsection (*l*) [amending section 1362(b) of this title] shall apply to any election under section 1362 of the Internal Revenue Code of 1954 (or any corresponding provision of prior law) made after October 19, 1982.

"(5) AMENDMENT MADE BY SUBSECTION (t).—If—

"(A) on or before the date of the enactment of this Act [July 18, 1984] 50 percent or more of the stock of an S corporation has been sold or exchanged in 1 or more transactions, and

"(B) the person (or persons) acquiring such stock establish by clear and convincing evidence that such acquisitions were negotiated on the contemplation that paragraph (2) of section 1362(e) of the Internal Revenue Code of 1954 would apply to the S termination year in which such sales or exchanges occur,

then the amendment made by subsection (t) [enacting section 1362(e)(6)(D) of this title] shall not apply to such S termination year."

EFFECTIVE DATE

Section 6 of Pub. L. 97-354, as amended by Pub. L. 97-448, title III, § 305(d)(1)(A), Jan. 12, 1983, 96 Stat. 2399; Pub. L. 98-369, div. A, title VII, § 721(i), (k), July 18, 1984, 98 Stat. 969, provided that:

[*See main edition for text of* (*a*)]

"(b) TRANSITIONAL RULES.—

[*See main edition for text of* (*1*) *and* (*2*)]

"(3) NEW PASSIVE INCOME RULES APPLY TO TAXABLE YEARS BEGINNING DURING 1982.—In the case of a taxable year beginning during 1982—

"(A) sections 1362(d)(3), 1366(f)(3), and 1375 of the Internal Revenue Code of 1954 (as amended by this Act [Pub. L. 97-354]) shall apply, and

"(B) section 1372(e)(5) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]) shall not apply.

The preceding sentence shall not apply in the case of any corporation which elects (at such time and in such manner as the Secretary of the Treasury or his delegate shall prescribe) to have such sentence not apply. Subsection (e) shall not apply to any termination resulting from an election under the preceding sentence.

[*See main edition for text of* (c) *and* (d)]

"(e) TREATMENT OF CERTAIN ELECTIONS UNDER PRIOR LAW.—For purposes of section 1362(g) of the Internal Revenue Code of 1954, as amended by this Act [Pub. L. 97-354] (relating to no election permitted within 5 years after termination of prior election), any termination or revocation under section 1372(e) of such Code (as in effect on the day before the date of the enactment of this Act [Oct. 19, 1982]) shall not be taken into account.

[*See main edition for text of* (*f*)]

§ 1362. Election; revocation; termination

[*See main edition for text of* (a)]

(b) When made

[*See main edition for text of* (1) *and* (2)]

(3) Election made after 1st 2½ months treated as made for following taxable year

If—

(A) a small business corporation makes an election under subsection (a) for any taxable year, and

(B) such election is made after the 15th day of the 3d month of the taxable year and on or before the 15th day of the 3rd month of the following taxable year,

then such election shall be treated as made for the following taxable year.

(4) Taxable years of 2½ months or less

For purposes of this subsection, an election for a taxable year made not later than 2 months and 15 days after the first day of the taxable year shall be treated as timely made during such year.

[*See main edition for text of* (c)]

(d) Termination

[*See main edition for text of* (1) *and* (2)]

(3) Where passive investment income exceeds 25 percent of gross receipts for 3 consecutive taxable years and corporation has subchapter C earnings and profits

[*See main edition for text of* (A) *to* (C)]

(D) Passive investment income defined

For purposes of this paragraph—

[*See main edition for text of* (i) *to* (iv)]

(v) Special rule for options and commodities dealers

In the case of any options or commodities dealer, passive investment income shall be determined by not taking into account any gain or loss described in section 1374(c)(4)(A).

(e) Treatment of S termination year

[*See main edition for text of* (1)]

(2) Pro rata allocation

Except as provided in paragraph (3) and subparagraphs (C) and (D) of paragraph (6), the determination of which items are to be taken into account for each of the short taxable years referred to in paragraph (1) shall be made—

[*See main edition for text of* (A) *and* (B)]

(3) Election to have items assigned to each short taxable year under normal tax accounting rules

[*See main edition for text of* (A)]

(B) Shareholders must consent to election

An election under this subsection shall be valid only if all persons who are shareholders in the corporation at any time during the S short year and all persons who are shareholders in the corporation on the first day of the C short year consent to such election.

[*See main edition for text of* (4) *and* (5)]

(6) Other special rules

For purposes of this title—

[*See main edition for text of* (A) *and* (B)]

(C) Paragraph (2) not to apply to items resulting from section 338

Paragraph (2) shall not apply with respect to any item resulting from the application of section 338.

(D) Pro rata allocation for S termination year not to apply if 50-percent change in ownership

Paragraph (2) shall not apply to an S termination year if there is a sale or exchange of 50 percent or more of the stock in such corporation during such year.

[*See main edition for text of* (*f*) *and* (*g*)]

(As amended Pub. L. 98-369, div. A, title I, § 102(d)(2), title VII, § 721(g), (h), (*l*), (t), July 18, 1984, 98 Stat. 623, 968, 969, 971.)

AMENDMENTS

1984—Subsec. (b)(3)(B). Pub. L. 98-369, § 721(*l*)(2), substituted "on or before the 15th day of the 3rd month of the following taxable year" for "on or before the last day of such taxable year".

Subsec. (b)(4). Pub. L. 98-369, § 721(*l*)(1), added par. (4).

Subsec. (d)(3)(D)(v). Pub. L. 98-369, § 102(d)(2), added cl. (v).

Subsec. (e)(2). Pub. L. 98-369, § 721(g)(2), substituted "as provided in paragraph (3) and subparagraphs (C) and (D) of paragraph (6)" for "as provided in paragraph (3)".

Subsec. (e)(3)(B). Pub. L. 98-369, § 721(h), struck out "All" in heading, and substituted "subsection" for "paragraph" and "S short year and all persons who are shareholders in the corporation on the first day of the C short year" for "S termination year".

Subsec. (e)(6)(C). Pub. L. 98-369, § 721(g)(1), added subpar. (C).

Subsec. (e)(6)(D). Pub. L. 98-369, § 721(t), added subpar. (D).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(d)(2) of Pub. L. 98-369 applicable to positions established after July 18, 1984, in taxable years ending after that date except as otherwise provided, see section 102(f), (g) of Pub. L. 98-369, set out as a note under section 1256 of this title.

Amendment by section 721 of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, except that amendment by section 721(g)(1) is not applicable to certain qualified stock purchases, amendment by section 721(*l*) is applicable to any election under this section (or any corresponding provision of prior law) made after Oct. 19, 1982, and amendment by section 721(t) is not applicable to certain S termination years, see section 721(y) of Pub. L. 98-369, set out as a note under section 1361 of this title.

SUBCHAPTER S ELECTION

Section 102(d)(3) of Pub. L. 98-369 provided that: "If a commodities dealer or an options dealer—

"(A) becomes a small business corporation (as defined in section 1361(b) of the Internal Revenue Code of 1954) at any time before the close of the 75th day after the date of the enactment of this Act [July 18, 1984], and

"(B) makes the election under section 1362(a) of such Code before the close of such 75th day,

then such dealer shall be treated as having received approval for and adopted a taxable year beginning on the first day during 1984 on which it was a small business corporation (as so defined) and ending on the date determined under section 1378 of such Code and such election shall be effective for such taxable year."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1042, 1361, 1371, 1374, 1375, 1377, 1378, 1379 of this title.

§ 1363. Effect of election on corporation

[*See main edition for text of* (*a*)]

(b) Computation of corporation's taxable income

The taxable income of an S corporation shall be computed in the same manner as in the case of an individual, except that—

(1) the items described in section 1366(a)(1)(A) shall be separately stated,

(2) the deductions referred to in section 703(a)(2) shall not be allowed to the corporation,

(3) section 248 shall apply, and

(4) section 291 shall apply if the S corporation (or any predecessor) was a C corporation for any of the 3 immediately preceding taxable years.

(c) Elections of the S corporation

[*See main edition for text of* (*1*)]

(2) Exceptions

In the case of an S corporation, elections under the following provisions shall be made by each shareholder separately—

(A) section 163(d) (relating to limitation on interest on investment indebtedness),

(B) section 617 (relating to deduction and recapture of certain mining exploration expenditures), and

(C) section 901 (relating to taxes of foreign countries and possessions of the United States).

(d) Distributions of appreciated property

Except as provided in subsection (e), if—

[*See main edition for text of* (*1*) *and* (*2*)]

then, notwithstanding any other provision of this subtitle, gain shall be recognized to the S corporation on the distribution in the same manner as if it had sold such property to the distributee at its fair market value.

(e) Subsection (d) not to apply to complete liquidations and reorganizations

Subsection (d) shall not apply to any distribution—

(1) of property in complete liquidation of the corporation, or

(2) to the extent it consists of property permitted by section 354, 355, or 356 to be received without the recognition of gain.

(As amended Pub. L. 98-369, div. A, title VII, § 721(a), (b)(1), (p), July 18, 1984, 98 Stat. 966, 970.)

AMENDMENTS

1984—Subsec. (b)(4). Pub. L. 98-369, § 721(p), added par. (4).

Subsec. (c)(2). Pub. L. 98-369, § 721(b)(1), redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out subpar. (A) which provided "subsection (b)(5) or (d)(4) of section 108 (relating to income from discharge of indebtedness),".

Subsec. (d). Pub. L. 98-369, § 721(a)(2), substituted "Except as provided in subsection (e), if" for "If".

Subsec. (e). Pub. L. 98-369, § 721(a)(1), added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

PART II—TAX TREATMENT OF SHAREHOLDERS

§ 1366. Pass-thru of items to shareholders

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Special rules

(1) Subsection (a) not to apply to credit allowable under section 34

Subsection (a) shall not apply with respect to any credit allowable under section 34 (relating to certain uses of gasoline and special fuels).

[*See main edition for text of* (*2*) *and* (*3*); (*g*)]

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(26), title VII, § 735(c)(16), July 18, 1984, 98 Stat. 844, 985.)

AMENDMENTS

1984—Subsec. (f). Pub. L. 98-369, § 474(r)(26), substituted "section 34" for "section 39" in heading and text.

Subsec. (f)(1). Pub. L. 98-369, § 735(c)(16), substituted "and special fuels" for ", special fuels, and lubricating oil".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(26) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section

475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 735(c)(16) of Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 108, 1362, 1363, 1367 of this title.

§ 1367. Adjustments to basis of stock of shareholders, etc.

(a) General rule

[See main edition for text of (1)]

(2) Decreases in basis

The basis of each shareholder's stock in an S corporation shall be decreased for any period (but not below zero) by the sum of the following items determined with respect to the shareholder for such period:

[See main edition for text of (A) to (D)]

(E) the amount of the shareholder's deduction for depletion for any oil and gas property held by the S corporation to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under section 613A(c)(13)(B).

(b) Special rules

[See main edition for text of (1)]

(2) Adjustments in basis of indebtedness

[See main edition for text of (A)]

(B) Restoration of basis

If for any taxable year beginning after December 31, 1982, there is a reduction under subparagraph (A) in the shareholder's basis in the indebtedness of an S corporation to a shareholder, any net increase (after the application of paragraphs (1) and (2) of subsection (a)) for any subsequent taxable year shall be applied to restore such reduction in basis before any of it may be used to increase the shareholder's basis in the stock of the S corporation.

(3) Coordination with sections 165(g) and 166(d)

This section and section 1366 shall be applied before the application of sections 165(g) and 166(d) to any taxable year of the shareholder or the corporation in which the security or debt becomes worthless.

(As amended Pub. L. 98-369, div. A, title VII, §§ 721(d), (w), 722(e)(2), July 18, 1984, 98 Stat. 967, 971, 974.)

AMENDMENTS

1984—Subsec. (a)(2)(E). Pub. L. 98-369, § 722(e)(2), substituted "for any oil and gas property held by the S corporation to the extent such deduction does not exceed the proportionate share of the adjusted basis of such property allocated to such shareholder under section 613A(c)(13)(B)" for "under section 611 with respect to oil and gas wells".

Subsec. (b)(2)(B). Pub. L. 98-369, § 721(w), substituted "for any taxable year beginning after December 31, 1982, there is" for "for any taxable year there is".

Subsec. (b)(3). Pub. L. 98-369, § 721(d), added "and 166(d)" in heading and text.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 721(d), (w) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

Section 722(b)(3)(B) of Pub. L. 98-369 provided that: "The amendment made by paragraph (2) [amending subsec. (a)(2)(E) of this section] shall apply to taxable years beginning after December 31, 1982."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 108, 1016, 1366, 1368 of this title.

§ 1368. Distributions

[See main edition for text of (a) and (b)]

(c) S corporation having earnings and profits

In the case of a distribution described in subsection (a) by an S corporation which has accumulated earnings and profits—

[See main edition for text of (1) to (3)]

Except to the extent provided in regulations, if the distributions during the taxable year exceed the amount in the accumulated adjustments account at the close of the taxable year, for purposes of this subsection, the balance of such account shall be allocated among such distributions in proportion to their respective sizes.

[See main edition for text of (d)]

(e) Definitions and special rules

For purposes of this section—

(1) Accumulated adjustments account

(A) In general

Except as provided in subparagraph (B), the term "accumulated adjustments account" means an account of the S corporation which is adjusted for the S period in a manner similar to the adjustments under section 1367 (except that no adjustment shall be made for income (and related expenses) which is exempt from tax under this title and the phrase "(but not below zero)" shall be disregarded in section 1367(b)(2)(A)).

[See main edition for text of (B), (2) and (3)]

(As amended Pub. L. 98-369, div. A, title VII, § 721(r), July 18, 1984, 98 Stat. 970.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 721(r)(2), added "Except to the extent provided in regulations, if the distributions during the taxable year exceed the amount in the accumulated adjustments account at the close of the taxable year, for purposes of this subsection, the balance of such account shall be allocated among such distributions in proportion to their respective sizes."

Subsec. (e)(1)(A). Pub. L. 98-369, § 721(r)(1), substituted "(except that no adjustment shall be made for income (and related expenses) which is exempt from tax under this title and the phrase '(but not below zero)' shall be disregarded in section 1367(b)(2)(A))" for "(except that no adjustment shall be made for income which is exempt from tax under this title and no adjustment shall be made for any expense not deductible in computing the corporation's taxable income and not properly chargeable to capital account)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective as if included in the Subchatper S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

PART III—SPECIAL RULES

§ 1371. Coordination with subchapter C

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Earnings and profits

(1) In general

Except as provided in paragraphs (2) and (3) and subsection (d)(3), no adjustment shall be made to the earnings and profits of an S corporation.

[*See main edition for text of* (*2*) *and* (*3*)]

(d) Coordination with investment credit recapture

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Adjustment to earnings and profits for amount of recapture

Paragraph (1) of subsection (c) shall not apply to any increase in tax under section 47 for which the S corporation is liable.

(e) Cash distributions during post-termination transition period

(1) In general

Any distribution of money by a corporation with respect to its stock during a post-termination transition period shall be applied against and reduce the adjusted basis of the stock, to the extent that the amount of the distribution does not exceed the accumulated adjustments account.

(2) Election to distribute earnings first

An S corporation may elect to have paragraph (1) not apply to all distributions made during a post-termination transition period described in section 1377(b)(1)(A). Such election shall not be effective unless all shareholders of the S corporation to whom distributions are made by the S corporation during such post-termination transition period consent to such election (within the meaning of section 1368(e)).

(As amended Pub. L. 98-369, div. A, title VII, § 721(e), (o), (x)(3), July 18, 1984, 98 Stat. 967, 970, 971.)

Amendments

1984—Subsec. (c)(1). Pub. L. 98-369, § 621(e)(2), substituted "paragraphs (2) and (3) and subsection (d)(3)" for "paragraphs (2) and (3)".

Subsec. (d)(3). Pub. L. 98-369, § 721(e)(1), added par. (3).

Subsec. (e). Pub. L. 98-369, § 721(o), amended subsec. (e) generally, designating existing provisions as par. (1) and adding par. (2).

Subsec. (e)(2). Pub. L. 98-369, § 721(x)(3), added "(within the meaning of section 1368(e))".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

§ 1374. Tax imposed on certain capital gains

[*See main edition for text of* (*a*)]

(b) Amount of tax

The tax imposed by subsection (a) shall be the lower of—

[*See main edition for text of* (*1*) *and* (*2*)]

No credit shall be allowable under part IV of subchapter A of this chapter (other than under section 34) against the tax imposed by subsection (a).

(c) Exceptions

[*See main edition for text of* (*1*)]

(2) New corporations

Subsection (a) shall not apply to an S corporation if—

(A) it has been in existence for less than 4 taxable years, and

(B) an election under section 1362(a) has been in effect with respect to such corporation for each of its taxable years.

To the extent provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of this paragraph and paragraph (1).

[*See main edition for text of* (*3*)]

(4) Treatment of certain gains of options and commodities dealers

(A) Exclusion of certain capital gains

For purposes of this section, the net capital gain of any options dealer or commodities dealer shall be determined by not taking into account any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from any section 1256 contract or property related to such a contract.

(B) Definitions

For purposes of this paragraph—

(i) Options dealer

The term "options dealer" has the meaning given to such term by section 1256(g)(8).

(ii) Commodities dealer

The term "commodities dealer" means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(iii) Section 1256 contracts

The term "section 1256 contracts" has the meaning given to such term by section 1256(b).

[See main edition for text of (d)]

(As amended Pub. L. 98-369, div. A, title I, § 102(d)(1), title IV, § 474(r)(27), title VII, § 721(u), July 18, 1984, 98 Stat. 623, 844, 971.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 474(r)(27), substituted "section 34" for "section 39" in provisions following par. (2).

Subsec. (c)(2). Pub. L. 98-369, § 721(u), struck out "(and any predecessor corporation)" before "has been in existence" in subpar. (A), and added provision that to the extent provided in regulations, an S corporation and any predecessor corporation shall be treated as 1 corporation for purposes of this paragraph and paragraph (1).

Subsec. (c)(4). Pub. L. 98-369, § 102(d)(1), added par. (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(d)(1) of Pub. L. 98-369 applicable to positions established after July 18, 1984, in taxable years ending after that date, except as otherwise provided, see section 102(f), (g) of Pub. L. 98-369 set out as a note under section 1256 of this title.

Amendment by section 474(r)(27) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 721(u) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26, 58, 1362, 1366, 1375 of this title.

§ 1375. Tax imposed when passive investment income of corporation having subchapter C earnings and profits exceeds 25 percent of gross receipts

[See main edition for text of (a) and (b)]

(c) Special rules

(1) Disallowance of credit

No credit shall be allowed under part IV of subchapter A of this chapter (other than section 34) against the tax imposed by subsection (a).

[See main edition for text of (2)]

(d) Waiver of tax in certain cases

If the S corporation establishes to the satisfaction of the Secretary that—

(1) it determined in good faith that it had no subchapter C earnings and profits at the close of a taxable year, and

(2) during a reasonable period of time after it was determined that it did have subchapter C earnings and profits at the close of such taxable year such earnings and profits were distributed,

the Secretary may waive the tax imposed by subsection (a) for such taxable year.

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(28), title VII, § 721(v), July 18, 1984, 98 Stat. 844, 971.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-369, § 474(r)(28), substituted "section 34" for "section 39".

Subsec. (d). Pub. L. 98-369, § 721(v), added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(28) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 721(v) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26, 1366 of this title.

PART IV—DEFINITIONS; MISCELLANEOUS

§ 1377. Definitions and special rule

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1371, 4996 of this title.

§ 1378. Taxable year of S corporation

[See main edition for text of (a) and (b)]

(c) Existing S corporations required to use permitted year after 50-percent shift in ownership

(1) In general

A corporation which is an S corporation for a taxable year which includes December 31, 1982 (or which is an S corporation for a taxable year beginning during 1983 by reason of an election made on or before October 19, 1982), shall not be treated as an S corporation for any subsequent taxable year beginning after the first day on which more than 50 percent of the stock is newly owned stock unless such subsequent taxable year is a permitted year.

[See main edition for text of (2)]

(3) Stock acquired by reason of death, gift from family member, etc.

[See main edition for text of (A)]

(B) Qualified transferor

For purposes of subparagraph (A), the term "qualified transferor" means a person—

(i) who (or whose estate) held the stock in the corporation (or predecessor stock) on December 31, 1982, or

[See main edition for text of (ii), (C) and (D)]

(As amended Pub. L. 98-369, div. A, title VII, § 721(m), (q), July 18, 1984, 98 Stat. 969, 970.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-369, § 721(m), substituted "which includes December 31, 1982 (or which is an S corporation for a taxable year beginning during 1983 by reason of an election made on or before October 19, 1982)" for "which includes December 31, 1982".

Subsec. (c)(3)(B)(i). Pub. L. 98-369, § 721(q), substituted "who (or whose estate) held" for "who held".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

§ 1379. Transitional rules on enactment

[See main edition for text of (a)]

(b) References to prior law included

Any references in this title to a provision of this subchapter shall, to the extent not inconsistent with the purposes of this subchapter, include a reference to the corresponding provision as in effect before the enactment of the Subchapter S Revision Act of 1982.

[See main edition for text of (c) to (e)]

(As amended Pub. L. 98-369, div. A, title VII, § 721(n), July 18, 1984, 98 Stat. 969.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 struck out "In applying this subchapter to any taxable year beginning after December 31, 1982," and substituted "Any references in this title to a provision" for "any reference in this subchapter to another provision".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

COORDINATION OF REPEALS OF CERTAIN SECTIONS

Subsec. (b) of this section as in effect on day before Sept. 3, 1982, inapplicable to any section 401(j) plan, see section 713(d)(8) of Pub. L. 98-369, set out as a note under section 404 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4975 of this title; title 29 section 1108.

Subchapter T—Cooperatives and Their Patrons

PART I—TAX TREATMENT OF COOPERATIVES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 521, 927, 1042, 1388 of this title.

§ 1381. Organizations to which part applies

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46, 52, 168, 1382, 1385, 6044, 6072 of this title; title 12 section 3019.

§ 1382. Taxable income of cooperatives

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 925, 1383, 1385, 1388, 6044 of this title.

CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 408, 416, 1016, 6017, 6103, 6414, 6511, 6521, 6654, 7651, 7655, 7701, 7851 of this title; title 42 sections 401, 405, 408, 1307; title 48 sections 1421h, 1421i.

§ 1401. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to the following percent of the amount of the self-employment income for such taxable year:

In the case of a taxable year		
Beginning after:	And before:	Percent:
December 31, 1983	January 1, 1988	11.40
December 31, 1987	January 1, 1990	12.12
December 31, 1989		12.40

(b) Hospital insurance

In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to the following percent of the amount of the self-employment income for such taxable year:

In the case of a taxable year		
Beginning after:	And before:	Percent:
December 31, 1983	January 1, 1985	2.60
December 31, 1984	January 1, 1986	2.70
December 31, 1985		2.90.

(c) Credit against taxes imposed by this section

(1) In general

In the case of a taxable year beginning before 1990, there shall be allowed as a credit against the taxes imposed by this section for any taxable year an amount equal to the applicable percentage of the self-employment income of the individual for such taxable year.

(2) Applicable percentage

For purposes of paragraph (1), the applicable percentage shall be determined in accordance with the following table:

In the case of taxable years beginning in:	The applicable percentage is:
1984	2.7
1985	2.3
1986, 1987, 1988, or 1989	2.0.

(d) Relief from taxes in cases covered by certain international agreements

During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, the self-employment income of an individual shall be exempt from the taxes imposed by this section to the extent that such self-employment income is subject under such agreement to taxes or contributions for similar purposes under the social security system of such foreign country.

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 124(a), (b), 97 Stat. 89.)

References in Text

Section 233 of the Social Security Act, referred to in subsec. (d), is classified to section 433 of Title 42, The Public Health and Welfare.

Amendments

1983—Subsec. (a). Pub. L. 98-21, § 124(a), amended subsec. (a) generally, substituting a table for former pars. (1) to (7) which had imposed a tax on the self-employment income of every individual (1) in the case of any taxable year beginning before Jan. 1, 1978, to be equal to 7.0 percent of the amount of the self-employment income for such taxable year; (2) in the case of any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, to be equal to 7.10 percent of the amount of the self-employment income for such taxable year; (3) in the case of any taxable year beginning after Dec. 31, 1978, and before Jan. 1, 1981, to be equal to 7.05 percent of the amount of the self-employment income for such taxable year; (4) in the case of any taxable year beginning after Dec. 31, 1980, and before Jan. 1, 1982, to be equal to 8.00 percent of the amount of the self-employment income for such taxable year; (5) in the case of any taxable year beginning after Dec. 31, 1981, and before Jan. 1, 1985, to be equal to 8.05 percent of the amount of the self-employment income for such taxable year; (6) in the case of any taxable year beginning after Dec. 31, 1984, and before Jan. 1, 1990, to be equal to 8.55 percent of the amount of the self-employment income for such taxable year; and (7) in the case of any taxable year beginning after Dec. 31, 1989, to be equal to 9.30 percent of the amount of the self-employment income for such taxable year.

Subsec. (b). Pub. L. 98-21, § 124(a), amended subsec. (b) generally, substituting a table for former pars. (1) to (6) which had imposed a tax on the self-employment income of every individual (1) in the case of any taxable year beginning after Dec. 31, 1973, and before Jan. 1, 1978, to be equal to 0.90 percent of the amount of the self-employment income for such taxable year; (2) in the case of any taxable year beginning after Dec. 31, 1977, and before Jan. 1, 1979, to be equal to 1.00 percent of the amount of the self-employment income for such taxable year; (3) in the case of any taxable year beginning after Dec. 31, 1978, and before Jan. 1, 1981, to be equal to 1.05 percent of the amount of the self-employment income for such taxable year; (4) in the case of any taxable year beginning after Dec. 31, 1980, and before Jan. 1, 1985, to be equal to 1.30 percent of the amount of the self-employment income for such taxable year; (5) in the case of any taxable year beginning after Dec. 31, 1984, and before Jan. 1, 1986, to be equal to 1.35 percent of the amount of the self-employment income for such taxable year; and (6) in the case of any taxable year beginning after Dec. 31, 1985, to be equal to 1.45 percent of the amount of the self-employment income for such taxable year.

Subsecs. (c), (d). Pub. L. 98-21, § 124(b), added subsec. (c) and redesignated former subsec. (c) as (d).

Effective Date of 1983 Amendment

Section 124(d) of Pub. L. 98-21 provided that:

"(1) In general.—Except as provided in paragraph (2), the amendments made by this section [amending sections 43, 164, 275, 401, 1401, and 1402 of this title and section 411 of Title 42, The Public Health and Welfare] shall apply to taxable years beginning after December 31, 1983.

"(2) Subsection (c).—The amendments made by subsection (c) [amending sections 43, 164, 275, 401, and 1402 of this title and section 411 of Title 42] shall apply to taxable years beginning after December 31, 1989."

Land Diverted Under 1983 Payment-in-Kind Program

Land diverted from production of agricultural commodities under a 1983 payment-in-kind program to be treated, for purposes of this chapter, as used during the 1983 crop year by qualified taxpayers in the active conduct of the trade or business of farming, with qualified taxpayers who materially participate in the diversion and devotion to conservation uses under a 1983 payment-in-kind program to be treated as materially participating in the operation of such land during the 1983 crop year, see section 3 of Pub. L. 98-4, set out as a note under section 61 of this title.

Section Referred to in Other Sections

This section is referred to in section 164 of this title; title 42 sections 907, 910, 911, 1395i.

§ 1402. Definitions

(a) Net earnings from self-employment

The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

[See main edition for text of (1) to (10)]

(11) the exclusion from gross income provided by section 911(a)(1) shall not apply;

(12) in lieu of the deduction provided by section 164(f) (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer's net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 for such year;

(13) there shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services; and

(14) with respect to remuneration for services which are treated as services in a trade or business under subsection (c)(2)(G)—

(A) no deduction for trade or business expenses provided under this Code[1] (other than the deduction under paragraph (12)) shall apply;

(B) the provisions of subsection (b)(2) shall not apply; and

(C) if the amount of such remuneration from an employer for the taxable year is less than $100, such remuneration from that employer shall not be included in self-employment income.

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[1] See References in Text note below.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based on the ordinary income or loss of the partnership for any taxable year of the partnership ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g)—

[*See main edition for text of* (*i*) *to* (*iv*)]

For purposes of the preceding sentence, gross income means—

[*See main edition for text of* (*v*) *and* (*vi*)]

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (h), or by a partnership of which an individual is a member on a regular basis as defined in subsection (h), but only if such individual's net earnings from self-employment as determined without regard to this sentence in the taxable year are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed $1,600.

(b) Self-employment income

The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 233 of the Social Security Act) during any taxable year; except that such term shall not include—

[*See main edition for text of* (*1*) *and* (*2*)]

For purposes of clause (1), the term "wages" (A) includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or under an agreement entered into pursuant to the provisions of section 3121(*l*) (relating to coverage of citizens of the United States who are employees of foreign affiliates of American employers), as would be wages under section 3121(a) if such services constituted employment under section 3121(b), (B) includes compensation which is subject to the tax imposed by section 3201 or 3211. An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for purposes of this chapter be considered to be a nonresident alien individual, and (C) includes, but only with respect to the tax imposed by section 1401(b), remuneration paid for medicare qualified Federal employment (as defined in section 3121(u)(2)) which is subject to the taxes imposed by sections 3101(b) and 3111(b).

(c) Trade or business

The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include—

(1) the performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Secretary of Health and Human Services pursuant to section 218 of the Social Security Act;

(2) the performance of service by an individual as an employee, other than—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary of Health and Human Services pursuant to section 218 of the Social Security Act,

(F) service described in section 3121(b)(20), and

(G) service described in section 3121(b)(8)(B);

[*See main edition for text of* (*3*) *to* (*6*); (*d*) *to* (*f*)]

(g) Members of certain religious faiths

(1) Exemption

Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application contains or is accompanied by—

[*See main edition for text of* (*A*) *and* (*B*)]

and only if the Secretary of Health and Human Services finds that—

[*See main edition for text of* (*C*) *to* (*E*)]

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

[*See main edition for text of* (*2*)]

(3) Period for which exemption effective

An exemption granted to any individual pursuant to this subsection shall apply with respect to all taxable years beginning after December 31, 1950, except that such exemption shall not apply for any taxable year—

(A) beginning (i) before the taxable year in which such individual first met the requirements of the first sentence of paragraph (1), or (ii) before the time as of which the Secretary of Health and Human Services finds that the sect or division thereof of which such individual is a member met the requirements of subparagraphs (C) and (D), or

(B) ending (i) after the time such individual ceases to meet the requirements of the first sentence of paragraph (1), or (ii) after the time as of which the Secretary of Health and Human Services finds that the sect or division thereof of which he is a member ceases to meet the requirements of subparagraph (C) or (D).

[*See main edition for text of* (*4*); (*h*)]

(i) Special rules for options and commodities dealers

(1) In general

In determining the net earnings from self-employment of any options dealer or commodities dealer—

(A) notwithstanding subsection (a)(3)(A), there shall not be excluded any gain or loss (in the normal course of the taxpayer's activity of dealing in or trading section 1256 contracts) from section 1256 contracts or property related to such contracts, and

(B) the deduction provided by section 1202 shall not apply.

(2) Definitions

For purposes of this subsection—

(A) Options dealer

The term "options dealer" has the meaning given such term by section 1256(g)(8).

(B) Commodities dealer

The term "commodities dealer" means a person who is actively engaged in trading section 1256 contracts and is registered with a domestic board of trade which is designated as a contract market by the Commodities Futures Trading Commission.

(C) Section 1256 contracts

The term "section 1256 contract" has the meaning given to such term by section 1256(b).

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 124(c)(2), title III, §§ 321(e)(3), 322(b)(2), 323(b)(1), 97 Stat. 90, 120, 121; July 18, 1984, Pub. L. 98-369, div. A, title I, § 102(c)(1), div. B, title VI, §§ 2603(c)(2), (d)(2), 2663(j)(5)(B), 98 Stat. 622, 1129, 1130, 1171.)

REFERENCES IN TEXT

This Code, referred to in subsec. (a)(14)(A), means the Internal Revenue Code of 1954, which comprises this title.

The Social Security Act, referred to in subsecs. (b), (c)(1), (2)(E), (e)(1), (g)(1), (1)(B), (4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Titles II and XVIII of the Social Security Act are classified generally to subchapters II (§ 401 et seq.) and XVIII (§ 1395 et seq.) of Title 42. Sections 203, 205, 218, 222, 230, and 233 of the Social Security Act are classified to sections 403, 405, 418, 422, 430, and 433, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1984—Subsec. (a)(14). Pub. L. 98-369, § 2603(d)(2), added par. (14).

Subsec. (c)(1), (2)(E). Pub. L. 98-369, § 2663(j)(5)(B), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Subsec. (c)(2)(G). Pub. L. 98-369, § 2603(c)(2), added subpar. (G).

Subsec. (g)(1), (3)(A), (B). Pub. L. 98-369, § 2663(j)(5)(B), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Subsec. (i). Pub. L. 98-369, § 102(c)(1), added subsec. (i).

1983—Subsec. (a)(11). Pub. L. 98-21, § 323(b)(1), struck out "in the case of an individual described in section 911(d)(1)(B)," before "the exclusion".

Subsec. (a)(12), (13). Pub. L. 98-21, § 124(c)(2), added par. (12) and redesignated former par. (12) as (13).

Subsec. (b). Pub. L. 98-21, § 322(b)(2), added ", except as provided by an agreement under section 233 of the Social Security Act" in matter preceding par. (1).

Pub. L. 98-21, § 321(e)(3), substituted "employees of foreign affiliates of American employers" for "employees of foreign subsidiaries of domestic corporations" in cl. (A) of provisions following par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 102(c)(1) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, except as otherwise provided, see section 102(f)(3), (g) of Pub. L. 98-369, set out as a note under section 1256 of this title.

Amendment by section 2603(c)(2) of Pub. L. 98-369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98-369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 2663(j)(5)(B) of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of Title 42.

Effective Date of 1983 Amendment

Amendment by section 124(c)(2) of Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1989, see section 124(d)(2) of Pub. L. 98-21, set out as a note under section 1401 of this title.

Section 323(c)(2) of Pub. L. 98-21 provided that: "Except as provided in subsection (b)(2)(B) [amending section 411(a)(10) of Title 42, The Public Health and Welfare, effective with respect to taxable years beginning after Dec. 31, 1981, and before Jan. 1, 1984], the amendments made by subsection (b) [amending this section and section 411 of Title 42] shall apply to taxable years beginning after December 31, 1983."

Amendment by section 322 of Pub. L. 98-21 effective for taxable years beginning on or after Apr. 20, 1983, see section 322(c) of Pub. L. 98-21 set out as a note under section 3121 of this title.

Amendment by section 321 of Pub. L. 98-21 applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98-21 set out as a note under section 406 of this title.

Cross References

Tax withheld at source on nonresident aliens and foreign corporations, see section 33 of this title.

Section Referred to in Other Sections

This section is referred to in sections 32, 401, 879, 981, 2032A, 6103, 6362, 6521, 6654 of this title; title 42 sections 401, 402, 411, 430.

§ 1403. Miscellaneous provisions

[*See main edition for text of* (*a*)]

(b) Cross references

(1) For provisions relating to returns, see section 6017.

(2) For provisions relating to collection of taxes in Virgin Islands, Guam, American Samoa, and Puerto Rico, see section 7651.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 412(b)(2), 98 Stat. 792.)

Amendments

1984—Subsec. (b)(3). Pub. L. 98-369 struck out par. (3) referring to section 6015 for provisions relating to declarations of estimated tax on self-employment income.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Subchapter Sec.[1]
A. Nonresident aliens and foreign corporations 1441
B. Application of withholding provisions... 1461

Amendments

1984—Pub. L. 98-369, div. A, title IV, § 474(r)(29)(B), (C), July 18, 1984, 98 Stat. 844, struck out "and Tax-Free Covenant Bonds" after "Foreign Corporations" in the heading of chapter 3, and struck out the item for subchapter B "Tax-free covenant bonds" and redesignated the item for subchapter C as B.

Subchapter A—Nonresident Aliens and Foreign Corporations

Sec.
1445. Withholding of tax on dispositions of United States real property interests.

Amendments

1984—Pub. L. 98-369, div. A, title I, § 129(a)(2), July 18, 1984, 98 Stat. 659, added item 1445.

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 33, 3405, 6049 of this title.

§ 1441. Withholding of tax on nonresident aliens

(a) General rule

Except as otherwise provided in subsection (c), all persons, in whatever capacity acting (including lessees or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the United States) having the control, receipt, custody, disposal, or payment of any of the items of income specified in subsection (b) (to the extent that any of such items constitutes gross income from sources within the United States), of any nonresident alien individual or of any foreign partnership shall (except as otherwise provided in regulations prescribed by the Secretary under section 874) deduct and withhold from such items a tax equal to 30 percent thereof, except that in the case of any item of income specified in the second sentence of subsection (b), the tax shall be equal to 14 percent of such item.

(b) Income items

The items of income referred to in subsection (a) are interest (other than original issue discount as defined in section 1273), dividends, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, gains described in section 402(a)(2), 403(a)(2), or 631(b) or (c), amounts subject to tax under section 871(a)(1)(C), gains subject to tax under section 871(a)(1)(D), and gains on transfers described in section 1235 made on or before October 4, 1966. The items of income referred to in subsection (a) from which tax shall be deducted and withheld at the rate of 14 percent are—

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[1] Section numbers editorially supplied.

[See main edition for text of (1) and (2)]

In the case of a nonresident alien individual who is a member of a domestic partnership, the items of income referred to in subsection (a) shall be treated as referring to items specified in this subsection included in his distributive share of the income of such partnership.

(c) Exceptions

[See main edition for text of (1) and (2)]

(3) Bonds with extended maturity dates

The deduction and withholding in the case of interest on bonds, mortgages, or deeds of trust or other similar obligations of a corporation, within subsections (a), (b), and (c) of section 1451 (as in effect before its repeal by the Tax Reform Act of 1984) were it not for the fact that the maturity date of such obligations has been extended on or after January 1, 1934, and the liability assumed by the debtor exceeds 27½ percent of the interest, shall not exceed the rate of 27½ percent per annum.

[See main edition for text of (4) to (8)]

(9) Interest income from certain portfolio debt investments

In the case of portfolio interest (within the meaning of 871(h)(2)), no tax shall be required to be deducted and withheld from such interest unless the person required to deduct and withhold tax from such interest knows, or has reason to know, that such interest is not portfolio interest by reason of section 871(h)(3).

[See main edition for text of (d) to (f)]

(g) Cross reference

For provision treating one-half of social security benefits as subject to withholding under this section, see section 871(a)(3).

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 121(c)(2), 97 Stat. 82; July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 42(a)(13), 127(e)(1), title IV, § 474(r)(29)(G), (H), 98 Stat. 557, 652, 845.)

REFERENCES IN TEXT

The Tax Reform Act of 1984, referred to in subsec. (c)(3), is division A [§§ 5 to 1082] of Pub. L. 98-369, July 18, 1984, 98 Stat. 494, which was approved July 18, 1984. For complete classification of this Act to the Code, see Short Title of 1984 Amendments note set out under section 1 of this title and Tables.

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 474(r)(29)(G), struck out "except in the cases provided for in section 1451 and" before "except as otherwise provided in regulations".

Subsec. (b). Pub. L. 98-369, § 42(a)(13), substituted "section 1273" for "section 1232(b)".

Subsec. (c)(3). Pub. L. 98-369, § 474(r)(29)(H), inserted "(as in effect before its repeal by the Tax Reform Act of 1984)".

Subsec. (c)(9). Pub. L. 98-369, § 127(e)(1), added par. (9).

1983—Subsec. (g). Pub. L. 98-21 added subsec. (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(13) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 127(e)(1) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years ending after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

Amendment by section 474(r)(29)(G), (H) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as an Effective Date note under section 86 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5, 565, 871, 1276, 1278, 1442, 1444, 3402, 6049, 6103, 7701 of this title; title 12 section 3413.

§ 1442. Withholding of tax on foreign corporations

(a) General rule

In the case of foreign corporations subject to taxation under this subtitle, there shall be deducted and withheld at the source in the same manner and on the same items of income as is provided in section 1441 a tax equal to 30 percent thereof. For purposes of the preceding sentence, the references in section 1441(b) to sections 871(a)(1)(C) and (D) shall be treated as referring to sections 881(a)(3) and (4), the reference in section 1441(c)(1) to section 871(b)(2) shall be treated as referring to section 842 or section 882(a)(2), as the case may be, the reference in section 1441(c)(5) to section 871(a)(1)(D) shall be treated as referring to section 881(a)(4), the reference in section 1441(c)(8) to section 871(a)(1)(C) shall be treated as referring to section 881(a)(3), and the references in section 1449(c)(9)[1] to sections 871(h)(2) and 871(h)(3) shall be treated as referring to sections 881(c)(2) and 881(c)(3).

[See main edition for text of (b)]

(c) Exception for certain Guam and Virgin Islands corporations

(1) In general

For purposes of this section, the term "foreign corporation" does not include a corporation created or organized in Guam or the Virgin Islands or under the law of Guam or the Virgin Islands if the requirements of subparagraphs (A) and (B) of section 881(b)(1) are met with respect to such corporation.

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[1] So in original. Probably should be "section 1441(c)(9)".

(2) Paragraph (1) not to apply to tax imposed in Guam

For purposes of applying this subsection with respect to income tax liability incurred to Guam—

(A) paragraph (1) shall not apply, and

(B) for purposes of this section, the term "foreign corporation" does not include a corporation created or organized in Guam or under the law of Guam.

(3) Cross reference

For tax imposed in the Virgin Islands, see sections 934 and 934A.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 127(e)(2), 130(b), title IV, § 474(r)(29)(I), 98 Stat. 652, 661, 845.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 474(r)(29)(I), struck out "or section 1451" after "provided in section 1441" and struck out "; except that, in the case of interest described in section 1451 (relating to tax-free covenant bonds), the deduction and withholding shall be at the rate specified therein" after "a tax equal to 30 percent thereof".

Pub. L. 98-369, § 127(e)(2), struck out "and" after "section 881(a)(4)," and inserted ", and the references in section 1449(c)(9) to sections 871(h)(2) and 871(h)(3) shall be treated as referring to sections 881(c)(2) and 881(c)(3)".

Subsec. (c). Pub. L. 98-369, § 130(b), substituted provision relating to exception for certain Guam and Virgin Islands corporations for provision relating to exception for Guam corporations.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 127(e)(2) of Pub. L. 98-369 applicable to interest received after July 18, 1984, with respect to obligations issued after such date, in taxable years after such date, see section 127(g)(1) of Pub. L. 98-369, set out as a note under section 871 of this title.

Amendment by section 130(b) of Pub. L. 98-369 applicable to payments made after Mar. 1, 1984, in taxable years ending after such date, see section 130(d) of Pub. L. 98-369, set out as a note under section 881 of this title.

Amendment by section 474(r)(29)(I) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 12, 565, 814, 881, 884, 871, 1276, 1278, 1444, 3402, 7701 of this title.

§ 1443. Foreign tax-exempt organizations

CROSS REFERENCES

Credits against tax, see section 33 of this title.

§ 1445. Withholding of tax on dispositions of United States real property interests

(a) General rule

Except as otherwise provided in this section, in the case of any disposition of a United States real property interest (as defined in section 897(c)) by a foreign person, the transferee shall be required to deduct and withhold a tax equal to 10 percent of the amount realized on the disposition.

(b) Exemptions

(1) In general

No person shall be required to deduct and withhold any amount under subsection (a) with respect to a disposition if paragraph (2), (3), (4), (5), or (6) applies to the transaction.

(2) Transferor furnishes nonforeign affidavit

Except as provided in paragraph (7), this paragraph applies to the disposition if the transferor furnishes to the transferee an affidavit by the transferor stating, under penalty of perjury, the transferor's United States taxpayer identification number and that the transferor is not a foreign person.

(3) Nonpublicly traded domestic corporation furnishes affidavit that it is not a United States real property holding corporation

Except as provided in paragraph (7), this paragraph applies in the case of a disposition of any interest in any domestic corporation, if the domestic corporation furnishes to the transferee an affidavit by the domestic corporation stating, under penalty of perjury, that the domestic corporation is not and has not been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii).

(4) Transferee receives qualifying statement

(A) In general

This paragraph applies to the disposition if the transferee receives a qualifying statement at such time, in such manner, and subject to such terms and conditions as the Secretary may by regulations prescribe.

(B) Qualifying statement

For purposes of subparagraph (A), the term "qualifying statement" means a statement by the Secretary that—

(i) the transferor either—

(I) has reached agreement with the Secretary (or such agreement has been reached by the transferee) for the payment of any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, or

(II) is exempt from any tax imposed by section 871(b)(1) or 882(a)(1) on any gain recognized by the transferor on the disposition of the United States real property interest, and

(ii) the transferor or transferee has satisfied any transferor's unsatisfied withholding liability or has provided adequate security to cover such liability.

(5) Residence where amount realized does not exceed $300,000

This paragraph applies to the disposition if—

(A) the property is acquired by the transferee for use by him as a residence, and

(B) the amount realized for the property does not exceed $300,000.

(6) Stock regularly traded on established securities market

This paragraph applies if the disposition is of a share of a class of stock that is regularly traded on an established securities market.

(7) Special rules for paragraphs (2) and (3)

Paragraph (2) or (3) (as the case may be) shall not apply to any disposition—

(A) if—

(i) the transferee has actual knowledge that the affidavit referred to in such paragraph is false, or

(ii) the transferee receives a notice (as described in subsection (d)) from a transferor's agent or a transferee's agent that such affidavit is false, or

(B) if the Secretary by regulations requires the transferee to furnish a copy of such affidavit to the Secretary and the transferee fails to furnish a copy of such affidavit to the Secretary at such time and in such manner as required by such regulations.

(c) Limitations on amount required to be withheld

(1) Cannot exceed transferor's maximum tax liability

(A) In general

The amount required to be withheld under this section with respect to any disposition shall not exceed the amount (if any) determined under subparagraph (B) as the transferor's maximum tax liability.

(B) Request

At the request of the transferor or transferee, the Secretary shall determine, with respect to any disposition, the transferor's maximum tax liability.

(C) Refund of excess amounts withheld

Subject to such terms and conditions as the Secretary may by regulations prescribe, a transferor may seek and obtain a refund of any amounts withheld under this section in excess of the transferor's maximum tax liability.

(2) Authority of Secretary to prescribe reduced amount

At the request of the transferor or transferee, the Secretary may prescribe a reduced amount to be withheld under this section if the Secretary determines that to substitute such reduced amount will not jeopardize the collection of the tax imposed by section 871(b)(1) or 882(a)(1).

(3) Procedural rules

(A) Regulations

Requests for—

(i) qualifying statements under subsection (b)(4),

(ii) determinations of transferor's maximum tax liability under paragraph (1), and

(iii) reductions under paragraph (2) in the amount required to be withheld,

shall be made at the time and manner, and shall include such information, as the Secretary shall prescribe by regulations.

(B) Requests to be handled within 90 days

The Secretary shall take action with respect to any request described in subparagraph (A) within 90 days after the Secretary receives the request.

(d) Liability of transferor's agents or transferee's agents

(1) Notice of false affidavit; foreign corporations

If—

(A) the transferor furnishes the transferee an affidavit described in paragraph (2)(A) of subsection (b) or a domestic corporation furnishes the transferee an affidavit described in paragraph (3) of subsection (b), and

(B) in the case of—

(i) any transferor's agent, the transferor is a foreign corporation or such agent has actual knowledge that such affidavit is false, or

(ii) any transferee's agent, such agent has actual knowledge that such affidavit is false,

such agent shall so notify the transferee at such time and in such manner as the Secretary shall require by regulations.

(2) Failure to furnish notice

(A) In general

If any transferor's agent or transferee's agent is required by paragraph (1) to furnish notice, but fails to furnish such notice at such time or times and in such manner as may be required by regulations, such agent shall have the same duty to deduct and withhold that the transferee would have had if such agent had complied with paragraph (1).

(B) Liability limited to amount of compensation

An agent's liability under subparagraph (A) shall be limited to the amount of compensation the agent derives from the transaction.

(3) Transferor's agent

For purposes of this subsection, the term "transferor's agent" means any person who represents the transferor—

(A) in any negotiation with the transferee or any transferee's agent related to the transaction, or

(B) in settling the transaction.

(4) Transferee's agent

For purposes of this subsection, the term "transferee's agent" means any person who represents the transferee—

(A) in any negotiation with the transferor or any transferor's agent related to the transaction, or

(B) in settling the transaction.

(5) Settlement officer not treated as transferor's agent

For purposes of this subsection, a person shall not be treated as a transferor's agent or transferee's agent with respect to any transaction merely because such person performs 1 or more of the following acts:

(A) The receipt and the disbursement of any portion of the consideration for the transaction.

(B) The recording of any document in connection with the transaction.

(e) Special rules relating to distributions, etc., by corporations, partnerships, trusts, or estates

(1) Certain domestic partnerships, trusts, and estates

A domestic partnership, the trustee of a domestic trust, or the executor of a domestic estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of any amount of which such partnership, trustee, or executor has custody which is—

(A) attributable to the disposition of a United States real property interest (as defined in section 897(c), other than a disposition described in paragraph (4) or (5)), and

(B) either—

(i) includible in the distributive share of a partner of the partnership who is a foreign person,

(ii) includible in the income of a beneficiary of the trust or estate who is a foreign person, or

(iii) includible in the income of a foreign person under the provisions of section 671.

(2) Certain distributions by foreign corporations

In the case of any distribution by a foreign corporation on which gain is recognized under subsection (d) or (e) of section 897, the foreign corporation shall deduct and withhold under subsection (a) a tax equal to 28 percent of the amount of gain recognized on such distribution under such subsection.

(3) Distributions by certain domestic corporations to foreign shareholders

If a domestic corporation which is or has been a United States real property holding corporation (as defined in section 897(c)(2)) during the applicable period specified in section 897(c)(1)(A)(ii) distributes property to a foreign person in a transaction to which section 302 or part II of subchapter C applies, such corporation shall deduct and withhold under subsection (a) a tax equal to 10 percent of the amount realized by the foreign shareholder.

(4) Taxable distributions by domestic or foreign partnerships, trusts, or estates

A domestic or foreign partnership, the trustee of a domestic or foreign trust, or the executor of a domestic or foreign estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of the fair market value (as of the time of the taxable distribution) of any United States real property interest distributed to a partner of the partnership or a beneficiary of the trust or estate, as the case may be, who is a foreign person in a transaction which would constitute a taxable distribution under the regulations promulgated by the Secretary pursuant to section 897(g).

(5) Rules relating to dispositions of interest in partnerships, trusts, or estates

To the extent provided in regulations, the transferee of a partnership interest or of a beneficial interest in a trust or estate shall be required to deduct and withhold under subsection (a) a tax equal to 10 percent of the amount realized on the disposition.

(6) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations providing for exceptions from provisions of this subsection.

(f) Definitions

For purposes of this section—

(1) Transferor

The term "transferor" means the person disposing of the United States real property interest.

(2) Transferee

The term "transferee" means the person acquiring the United States real property interest.

(3) Foreign person

The term "foreign person" means any person other than a United States person.

(4) Transferor's maximum tax liability

The term "transferor's maximum tax liability" means, with respect to the disposition of any interest, the sum of—

(A) the maximum amount which the Secretary determines could be imposed as tax under section 871(b)(1) or 882(a)(1) by reason of the disposition, plus

(B) the amount the Secretary determines to be the transferor's unsatisfied withholding liability with respect to such interest.

(5) Transferor's unsatisfied withholding liability

The term "transferor's unsatisfied withholding liability" means the withholding obligation imposed by this section on the transferor's acquisition of the United States real property interest or on the acquisition of a predecessor interest, to the extent such obligation has not been satisfied.

(Added Pub. L. 98–369, div. A, title I, § 129(a)(1), July 18, 1984, 98 Stat. 655.)

EFFECTIVE DATE

Section 129(c)(1) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting this section] shall apply to any disposition on or after January 1, 1985."

Subchapter B—Application of Withholding Provisions

Sec.
1461. Return and payment of withheld tax.[1]
1462. Withheld tax as credit to recipient of income.

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[1] Section catchline amended by Pub. L. 89-809 without corresponding amendment of subchapter analysis.

Sec.
1463. Tax paid by recipient of income.
1464. Refunds and credits with respect to withheld tax.
[1465. Repealed.]

PRIOR PROVISIONS

A prior subchapter B, consisting of section 1451, acts Aug. 16, 1954, ch. 736, 68A Stat. 359; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834, which related to tax-free covenant bonds, was repealed by Pub. L. 98-369, div. A, title IV, § 474(r)(29)(A), July 18, 1984, 98 Stat. 844, which repeal was not applicable with respect to obligations issued before Jan. 1, 1984, pursuant to section 475(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 33 of this title.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 474(r)(29)(A), July 18, 1984, 98 Stat. 844, redesignated subchapter C as B, and sturck out former subchapter B which related to tax-free covenant bonds.

1976—Pub. L. 94-455, title XIX, § 1901(b)(41), Oct. 4, 1976, 90 Stat. 1803, struck out item 1465 "Definition of withholding agent".

[§ 1451. Repealed. Pub. L. 98-369, div. A, title IV, § 474(r)(29)(A), July 18, 1984, 98 Stat. 844]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 359; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834, related to tax-free covenant bonds. The repeal was not applicable with respect to obligations issued before Jan. 1, 1984, pursuant to section 475(b) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 33 of this title.

§ 1461. Liability for withheld tax

Every person required to deduct and withhold any tax under this chapter is hereby made liable for such tax and is hereby indemnified against the claims and demands of any person for the amount of any payments made in accordance with the provisions of this chapter.

(Aug. 16, 1954, ch. 736, 68A Stat. 360; Nov. 13, 1966, Pub. L. 89-809, title I, § 103(i), 80 Stat. 1554.)

AMENDMENTS

1966—Pub. L. 89-809 struck out requirement that persons required to deduct and withhold any tax under this chapter make return thereof on or before March 15 of each year and pay the tax to the officer designated in section 6151, and substituted "Liability for withheld tax" for "Return and payment of withheld tax" in section catchline.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment by Pub. L. 89-809 applicable with respect to payments occurring after Dec. 31, 1966, see section 103(n)(3) of Pub. L. 89-809, set out as a note under section 871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7701 of this title.

§ 1462. Withheld tax as credit to recipient of income

Income on which any tax is required to be withheld at the source under this chapter shall be included in the return of the recipient of such income, but any amount of tax so withheld shall be credited against the amount of income tax as computed in such return.

(Aug. 16, 1954, ch. 736, 68A Stat. 360.)

CROSS REFERENCES

Applicability of revenue laws, see section 7851 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6513 of this title.

§ 1463. Tax paid by recipient of income

If any tax required under this chapter to be deducted and withheld is paid by the recipient of the income, it shall not be re-collected from the withholding agent; nor in cases in which the tax is so paid shall any penalty be imposed on or collected from the recipient of the income or the withholding agent for failure to return or pay the same, unless such failure was fraudulent and for the purpose of evading payment.

(Aug. 16, 1954, ch. 736, 68A Stat. 360.)

§ 1464. Refunds and credits with respect to withheld tax

Where there has been an overpayment of tax under this chapter, any refund or credit made under chapter 65 shall be made to the withholding agent unless the amount of such tax was actually withheld by the withholding agent.

(Aug. 16, 1954, ch. 736, 68A Stat. 360.)

[§ 1465. Repealed. Pub. L. 94-455, title XIX, § 1901(a)(156), Oct. 4, 1976, 90 Stat. 1789]

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 360, defined withholding agent.

EFFECTIVE DATE OF REPEAL

Repeal of section by section 1901(a)(156) of Pub. L. 94-455 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 1901(d) of Pub. L. 94-455, set out as an Effective Date of 1976 Amendment note under section 2 of this title.

CHAPTER 5—TAX ON TRANSFERS TO AVOID INCOME TAX

§ 1491. Imposition of tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 814, 1492, 1494 of this title.

§ 1492. Nontaxable transfers

The tax imposed by section 1491 shall not apply—

(1) If the transferee is an organization exempt from income tax under part I of subchapter F of chapter 1 (other than an organization described in section 401(a)); or

(2) To a transfer—

(A) described in section 367, or

(B) not described in section 367 but with respect to which the taxpayer elects (before the transfer) the application of principles similar to the principles of section 367, or

(3) To a transfer for which an election has been made under section 1057.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 131(f)(1), 98 Stat. 665.)

AMENDMENTS

1984—Pars. (2) to (4). Pub. L. 98-369 substituted provision that the tax imposed by section 1491 not apply to a transfer described in 367 or if not described in section 367 but with respect to which the taxpayer elects, before the transfer, the application of principles similar to the principles of section 367 for provision that such tax not apply if before the transfer it has been established to the satisfaction of the Secretary that such transfer is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax in par. (2), struck out par. (3), which provided that the tax imposed by section 1491 not apply to a transfer described in section 367, and redesignated par. (4) as (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as a note under section 367 of this title.

§ 1494. Payment and collection

[*See main edition for text of* (*a*)]

(b) Abatement or refund

Under regulations prescribed by the Secretary, the tax may be abated, remitted, or refunded if the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 131(f)(2), 98 Stat. 665.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted "the taxpayer, after the transfer, elects the application of principles similar to the principles of section 367" for "after the transfer it has been established to the satisfaction of the Secretary that such transfer was not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 131(f)(2) of Pub. L. 98-369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as a note under section 367 of this title.

CHAPTER 6—CONSOLIDATED RETURNS

Subchapter A—Returns and Payment of Tax

§ 1501. Privilege to file consolidated returns

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 542, 963, 1092 of this title.

§ 1503. Computation and payment of tax

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Special rule for application of certain losses against income of insurance companies taxed under section 801

(1) In general

If an election under section 1504(c)(2) is in effect for the taxable year and the consolidated taxable income of the members of the group not taxed under section 801 results in a consolidated net operating loss for such taxable year, then under regulations prescribed by the Secretary, the amount of such loss which cannot be absorbed in the applicable carry-back periods against the taxable income of such members not taxed under section 801 shall be taken into account in determining the consolidated taxable income of the affiliated group for such taxable year to the extent of 35 percent of such loss or 35 percent of the taxable income of the members taxed under section 801, whichever is less. The unused portion of such loss shall be available as a carryover, subject to the same limitations (applicable to the sum of the loss for the carryover year and the loss (or losses) carried over to such year), in applicable carryover years. For taxable years ending with or within calendar year 1981, "25 percent" shall be substituted for "35 percent" each place it appears in the first sentence of this subsection. For taxable years ending with or within calendar year 1982, "30 percent" shall be substituted for "35 percent" each place it appears in that sentence.

(2) Losses of recent nonlife affiliates

Notwithstanding the provisions of paragraph (1), a net operating loss for a taxable year of a member of the group not taxed under section 801 shall not be taken into account in determining the taxable income of a member taxed under section 801 (either for the taxable year or as a carryover or carryback) if such taxable year precedes the sixth taxable year such members have been members of the same affiliated group (determined without regard to section 1504(b)(2)).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title II, § 211(b)(19), 98 Stat. 756.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 211(b)(19)(A), (C), substituted "section 801" for "section 802" in heading, and wherever appearing in text.

Subsec. (c)(1). Pub. L. 98-369, § 211(b)(19)(B), struck out provision that for purposes of this subsection, in determining the taxable income of each insurance company subject to tax under section 802, section 802(b)(3) would not be taken into account.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 178, 337, 594, 806 of this title.

§ 1504. Definitions

(a) Affiliated group defined

For purposes of this subtitle—

(1) In general

The term "affiliated group" means—

(A) 1 or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if—

(B)(i) the common parent owns directly stock meeting the requirements of paragraph (2) in at least 1 of the other includible corporations, and

(ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

(2) 80-percent voting and value test

The ownership of stock of any corporation meets the requirements of this paragraph if it—

(A) possesses at least 80 percent of the total voting power of the stock of such corporation, and

(B) has a value equal to at least 80 percent of the total value of the stock of such corporation.

(3) 5 years must elapse before reconsolidation

(A) In general

If—

(i) a corporation is included (or required to be included) in a consolidated return filed by an affiliated group for a taxable year which includes any period after December 31, 1984, and

(ii) such corporation ceases to be a member of such group in a taxable year beginning after December 31, 1984,

with respect to periods after such cessation, such corporation (and any successor of such corporation) may not be included in any consolidated return filed by the affiliated group (or by another affiliated group with the same common parent or a successor of such common parent) before the 61st month beginning after its first taxable year in which it ceased to be a member of such affiliated group.

(B) Secretary may waive application of subparagraph (A)

The Secretary may waive the application of subparagraph (A) to any corporation for any period subject to such conditions as the Secretary may prescribe.

(4) Stock not to include certain preferred stock

For purposes of this subsection, the term "stock" does not include any stock which—

(A) is not entitled to vote,

(B) is limited and preferred as to dividends and does not participate in corporate growth to any significant extent,

(C) has redemption and liquidation rights which do not exceed the paid-in capital or par value represented by such stock (except for a reasonable redemption premium in excess of such paid-in capital or par value), and

(D) is not convertible into another class of stock.

(5) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including (but not limited to) regulations—

(A) which treat warrants, obligations convertible into stock, and other similar interests as stock, and stock as not stock,

(B) which treat options to acquire or sell stock as having been exercised,

(C) which provide that the requirements of paragraph (2)(B) shall be treated as met if the affiliated group, in reliance on a good faith determination of value, treated such requirements as met,

(D) which disregard an inadvertent ceasing to meet the requirements of paragraph (2)(B) by reason of changes in relative values of different classes of stock,

(E) which provide that transfers of stock within the group shall not be taken into account in determining whether a corporation ceases to be a member of an affiliated group, and

(F) which disregard changes in voting power to the extent such changes are disproportionate to related changes in value.

(b) Definition of "includible corporation"

As used in this chapter, the term "includible corporation" means any corporation except—

(1) Corporations exempt from taxation under section 501.

(2) Insurance companies subject to taxation under section 801 or 821.

[See main edition for text of (3) to (7)]

(c) Includible insurance companies

Notwithstanding the provisions of paragraph (2) of subsection (b)—

(1) Two or more domestic insurance companies each of which is subject to tax under section 801 shall be treated as includible corporations for purposes of applying subsection (a) to such insurance companies alone.

(2)(A) If an affiliated group (determined without regard to subsection (b)(2) [2] includes one or more domestic insurance companies taxed under section 801 or 821, the common parent of such group may elect (pursuant to regulations prescribed by the Secretary) to treat all such companies as includible corporations for purposes of applying subsection (a) except that no such company shall be so treated until it has been a member of the affiliated group for the 5 taxable years immediately preceding the taxable year for which the consolidated return is filed.

[See main edition for text of (B); (d) and (e)]

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[2] So in original. Probably should be followed by a closing parenthesis.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 60(a), title II, § 211(b)(20), 98 Stat. 577, 756.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 60(a), in amending subsec. (a), generally, revised the existing provisions of subsec. (a) into pars. (1), (2), and (4), added pars. (3) and (5), revised the definition of "affiliated group", and expanded the enumeration of securities not included under the term "stock".

Subsecs. (b)(2), (c)(1), (2)(A). Pub. L. 98-369, § 211(b)(20), substituted "section 801" for "section 802".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 60(b) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.

"(2) SPECIAL RULE FOR CORPORATIONS AFFILIATED ON JUNE 22, 1984.—In the case of a corporation which on June 22, 1984, is a member of an affiliated group which files a consolidated return for such corporation's taxable year which includes June 22, 1984, for purposes of determining whether such corporation continues to be a member of such group for taxable years beginning before January 1, 1988, the amendment made by subsection (a) [amending this section] shall not apply.

"(3) SPECIAL RULE NOT TO APPLY TO SELL-DOWNS AFTER JUNE 22, 1984.—If—

"(A) the requirements of subsection (b)(2) are satisfied with respect to a corporation,

"(B) more than a de minimis amount of the stock of such corporation is sold or exchanged (including in a redemption), or issued (other than in the ordinary course of business) after June 22, 1984, and

"(C) the requirements of the amendment made by subsection (a) [amending this section] are not satisfied after such sale, exchange, or issuance, then the amendments made by subsection (a) shall apply for purposes of determining whether such corporation continues to be a member of such group.

"(4) EXCEPTION FOR CERTAIN SELL-DOWNS.—Subsection (b)(2) (and not subsection (b)(3)) will apply to a corporation if such corporation issues or sells stock after June 22, 1984, pursuant to a registration statement filed with the Securities and Exchange Commission on or before June 22, 1984, but only if the requirements of the amendment made by subsection (a) [amending this section] (substituting 'more than 50 percent' for 'at least 80 percent' in paragraph (2)(B) of section 1504(a) of the Internal Revenue Code of 1954) are satisfied immediately after such issuance or sale and at all times thereafter until the first day of the first taxable year beginning after December 31, 1987.

"(5) NATIVE CORPORATIONS.—The amendments made by subsection (a) [amending this section] shall not apply to any Native Corporation established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) during any taxable year beginning before 1992 or any part thereof in which such Corporation is subject to the provisions of section 7(h)(1) of such Act (43 U.S.C. 1606 (h)(1))."

Amendment by section 211(b)(20) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 103, 128, 168, 243, 246A, 279, 281, 305, 312, 337, 338, 374, 404, 465, 472, 542, 584, 593, 805, 818, 904, 1092, 1313, 1361, 1391, 1503, 4216, 4282, 7701 of this title.

Subchapter B—Related Rules

PART I—IN GENERAL

§ 1551. Disallowance of the benefits of the graduated corporate rates and accumulated earnings credit

REFERENCES IN TEXT

Section 269(b) of this title, referred to in subsec. (c), was redesignated section 269(c) and a new section 269(b) was enacted by Pub. L. 98-369, div. A, title VII, § 712(k)(8)(A), July 18, 1984, 98 Stat. 952.

PART II—CERTAIN CONTROLLED CORPORATIONS

§ 1561. Limitations on certain multiple tax benefits in the case of certain controlled corporations

(a) General rule

The component members of a controlled group of corporations on a December 31 shall, for their taxable years which include such December 31, be limited for purposes of this subtitle to—

(1) amounts in each taxable income bracket in the tax table in section 11(b) which do not aggregate more than the maximum amount in such bracket to which a corporation which is not a component member of a controlled group is entitled, and

(2) one $250,000 ($150,000 if any component member is a corporation described in section 535(c)(2)(B)) amount for purposes of computing the accumulated earnings credit under section 535(c)(2) and (3).

The amounts specified in paragraph (1) shall be divided equally among the component members of such group on such December 31 unless all of such component members consent (at such time and in such manner as the Secretary shall by regulations prescribe) to an apportionment plan providing for an unequal allocation of such amounts. The amounts specified in paragraph (2) shall be divided equally among the component members of such group on such December 31 unless the Secretary prescribes regulations permitting an unequal allocation of such amounts. Notwithstanding paragraph (1), in applying the last sentence of section 11(b) to such component members, the taxable income of all such component members shall be taken into account and any increase in tax under such last sentence shall be divided among such component members in the same manner as amounts under paragraph (1).

(b) Certain short taxable years

If a corporation has a short taxable year which does not include a December 31 and is a component member of a controlled group of corporations with respect to such taxable year, then for purposes of this subtitle—

(1) the amount in each taxable income bracket in the tax table in section 11(b), and

(2) the amount to be used in computing the accumulated earnings credit under section 535(c)(2) and (3),

of such corporation for such taxable year shall be the amount specified in subsection (a)(1) or (2), as the case may be, divided by the number of corporations which are component members of such group on the last day of such taxable year. For purposes of the preceding sentence, section 1563(b) shall be applied as if such last day were substituted for December 31.

(As amended Pub. L. 98-369, div. A, title I, § 66(b), title II, § 211(b)(21), July 18, 1984, 98 Stat. 585, 756.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 211(b)(21)(A), added "and" at the end of par. (1), substituted a period for the comma at the end of par. (2), struck out par. (3) which read "one $25,000 amount for purposes of computing the limitation on the small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and", struck out par. (4) which read "one $1,000,000 amount (adjusted as provided in section 809(f)(3) for purposes of computing the limitation under paragraph (1) or (2) of section 809(f).", and substituted "paragraph (2)" for "paragraphs (2), (3), and (4)" in concluding provisions.

Pub. L. 98-369, § 66(b), added provision that notwithstanding paragraph (1), in applying the last sentence of section 11(b) to such component members, the taxable income of all such component members shall be taken into account and any increase in tax under the last sentence shall be divided among such component members in the same manner as amounts under paragraph (1).

Subsec. (b). Pub. L. 98-369, § 211(b)(21)(B), added "and" at the end of par. (1), struck out par. (3) which read "the amount to be used in computing the limitation on the small business deduction of life insurance companies under sections 804(a)(3) and 809(d)(10), and", struck out par. (4) which read "the amount (adjusted as provided in section 809(f)(3)) to be used in computing the limitation under paragraph (1) or (2) of section 809(f),", and substituted "or (2)" for ", (2), (3), or (4)" in concluding provisions.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 66(b) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 66(c) of Pub. L. 98-369, set out as a note under section 11 of this title.

Amendment by section 211(b)(21) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 535, 1564, 6655 of this title.

§ 1563. Definitions and special rules

(a) Controlled group of corporations

For purposes of this part, the term "controlled group of corporations" means any group of—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Certain insurance companies

Two or more insurance companies subject to taxation under section 801 which are members of a controlled group of corporations described in paragraph (1), (2), or (3). Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of the controlled group of corporations described in paragraph (1), (2), or (3).

(b) Component member

[*See main edition for text of* (*1*)]

(2) Excluded members

A corporation which is a member of a controlled group of corporations on December 31 of any taxable year shall be treated as an excluded member of such group for the taxable year including such December 31 if such corporation—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) is an insurance company subject to taxation under section 801 or section 821 (other than an insurance company which is a member of a controlled group described in subsection (a)(4)), or

[*See main edition for text of* (*E*), (*3*) *and* (*4*); (*c*) *to* (*f*)]

(As amended Pub. L. 98-369, div. A, title II, § 211(b)(22), July 18, 1984, 98 Stat. 757.)

AMENDMENTS

1984—Subsecs. (a)(4), (b)(2)(D). Pub. L. 98-369, substituted "section 801" for "section 802".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30, 38, 48, 52, 58, 103, 120, 127, 129, 179, 194, 243, 250, 267, 269B, 368, 382, 404, 409, 414, 415, 447, 465, 466, 613A, 806, 861, 863, 927, 936, 993, 1504, 1551, 1561, 1564, 4064, 6038A; title 29 sections 1060, 1107, 1301, 1322.

§ 1564. Transitional rules in the case of certain controlled corporations

REFERENCES IN TEXT

Sections 804(a)(3) and 809(d)(10), referred to in subsec. (a)(1)(C), were amended generally by Pub. L. 98-369, div. A, title II, § 211(a), July 18, 1984, 98 Stat. 722, 733, and as so amended do not contain the subsections referred to in text.

Subtitle B—Estate and Gift Taxes

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 404, 877, 6019, 6211, 6212, 6213, 6214, 6404, 6501, 6660, 6871, 6901, 7701, 7702 of this title.

CHAPTER 11—ESTATE TAX

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 667, 1014, 1040, 2519, 2613, 2614, 2621, 6103, 6161, 6163, 6212, 6314, 6324, 6324A, 6501, 6601, 6660, 6871, 6901, 6905, 7269, 7404, 7463, 7517, 7851, 7872 of this title.

Subchapter A—Estates of Citizens or Residents

PART I—TAX IMPOSED

§ 2001. Imposition and rate of tax

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Rate schedule

[*See main edition for text of* (*1*)]

(2) Phase-in of 50 percent maximum rate

(A) In general

In the case of decedents dying, and gifts made, before 1988, there shall be substituted for the last item in the schedule contained in paragraph (1) the items determined under this paragraph.

[*See main edition for text of* (*B*) *and* (*C*)]

(D) For 1984, 1985, 1986, or 1987

In the case of decendents dying, and gifts made, in 1984, 1985, 1986, or 1987 the substitution under this paragraph shall be as follows:

Over $2,500,000 but not over $3,000,000.	$1,025,800, plus 53% of the excess over $2,500,000.
Over $3,000,000	$1,290,800, plus 55% of the excess over $3,000,000.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 21(a), 98 Stat. 506.)

AMENDMENTS

1984—Subsec. (c)(2)(A), (D). Pub. L. 98-369 substituted "1988" for "1985" in subpar. (A) and substituted "1984, 1985, 1986, or 1987" for "1984" in heading and text of subpar. (D).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 21(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending subsec. (c)(2)(A) and (D) of this section] shall apply to the estates of decedents dying after, and gifts made after, December 31, 1983."

CLARIFICATION OF TREATMENT OF CERTAIN EXEMPTIONS FOR PURPOSES OF FEDERAL ESTATE AND GIFT TAXES

Section 641 of Pub. L. 98-369 provided that:

"(a) GENERAL RULE.—Nothing in any provision of law exempting any property (or interest therein) from taxation shall exempt the transfer of such property (or interest therein) from Federal estate, gift, and generation-skipping transfer taxes. In the case of any provision of law enacted after the date of the enactment of this Act [July 18, 1984], such provision shall not be treated as exempting the transfer of property from Federal estate, gift, and generation-skipping transfer taxes unless it refers to the appropriate provisions of the Internal Revenue Code of 1954.

"(b) EFFECTIVE DATE.—

"(1) IN GENERAL.—The provisions of subsection (a) shall apply to the estates of decedents dying, gifts made, and transfers made on or after June 19, 1984.

"(2) TREATMENT OF CERTAIN TRANSFERS TREATED AS TAXABLE.—The provisions of subsection (a) shall also apply in the case of any transfer of property (or interest therein) if at any time there was filed an estate or gift tax return showing such transfer as subject to Federal estate or gift tax.

"(3) NO INFERENCE.—No inference shall arise from paragraphs (1) and (2) that any transfer of property (or interest therein) before June 19, 1984, is exempt from Federal estate and gift taxes."

REPORTS WITH TRANSFERS OF PUBLIC HOUSING BONDS

Section 642 of Pub. L. 98-369 provided that:

"(a) GENERAL RULE.—With respect to transfers of public housing bonds occurring after December 31, 1983, and before June 19, 1984, the taxpayer shall report the date and amount of such transfer and such other information as the Secretary of the Treasury or his delegate shall prescribe by regulations to allow the determination of the tax and interest due if it is ultimately determined that such transfers are subject to estate, gift, or generation-skipping tax.

"(b) PENALTY FOR FAILURE TO REPORT.—Any taxpayer failing to provide the information required by subsection (a) shall be liable for a penalty equal to 25 percent of the excess of (1) the estate, gift, or generation-skipping tax that is payable assuming that such transfers are subject to tax, over (2) the tax payable assuming such transfers are not so subject."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 691, 1016, 2010, 2011, 2012, 2013, 2014, 2015, 2032A, 2051, 2053, 2054, 2055, 2056, 2101, 2107, 2210, 2502, 2602, 2621, 6018, 6019, 6166 of this title.

§ 2002. Liability for payment

Except as provided in section 2210, the tax imposed by this chapter shall be paid by the executor.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title V, § 544(b)(1), 98 Stat. 894.)

AMENDMENTS

1984—Pub. L. 98-369 inserted the exception phrase.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to estates of decedents which are required to file returns on a date (including any extensions) after July 18, 1984, see section 544(d) of Pub. L. 98-369, set out as an Effective Date note under section 2210 of this title.

PART III—GROSS ESTATE

§ 2032. Alternate valuation

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Election must decrease gross estate and estate tax

No election may be made under this section with respect to an estate unless such election will decrease—

(1) the value of the gross estate, and

(2) the amount of the tax imposed by this chapter (reduced by credits allowable against such tax).

(d) Election

(1) In general

The election provided for in this section shall be made by the executor on the return of the tax imposed by this chapter. Such election, once made, shall be irrevocable.

(2) Exception

No election may be made under this section if such return is filed more than 1 year after the time prescribed by law (including extensions) for filing such return.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, §§ 1023(a), 1024(a), 98 Stat. 1030.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 1023(a), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 98-369, § 1024(a), substituted "Election" for "Time of election" as the subsection heading, designated the existing text as par. (1), added a paragraph heading "In general" in par. (1) as so designated and in text substituted "shall be made by the executor on the return of the tax imposed by this chapter" for "shall be exercised by the executor on his return if filed within the time prescribed by law or before the expiration of any extension of time granted pursuant to law for the filing of the return", added sentence providing that an election, once made, is irrevocable, and added par. (2).

Pub. L. 98-369, § 1023(a), redesignated subsec. (c) as (d).

Effective Date of 1984 Amendment

Section 1023(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [enacting subsec. (c) of this section and redesignating subsec. (c) as (d)] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [July 18, 1984]."

Section 1024(b) of Pub. L. 98-369 provided that:

"(1) In general.—The amendment made by subsection (a) [amending subsec. (d) of this section] shall apply to estates of decedents dying after the date of the enactment of this Act [July 18, 1984].

"(2) Transitional rule.—In the case of an estate of a decedent dying before the date of the enactment of this Act [July 18, 1984] if—

"(A) a credit or refund of the tax imposed by chapter 11 of the Internal Revenue Code of 1954 is not prevented on the date of the enactment of this Act by the operation of any law or rule of law,

"(B) the election under section 2032 of the Internal Revenue Code of 1954 would have met the requirements of such section (as amended by this section and section 1023) had the decedent died after the date of enactment of this Act, and

"(C) a claim for credit or refund of such tax with respect to such estate is filed not later than the 90th day after the date of the enactment of this Act,

then such election shall be treated as a valid election under such section 2032. The statutory period for the assessment of any deficiency which is attributable to an election under this paragraph shall not expire before the close of the 2-year period beginning on the date of the enactment of this Act."

§ 2032A. Valuation of certain farm, etc., real property

[See main edition for text of (a) to (c)]

(d) Election; agreement

[See main edition for text of (1) and (2)]

(3) Modification of election and agreement to be permitted

The Secretary shall prescribe procedures which provide that in any case in which—

(A) the executor makes an election under paragraph (1) within the time prescribed for filing such election, and

(B) substantially complies with the regulations prescribed by the Secretary with respect to such election, but—

(i) the notice of election, as filed, does not contain all required information, or

(ii) signatures of 1 or more persons required to enter into the agreement described in paragraph (2) are not included on the agreement as filed, or the agreement does not contain all required information,

the executor will have a reasonable period of time (not exceeding 90 days) after notification of such failures to provide such information or agreements.

[See main edition for text of (e) to (i)]

(As amended Pub. L. 98-369, div. A, title X, § 1025(a), July 18, 1984, 98 Stat. 1030.)

Amendments

1984—Subsec. (d)(3). Pub. L. 98-369 added par. (3).

Effective Date of 1984 Amendment

Section 1025(b) of Pub. L. 98-369 provided that:

"(1) In general.—The amendment made by this section [enacting subsec. (d)(3) of this section] shall apply to estates of decedents dying after December 31, 1976.

"(2) Refund or credit of overpayment barred by statute of limitations.—Notwithstanding section 6511(a) of the Internal Revenue Code of 1954 or any other period of limitation or lapse of time, a claim for credit or refund of overpayment of the tax imposed by such Code which arises by reason of this section may be filed by any person at any time within the 1-year period beginning on the date of the enactment of this Act [July 18, 1984]. Sections 6511(b) and 6514 of such Code shall not apply to any claim for credit or refund filed under this subsection within such 1-year period."

Land Diverted Under 1983 Payment-in-Kind Program

Land diverted from production of agricultural commodities under a 1983 payment-in-kind program to be treated, for purposes of this section, as used during the 1983 crop year by qualified taxpayers in the active conduct of the trade or business of farming, with qualified taxpayers who materially participate in the diversion and devotion to conservation uses under a 1983 payment-in-kind program to be treated as materially participating in the operation of such land during the 1983 crop year, see section 3 of Pub. L. 98-4, set out as a note under section 61 of this title.

§ 2039. Annuities

[See main edition for text of (a) and (b)]

(c) Exception of certain annuity interests created by community property laws

(1) In general

In the case of an employee on whose behalf contributions or payments were made by his employer or former employer under a trust, plan, or contract to which this subsection applies, if the spouse of such employee predeceases such employee, then notwithstanding any provision of law, there shall be excluded from the gross estate of such spouse the value of any interest of such spouse in such trust, plan, or contract, to the extent such interest—

(A) is attributable to such contributions or payments, and

(B) arises solely by reason of such spouse's interest in community income under the community property laws of a State.

(2) Trusts, plans, and contracts to which subsection applies

This subsection shall apply to—

(A) any trust, plan, or contract which at the time of the decedent's separation from employment (by death or otherwise), or if earlier, at the time of termination of the plan—

(i) formed part of a plan which met the requirements of section 401(a), or

(ii) was purchased pursuant to a plan described in section 403(a), or

(B) a retirement annuity contract purchased for an employee by an employer which is—

(i) an organization referred to in clause (ii) or (vi) of section 170(b)(1)(A), or

(ii) a religious organization (other than a trust) exempt from taxation under section 501(a).

(3) Amount contributed by employee

For purposes of this subsection—

(A) contributions or payments made by the decedent's employer or former employer under a trust, plan, or contract described in paragraph (2)(A) shall not be considered to be contributed by the decedent, and

(B) contributions or payments made by the decedent's employer or former employer toward the purchase of an annuity contract described in paragraph (2)(B) shall not be considered to be contributed by the decedent to the extent excludable from gross income under section 403(b).

[(d) to (g) Repealed. Pub. L. 98-369, div. A, title V, § 525(a), July 18, 1984, 98 Stat. 873]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 491(d)(34), title V, § 525(a), 98 Stat. 851, 873.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 525(a), substituted provisions relating to exception of certain annuity interests created by community property laws for provisions which related to exemption of annuities under certain trusts and plans.

Subsec. (d). Pub. L. 98-369, § 525(a), struck out subsec. (d) which related to exemption of certain annuity interests created by community property laws. See subsec. (c) of this section.

Subsec. (e). Pub. L. 98-369, § 525(a), struck out subsec. (e) which related to exclusion of individual retirement accounts.

Pub. L. 98-369, § 491(d)(34), inserted "or" at the end of par. (1), substituted a period for ", or" at the end of par. (2), struck out par. (3) which excluded from the value of the gross estate the value of an annuity receivable by any beneficiary, other than the executor, under a retirement bond described in section 409(a), and substituted in provision following par. (2) "or 408(d)(3)" for "405(d)(3), 408(d)(3), or 409(b)(3)(C)", and substituted "or annuity" for ", annuity, or bond" wherever appearing.

Subsecs. (f), (g). Pub. L. 98-369, § 525(a), struck out subsec. (f) which related to lump sum distributions and an exception where the recipient elects not to take 10-year averaging, and subsec. (g) which related to a $100,000 limitation on the exclusions under subsecs. (c) and (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(34) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Section 525(b)(1), (2) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall apply to the estates of decedents dying after December 31, 1984.

"(2) EXCEPTION FOR PARTICIPANTS IN PAY STATUS.—The amendments made by this section shall not apply to the estate of any decedent who—

"(A) was a participant in any plan who was in pay status on December 31, 1984, and

"(B) irrevocably elected the form of the benefit before the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1982 AMENDMENT

Section 245(c) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title V, § 525(b)(3), July 18, 1984, 98 Stat. 874, provided that: "The amendments made by this section [amending this section] shall apply to the estates of decedents dying after December 31, 1982, except that such amendments shall not apply to the estate of any decedent who was a participant in any plan who was in pay status on December 31, 1982, and irrevocably elected before January 1, 1983, the form of benefit."

§ 2043. Transfers for insufficient consideration

[*See main edition for text of* (*a*)]

(b) Marital rights not treated as consideration

(1) In general

For purposes of this chapter, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate, shall not be considered to any extent a consideration "in money or money's worth".

(2) Exception

For purposes of section 2053 (relating to expenses, indebtedness, and taxes), a transfer of property which satisfies the requirements of paragraph (1) of section 2516 (relating to certain property settlements) shall be considered to be made for an adequate and full consideration in money or money's worth.

(As amended July 18, 1984, Pub. L. 8-369, div. A, title IV, § 425(d)(1), 98 Stat. 803.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 amended subsec. (b) generally, designating existing provisions as par. (1) and adding par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 425(c)(1) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending sections 2043(b) and 2053(e) of this title] shall apply to estates of decedents dying after the date of the enactment of this Act [July 18, 1984]."

§ 2044. Certain property for which marital deduction was previously allowed

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1014, 2053, 2207A, 2523 of this title.

PART IV—TAXABLE ESTATE

§ 2053. Expenses, indebtedness, and taxes

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Limitations

(1) Limitations applicable to subsections (a) and (b)

[*See main edition for text of* (*A*) *and* (*B*)]

(C) Certain claims by remaindermen

No deduction shall be allowed under this section for a claim against the estate by a remainderman relating to any property described in section 2044.

[*See main edition for text of* (*2*); (*d*)]

(e) Marital rights

For provisions treating certain relinquishments of marital rights as consideration in money or money's worth, see section 2043(b)(2).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 425(a)(2), title X, § 1027(b), 98 Stat. 804, 1031.)

AMENDMENTS

1984—Subsec. (c)(1)(C). Pub. L. 98-369, § 1027(b), added subpar. (C).

Subsec. (e). Pub. L. 98-369, § 425(a)(2), substituted "For provisions treating certain relinquishments of marital rights as consideration in money or money's worth, see section 2043(b)(2)" for "For provisions that relinquishment of marital rights shall not be deemed a consideration 'in money or money's worth,' see section 2043(b)."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 425(a)(2) of Pub. L. 98-369 applicable to estates of decedents dying after July 18, 1984, see section 425(c)(1) of Pub. L. 98-369, set out as a note under section 2043 of this title.

Section 1027(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 2053 and 2056 of this title] shall take effect as if included in the amendment made by section 403 of the Economic Recovery Tax Act of 1981 [section 403 of Pub. L. 97-34, see Effective Date of 1981 Amendment note set out under section 2056 of this title]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 213, 303, 642, 2011, 2013, 2014, 2032A, 2043, 2106, 2602, 6166 of this title.

§ 2055. Transfers for public, charitable, and religious uses

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Disallowance of deductions in certain cases

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Reformations to comply with paragraph (2)

(A) In general

A deduction shall be allowed under subsection (a) in respect of any qualified reformation.

(B) Qualified reformation

For purposes of this paragraph, the term "qualified reformation" means a change of a governing instrument by reformation, amendment, construction, or otherwise which changes a reformable interest into a qualified interest but only if—

(i) any difference between—

(I) the actuarial value (determined as of the date of the decedent's death) of the qualified interest, and

(II) the actuarial value (as so determined) of the reformable interest,

does not exceed 5 percent of the actuarial value (as so determined) of the reformable interest,

(ii) in the case of—

(I) a charitable remainder interest, the nonremainder interest (before and after the qualified reformation) terminated at the same time, or

(II) any other interest, the reformable interest and the qualified interest are for the same period, and

(iii) such change is effective as of the date of the decedent's death.

A nonremainder interest (before reformation) for a term of years in excess of 20 years shall be treated as satisfying subclause (I) of clause (ii) if such interest (after reformation) is for a term of 20 years.

(C) Reformable interest

For purposes of this paragraph—

(i) In general

The term "reformable interest" means any interest for which a deduction would be allowable under subsection (a) at the time of the decedent's death but for paragraph (2).

(ii) Beneficiary's interest must be fixed

The term "reformable interest" does not include any interest unless, before the remainder vests in possession, all payments to persons other than an organization described in subsection (a) are expressed either in specified dollar amounts or a fixed percentage of the fair market value of the property. For purposes of determining whether all such payments are expressed as a fixed percentage of the fair market value of the property, section 664(d)(3) shall be taken into account.

(iii) Special rule where timely commencement of reformation

Clause (ii) shall not apply to any interest if a judicial proceeding is commenced to change such interest into a qualified interest not later than the 90th day after—

(I) if an estate tax return is required to be filed, the last date (including extensions) for filing such return, or

(II) if no estate tax return is required to be filed, the last date (including extensions) for filing the income tax return for the 1st taxable year for which such a return is required to be filed by the trust.

(iv) Special rule for will executed before January 1, 1979, etc.

In the case of any interest passing under a will executed before January 1, 1979, or under a trust created before such date, clause (ii) shall not apply.

(D) Qualified interest

For purposes of this paragraph, the term "qualified interest" means an interest for which a deduction is allowable under subsection (a).

(E) Limitation

The deduction referred to in subparagraph (A) shall not exceed the amount of the deduction which would have been allowable for the reformable interest but for paragraph (2).

(F) Special rule where income beneficiary dies

If (by reason of the death of any individual, or by termination or distribution of a trust in accordance with the terms of the trust instrument) by the due date for filing the estate tax return (including any extension thereof) a reformable interest is in a wholly charitable trust or passes directly to a person or for a use described in subsection (a), a deduction shall be allowed for such reformable interest as if it had met the requirements of paragraph (2) on the date of the decedent's death. For purposes of the preceding sentence, the term "wholly charitable trust" means a charitable trust which, upon the allowance of a deduction, would be described in section 4947(a)(1).

(G) Statute of limitations

The period for assessing any deficiency of any tax attributable to the application of this paragraph shall not expire before the date 1 year after the date on which the Secretary is notified that such reformation has occurred.

(H) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this paragraph, including regulations providing such adjustments in the application of the provisions of section 508 (relating to special rules relating to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations) as may be necessary by reason of the qualified reformation.

(I) Reformations permitted in case of remainder interests in residence or farm, pooled income funds, etc.

The Secretary shall prescribe regulations (consistent with the provisions of this paragraph) permitting reformations in the case of any failure—

(i) to meet the requirements of section 170(f)(3)(B) (relating to remainder interests in personal residence or farm, etc.), or

(ii) to meet the requirements of section 642(c)(5).

[*See main edition for text of (4)*]

(f) Cross references

(1) For option as to time for valuation for purpose of deduction under this section, see section 2032.

(2) For treatment of certain organizations providing child care, see section 501(k).

(3) For exemption of gifts and bequests to or for the benefit of Library of Congress, see section 5 of the Act of March 3, 1925, as amended (2 U.S.C. 161).

(4) For treatment of gifts and bequests for the benefit of the Office of Naval Records and History as gifts or bequests to or for the use of the United States, see section 7222 of title 10, United States Code.

(5) For treatment of gifts and bequests to or for the benefit of National Park Foundation as gifts or bequests to or for the use of the United States, see section 8 of the Act of December 18, 1967 (16 U.S.C. 191).

(6) For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency as gifts, devises, or bequests to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

(7) For treatment of gifts or bequests of money accepted by the Attorney General for credit to "Commissary Funds, Federal Prisons," as gifts or bequests to or for the use of the United States, see section 4043 of title 18, United States Code.

(8) For payment of tax on gifts and bequests of United States obligations to the United States, see section 3113(e) of title 31, United States Code.

(9) For treatment of gifts and bequests for benefit of the Naval Academy as gifts or bequests to or for the use of the United States, see section 6973 of title 10, United States Code.

(10) For treatment of gifts and bequests for benefit of the Naval Academy Museum as gifts or bequests to or for the use of the United States, see section 6974 of title 10, United States Code.

(11) For exemption of gifts and bequests received by National Archives Trust Fund Board, see section 2308 of title 44, United States Code.

(12) For treatment of gifts and bequests to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, §§ 1022(a), 1032(b)(2), 98 Stat. 1026, 1033.)

REFERENCES IN TEXT

Section 25 of the State Department Basic Authorities Act of 1956, referred to in subsec. (f)(6), is classified to section 2697 of Title 22, Foreign Relations and Intercourse.

AMENDMENTS

1984—Subsec. (e)(3). Pub. L. 98-369, § 1022(a), amended par. (3) generally, substituting provisions relating to reformations to comply with par. (2), defining "qualified reformation", "reformable interest", and "qualified interest", and setting forth limitations on the deduction, a special rule where the income beneficiary dies, statute of limitations, regulations prescribed by the Secretary, and reformations permitted in the case of remainder interests in a residence or farm, pooled income funds, etc., for former par. (3), which provided: "In the case of a will executed before December 31, 1978, or a trust created before such date, if a deduction is not allowable at the time of the decedent's death because of the failure of an interest in property which passes from the decedent to a person, or for a use, described in subsection (a) to meet the requirements of subparagraph (A) or (B) of paragraph (2) of this subsection, and if the governing instrument is amended or conformed on or before December 31, 1981, or, if later, on or before the 30th day after the date on which judicial proceedings begun on or before December 31, 1981, (which are required to amend or conform the governing instrument), become final, so that the interest is in a trust which meets the requirements of such subparagraph (A) or (B) (as the case may be), a deduction shall nevertheless be allowed. The Secretary may, by regulation, provide for the application of the provisions of this paragraph to trusts whose governing instruments are amended or conformed in accordance with this paragraph, and such regulations may provide for any adjustments in the application of the provisions of section 508 (relating to special rules with respect to section 501(c)(3) organizations), subchapter J (relating to estates, trusts, beneficiaries, and decedents), and chapter 42 (relating to private foundations), to such trusts made necessary by the application of this paragraph. If, by the due date for the filing of an estate tax return (including any extension thereof), the interest is in a charitable trust which, upon allowance of a deduction, would be described in section 4947(a)(1), or the interest passes directly to a person or for a use described in subsection (a), a deduction shall be allowed as if the governing instrument was amended or conformed under this paragraph. If the amendment or conformation of the governing instrument is made after the due date for the filing of the estate tax return (including any extension thereof), the deduction shall be allowed upon the filing of a timely claim for credit or refund (as provided for in section 6511) of an overpayment resulting from the application of this paragraph. In the case of a credit or refund as a result of an amendment or conformation made pursuant to this paragraph, no interest shall be allowed for the period prior to the expiration of the 180th day after the date on which the claim for credit or refund is filed."

Subsec. (f)(2). Pub. L. 98-369, § 1032(b)(2), added par. (2), and redesignated former pars. (2) to (11) as pars. (3) to (12), respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1022(e) of Pub. L. 98-369 provided that:

"(1) SUBSECTIONS (a), (b), AND (c).—The amendments made by subsections (a), (b), and (c) [amending sections 170, 2055, and 2522 of this title] shall apply to reformations after December 31, 1978; except that such amendments shall not apply to any reformation to which section 2055(e)(3) of the Internal Revenue Code of 1954 (as in effect on the day before the date of the enactment of this Act [July 18, 1984]) applies. For purposes of applying clause (iii) of section 2055(e)(3)(C) of such Code (as amended by this section), the 90th day described in such clause shall be treated as not occurring before the 90th day after the date of the enactment of this Act.

"(2) SUBSECTION (d).—The amendment made by subsection (d) [amending section 664 of this title] shall apply to transfers after December 31, 1978.

"(3) STATUTE OF LIMITATIONS.—

"(A) IN GENERAL.—If on the date of the enactment of this Act [July 18, 1984] (or at any time before the date 1 year after such date of enactment), credit or refund of any overpayment of tax attributable to the amendments made by this section is barred by any law or rule of law, such credit or refund of such overpayment may nevertheless be made if claim therefor is filed before the date 1 year after the date of the enactment of this Act.

"(B) NO INTEREST WHERE STATUTE CLOSED ON DATE OF ENACTMENT.—In any case where the making of the credit or refund of the overpayment described in subparagraph (A) is barred on the date of the enactment of this Act [July 18, 1984], no interest shall be allowed with respect to such overpayment (or any related adjustment) for the period before the date 180 days after the date on which the Secretary of the Treasury (or his delegate) is notified that the reformation has occurred."

[Amendment by section 1032(b)(2) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98-369, set out as a note under section 170 of this title.]

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(3) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 501, 508, 2011, 2012, 2013, 2014, 2032, 2053, 2106, 2522, 2602, 4947, 4948, 7871 of this title; title 12 section 3051; title 20 section 76m; title 22 sections 2876, 3307.

§ 2056. Bequests, etc., to surviving spouse

[*See main edition for text of* (*a*)]

(b) Limitation in the case of life estate or other terminable interest

[*See main edition for text of* (*1*) *to* (*6*)]

(7) Election with respect to life estate for surviving spouse

[*See main edition for text of* (*A*)]

(B) Qualified terminable interest property defined

For purposes of this paragraph—

[*See main edition for text of* (*i*)]

(ii) Qualifying income interest for life

The surviving spouse has a qualifying income interest for life if—

(I) the surviving spouse is entitled to all the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and

(II) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Subclause (II) shall not apply to a power exercisable only at or after the death of the surviving spouse. To the extent provided in regulations, an annuity shall be treated in a manner similar to an income interest in property (regardless of whether the property from which the annuity is payable can be separately identified).

[*See main edition for text of* (*iii*) *to* (*v*), (*8*) *and* (*9*); (*c*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1027(a), 98 Stat. 1031.)

AMENDMENTS

1984—Subsec. (b)(7)(B)(ii)(I). Pub. L. 98-369 added ", or has a usufruct interest for life in the property".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the amendment made by section 403 of the Economic Recovery Tax Act of 1981 [Pub. L. 97-34, see Effective Date of 1981 Amendment note below], see section 1027(c) of Pub. L. 98-369, set out as a note under section 2053 of this title.

Subchapter B—Estates of Nonresidents Not Citizens

§ 2105. Property without the United States

[*See main edition for text of* (*a*)]

(b) Bank deposits and certain other debt obligations

For purposes of this subchapter—

(1) amounts described in section 861(c), if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States were such interest received by the decedent at the time of his death,

(2) deposits with a foreign branch of a domestic corporation or domestic partnership, if such branch is engaged in the commercial banking business, and

(3) debt obligations, if, without regard to whether a statement meeting the requirements of section 871(h)(4) has been received, any interest thereon would be eligible for the exemption from tax under section 871(h)(1)

were such interest received by the decedent at the time of his death,

shall not be deemed property within the United States.

[*See main edition for text of* (c)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 127(d), 98 Stat. 651.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, amended subsec. (b) generally, substituting "Bank deposits and certain other debt obligations" for "Certain bank deposits, etc." in heading and ", if any interest thereon would be treated by reason of section 861(a)(1)(A) as income from sources without the United States were such interest received by the decedent at the time of his death," for "if any interest thereon, were such interest received by the decedent at the time of his death, would be treated by reason of section 861(a)(1)(A) as income from sources without the United States, and" in par. (1), inserting "and" after "business," in par. (2), and adding par. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after July 18, 1984, with respect to the estates of decedents dying after such date, see section 127(g)(2) of Pub. L. 98-369, set out as a note under section 871 of this title.

§ 2106. Taxable estate

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(3) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

Subchapter C—Miscellaneous

Sec.
2210. Liability for payment in case of transfer of employer securities to an employee stock ownership plan or a worker-owned cooperative.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title V, § 544(b)(2), July 18, 1984, 98 Stat. 894, added item 2210.

§ 2210. Liability for payment in case of transfer of employer securities to an employee stock ownership plan or a worker-owned cooperative

(a) In general

If—

(1) employer securities—

(A) are acquired from the decedent by an employee stock ownership plan or by an eligible worker-owned cooperative from any decedent,

(B) pass from the decedent to such a plan or cooperative, or

(C) are transferred by the executor to such a plan or cooperative, and

(2) the executor elects the application of this section and files the agreements described in subsection (e) before the due date (including extensions) for filing the return of tax imposed by section 2001,

then the executor is relieved of liability for payment of that portion of the tax imposed by section 2001 which such employee stock ownership plan or cooperative is required to pay under subsection (b).

(b) Payment of tax by employee stock ownership plan or cooperative

(1) In general

An employee stock ownership plan or eligible worker-owned cooperative—

(A) which has acquired employer securities from the decedent, or to which such securities have passed from the decedent or been transferred by the executor, and

(B) with respect to which an agreement described in subsection (e)(1) is in effect,

shall pay that portion of the tax imposed by section 2001 with respect to the taxable estate of the decedent which is described in paragraph (2).

(2) Amount of tax to be paid

The portion of the tax imposed by section 2001 with respect to the taxable estate of the decedent that is referred to in paragraph (1) is equal to the lesser of—

(A) the value of the employer securities described in subsection (a)(1) which is included in the gross estate of the decedent, or

(B) the tax imposed by section 2001 with respect to such taxable estate reduced by the sum of the credits allowable against such tax.

(c) Installment payments

(1) In general

If—

(A) the executor of the estate of the decedent (without regard to this section) elects to have the provisions of section 6166 (relating to extensions of time for payment of estate tax where estate consists largely of interest in closely held business) apply to payment of that portion of the tax imposed by section 2001 with respect to such estate which is attributable to employer securities, and

(B) the plan administrator or the cooperative provides to the executor the agreement described in subsection (e)(1),

then the plan administrator or the cooperative may elect, before the due date (including extensions) for filing the return of such tax, to pay all or part of the tax described in subsection (b)(2) in installments under the provisions of section 6166.

(2) Interest on installments

In determining the 4-percent portion for purposes of section 6601(j)—

(A) the portion of the tax imposed by section 2001 with respect to an estate for which the executor is liable, and

(B) the portion of such tax for which an employee stock ownership plan or an eligible worker-owned cooperative is liable,

shall be aggregated.

(d) Guarantee of payments

Any employer—

(1) whose employees are covered by an employee stock ownership plan, and

(2) who has entered into an agreement described in subsection (e)(2) which is in effect,

shall guarantee (in such manner as the Secretary may prescibe[3]) the payment of any amount such plan is required to pay under subsection (b), including any interest payable under section 6601 which is attributable to such amount.

(e) Agreements

The agreements described in this subsection are as follows:

(1) A written agreement signed by the plan administrator, or by any authorized officer of the eligible worker-owned cooperative, consenting to the application of subsection (b) to such plan or cooperative.

(2) A written agreement signed by the employer whose employees are covered by the plan described in subsection (b) consenting to the application of subsection (d).

(f) Exemption from tax on prohibited transactions

The assumption under this section by an employee stock ownership plan of any portion of the liability for the tax imposed by section 2001 shall be treated as a loan described in section 4975(d)(3).

(g) Definitions

For purposes of this section—

(1) Employer securities

The term "employer securities" has the meaning given such term by section 409(*l*).

(2) Employee stock ownership plan

The term "employee stock ownership plan" has the meaning given such term by section 4975(e)(7).

(3) Eligible worker-owned cooperative

The term "eligible worker-owned cooperative" has the meaning given to such term by section 1041(b)(2).

(4) Plan administrator

The term "plan administrator" has the meaning given such term by section 414(g).

(Added Pub. L. 98-369, div. A, title V, § 544(a), July 18, 1984, 98 Stat. 892.)

EFFECTIVE DATE

Section 544(d) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting section 2210 and amending sections 2002, 6018, and 6166 of this title] shall apply to those estates of decedents which are required to file returns on a date (including any extensions) after the date of enactment of this Act [July 18, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2002, 6018, 6166 of this title.

CHAPTER 12—GIFT TAX

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1015, 2001, 2012, 2035, 2207A, 2613, 2614, 2621, 6103, 6161, 6212, 6324, 6501, 6653, 6901, 6905, 7463, 7517, 7851, 7872 of this title.

Subchapter A—Determination of Tax Liability

§ 2503. Taxable gifts

REFERENCES IN TEXT

Section 213(e), referred to in subsec. (e)(2)(B), relating to the definition of medical care, was redesignated section 213(d) by Pub. L. 97-248, title II, § 202(b)(3)(B), Sept. 3, 1982, 96 Stat. 421.

Subchapter B—Transfers

§ 2516. Certain property settlements

Where a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement—

(1) to either spouse in settlement of his or her marital or property rights, or

(2) to provide a reasonable allowance for the support of issue of the marriage during minority,

shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 425(b), 98 Stat. 804.)

AMENDMENTS

1984—Pub. L. 98-369 substituted in introductory text "within the 3-year period beginning on the date 1 year before such agreement is entered into" for "within 2 years thereafter".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 425(c)(2) of Pub. L. 98-369 provided that: "The amendment made by subsection (b) [amending this section] shall apply to transfers after the date of the enactment of this Act [July 18, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2043 of this title.

§ 2517. Certain annuities under qualified plans

(a) General rule

The exercise or nonexercise by an employee of an election or option whereby an annuity or other payment will become payable to any beneficiary at or after the employee's death shall not be considered a transfer for purposes of this chapter if the option or election and annuity or other payment is provided for under—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b).

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-369, div. A, title IV, § 491(d)(35), July 18, 1984, 98 Stat. 851.)

AMENDMENTS

1984—Subsec. (a)(5). Pub. L. 98-369 substituted "an individual retirement annuity described in section

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[3] So in original. Probably should be "prescribe".

408(b)" for ", an individual retirement annuity described in section 408(b), or a retirement bond described in section 409(a)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Subchapter C—Deductions

§ 2522. Charitable and similar gifts

[See main edition for text of (a) and (b)]

(c) Disallowance of deductions in certain cases

[See main edition for text of (1) to (3)]

(4) Reformations to comply with paragraph (2)

(A) In general

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

(B) Rules similar to section 2055(e)(3) to apply

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

(d) Cross references

(1) For treatment of certain organizations providing child care, see section 501(k).

(2) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).

(3) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, §§ 1022(c), 1032(b)(3), 98 Stat. 1028, 1034.)

AMENDMENTS

1984—Subsec. (c)(4). Pub. L. 98-369, § 1022(c), added par. (4).

Subsec. (d). Pub. L. 98-369, § 1032(b)(3), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1022(c) of Pub. L. 98-369 applicable to reformations after Dec. 31, 1978, but inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98-369, set out as a note under section 2055 of this title.

Amendment by section 1032(b)(3) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98-369, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(4) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 501, 508, 1015, 2012, 2503, 2602, 4947, 4948, 7871 of this title; title 12 section 3051; title 16 section 1285; title 22 sections 2876, 3307.

Subtitle C—Employment Taxes

Chapter		Sec.[1]
23A.	Railroad Unemployment Repayment Tax	3321

AMENDMENTS

1983—Pub. L. 98-76, title II, § 231(c), Aug. 12, 1983, 97 Stat. 429, added item for chapter 23A.

Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 1314, 1398, 6305, 7508, 7512 of this title; title 33 section 902.

CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 72, 275, 401, 408, 416, 1402, 3121, 3503, 6011, 6103, 6302, 6501, 6513, 6521, 7507, 7509, 7651, 7655, 7701, 7851 of this title; title 5 section 5901; title 22 sections 3307, 3310; title 29 section 1302, 1516; title 31 sections 1309, 9502; title 38 section 4114; title 42 sections 401, 405, 408, 418; title 45 section 231f; title 48 section 1421h.

Subchapter A—Tax on Employees

§ 3101. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

In cases of wages received during:	The rate shall be:
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

[See main edition for text of (b) and (c)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 123(a)(1), 97 Stat. 87.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-21 substituted the table of rates for former pars. (1) to (7) which had imposed a tax on the income of every individual (1) with respect to wages received during the calendar years 1974 through 1977 at the rate of 4.95 percent; (2) with respect to wages received during the calendar year 1978 at the rate of 5.05 percent; (3) with respect to wages received during the calendar years 1979 and 1980 at the rate of 5.08 percent; (4) with respect to wages received during the calendar year 1981 at the rate of 5.35 percent; (5) with respect to wages received during the calendar years 1982 through 1984 at the rate of 5.40 percent; (6) with respect to wages received during the calendar years 1985 through 1989 at the rate of 5.70 percent; and (7) with respect to wages received after Dec. 31, 1989, at the rate of 6.20 percent.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 123(a)(3) of Pub. L. 98-21 provided that: "The amendments made by this subsection [amending sections 3101 and 3111 of this title] shall apply to remuneration paid after December 31, 1983."

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[1] Section numbers editorially supplied.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 275, 406, 1402, 3102, 3121, 3306, 3502, 6051, 6053, 6205, 6413, 6521, 6652 of this title; title 42 sections 401, 409, 418, 429, 907, 910, 911, 1395i; title 45 section 231e.

§ 3102. Deduction of tax from wages

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3505, 3507, 6053 of this title.

Subchapter B—Tax on Employers

§ 3111. Rate of tax

(a) Old-age, survivors, and disability insurance

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a) and (t)) paid by him with respect to employment (as defined in section 3121(b))—

In cases of wages paid during:	The rate shall be:
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title I, § 123(a)(2), 97 Stat. 88.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-21 substituted the table of rates for pars. (1) to (7) which had imposed a tax on every employer (1) with respect to wages paid during the calendar years 1974 through 1977 at the rate of 4.95 percent, (2) with respect to wages paid during the calendar year 1978 at the rate of 5.05 percent, (3) with respect to wages paid during the calendar years 1979 and 1980 at the rate of 5.08 percent, (4) with respect to wages paid during the calendar year 1981 at the rate of 5.35 percent, (5) with respect to wages paid during the calendar years 1982 through 1984 at the rate of 5.40 percent, (6) with respect to wages paid during the calendar years 1985 through 1989 at the rate of 5.70 percent, and (7) with respect to wages paid after Dec. 31, 1989, at the rate of 6.20 percent.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1983, see section 123(a)(3) of Pub. L. 98-21, set out as a note under section 3101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 1402, 3112, 3121, 3122, 3125, 3507, 6051, 6205, 6413, 6674, 6690 of this title; title 42 sections 401, 401a, 418, 429, 907, 910, 911, 1395i, 1395ww.

Subchapter C—General Provisions

§ 3121. Definitions

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

[*See main edition for text of* (*1*)]

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workman's compensation law), or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or

(C) death;

[(3) Repealed. Pub. L. 98-21, title III, § 324(a)(3)(B), Apr. 20, 1983, 97 Stat. 123]

[*See main edition for text of* (*4*)]

(5) any payment made to, or on behalf of, an employee or his beneficiary—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) for such payment,

(D) under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

(E) under or to an exempt governmental deferred compensation plan (as defined in subsection (v)(3)), or

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974;

[*See main edition for text of* (*6*) *to* (*8*)]

[(9) Repealed. Pub. L. 98-21, title III, § 324(a)(3)(B), Apr. 20, 1983, 97 Stat. 123]

[*See main edition for text of* (*10*) *to* (*12*)]

(13) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, or (ii) retirement for disability, and

[*See main edition for text of* (*B*)]

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated.

[*See main edition for text of* (*14*) *to* (*16*)]

(17) any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans);

(18) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129;

(19) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119; or

(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter. Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

(b) Employment

For purposes of this chapter, the term "employment" means any service, of whatever nature, performed (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act; except that such term shall not include—

(1) service performed by foreign agricultural workers lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

[*See main edition for text of* (*2*) *to* (*4*)]

(5) service performed in the employ of the United States or any instrumentality of the United States, if such service—

(A) would be excluded from the term "employment" for purposes of this title if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who—

(i) has been continuously performing service described in subparagraph (A) since December 31, 1983, and for purposes of this clause—

(I) if an individual performing service described in subparagraph (A) returns to the performance of such service after being separated therefrom for a period of less than 366 consecutive days, regardless of whether the period began before, on, or after December 31, 1983, then such service shall be considered continuous,

(II) if an individual performing service described in subparagraph (A) returns to the performance of such service after being detailed or transferred to an international organization as described under section 3343 of subchapter III of chapter 33 of title 5, United States Code, or under section 3581 of chapter 35 of such title, then the service performed for that organization shall be considered service described in subparagraph (A),

(III) if an individual performing service described in subparagraph (A) is reemployed or reinstated after being separated from such service for the purpose of accepting employment with the American Institute in Taiwan as provided under section 3310 of chapter 48 of title 22, United States Code, then the service performed for that Institute shall be considered service described in subparagraph (A), and

(IV) if an individual performing service described in subparagraph (A) returns to the performance of such service after performing service as a member of a uniformed service (including, for purposes of this clause, service in the National Guard and temporary service in the Coast Guard Reserve) and after exercising restoration or reemployment rights as provided under chapter 43 of title 38, United States Code, then the service so performed as a member of a uniformed service shall be considered service described in subparagraph (A); or

(ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed service);

except that this paragraph shall not apply with respect to—

(C) service performed as the President or Vice President of the United States,

(D) service performed—

(i) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5, United States Code,

(ii) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(iii) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107 (a)(1) or (b)(1) of title 3, United States Code, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(E) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Claims Court, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate, or a referee in bankruptcy or United States bankruptcy judge,

(F) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress, or

(G) any other service in the legislative branch of the Federal Government if such service—

(i) is performed by an individual who was not subject to subchapter III of chapter 83 of title 5, United States Code, or to another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services), on December 31, 1983, or

(ii) is performed by an individual who has, at any time after December 31, 1983, received a lump-sum payment under section 8342(a) of title 5, United States Code, or under the corresponding provision of the law establishing the other retirement system described in clause (i), or

(iii) is performed by an individual after such individual has otherwise ceased to be subject to subchapter III of chapter 83 of title 5, United States Code (without having an application pending for coverage under such subchapter), while performing service in the legislative branch (determined without regard to the provisions of subparagraph (B) relating to continuity of employment), for any period of time after December 31, 1983,

and for purposes of this subparagraph (G) an individual is subject to such subchapter III or to any such other retirement system at any time only if (a) such individual's pay is subject to deductions, contributions, or similar payments (concurrent with the service being performed at that time) under section 8334(a) of such title 5 or the corresponding provision of the law establishing such other system, or (in a case to which section 8332(k)(1) of such title applies) such individual is making payments of amounts equivalent to such deductions, contributions, or similar payments while on leave without pay, or (b) such individual is receiving an annuity from the Civil Service Retirement and Disability Fund, or is receiving benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);

(6) service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;

[*See main edition for text of* (7)]

(8)(A) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this subparagraph shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under subsection (r) is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;

(B) service performed in the employ of a church or qualified church-controlled organization if such church or organization has in effect an election under subsection (w), other than service in an unrelated trade or business (within the meaning of section 513(a));

[*See main edition for text of* (*9*)]

(10) service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section 218(c)(5) of the Social Security Act are covered under the agreement between the Secretary of Health and Human Services and such State entered into pursuant to section 218 of such Act;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

[*See main edition for text of* (*11*) *to* (*20*); (*c*) *to* (*h*)]

(i) Computation of wages in certain cases

[*See main edition for text of* (*1*)]

(2) Service in the uniformed services

For purposes of this chapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of subsection (m)(1) are applicable, the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only his basic pay as described in chapter 3 and section 1009 of title 37, United States Code.

[*See main edition for text of* (*3*) *and* (*4*)]

(5) Service performed by certain retired justices and judges

For purposes of this chapter, in the case of an individual performing service under the provisions of section 294 of title 28, United States Code (relating to assignment of retired justices and judges to active duty), the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include any payment under section 371(b) of such title 28 which is received during the period of such service.

[*See main edition for text of* (*j*)]

[(k) Repealed. Pub. L. 98–21, title I, § 102(b)(2), Apr. 20, 1983, 97 Stat. 71]

(*l*) Agreements entered into by American employers with respect to foreign affiliates

(1) Agreement with respect to certain employees of foreign affiliate

The Secretary shall, at the American employer's request, enter into an agreement (in such manner and form as may be prescribed by the Secretary) with any American employer (as defined in subsection (h)) who desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any 1 or more of such employer's foreign affiliates (as defined in paragraph (8)) by all employees who are citizens or residents of the United States, except that the agreement shall not apply to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term "employment" or "wages", as defined in this section, had the service been performed in the United States. Such agreement may be amended at any time so as to be made applicable, in the same manner and under the same conditions, with respect to any other foreign affiliate of such American employer. Such agreement shall be applicable with respect to citizens or residents of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign affiliate specified in the agreement. Such agreement shall provide—

(A) that the American employer shall pay to the Secretary, at such time or times as the Secretary may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment as defined in this section; and

(B) that the American employer will comply with such regulations relating to payments and reports as the Secretary may prescribe to carry out the purposes of this subsection.

(2) Effective period of agreement

An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement; except that in case such agreement is amended to include the services performed for any other affiliate and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other affiliate only after the calendar quarter in which such amendment is executed.

(3) Termination of period by an American employer

The period for which an agreement entered into pursuant to paragraph (1) of this subsection is effective may be terminated with respect to any one or more of its foreign affiliates by the American employer, effective at the end of a calendar quarter, upon giving two years' advance notice in writing, but only if, at the time of the receipt of such notice, the agreement has been in effect for a period of not less than eight years. The notice of termination may be revoked by the American employer by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner as may be prescribed by regulations. Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign entity shall terminate at the end of any calendar quarter in which the foreign entity, at any time in such quarter, ceases to be a foreign affiliate as defined in paragraph (8).

(4) Termination of period by Secretary

If the Secretary finds that any American employer which entered into an agreement pursuant to this subsection has failed to comply substantially with the terms of such agreement, the Secretary shall give such American employer not less than sixty days' advance notice in writing that the period covered by such agreement will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Secretary by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the American employer. No notice of termination or of revocation thereof shall be given under this paragraph to an American employer without the prior concurrence of the Secretary of Health, Education, and Welfare.

(5) No renewal of agreement

If any agreement entered into pursuant to paragraph (1) of this subsection is terminated in its entirety (A) by a notice of termination filed by the American employer pursuant to paragraph (3), or (B) by a notice of termination given by the Secretary pursuant to paragraph (4), the American employer may not again enter into an agreement pursuant to paragraph (1). If any such agreement is terminated with respect to any foreign affiliate, such agreement may not thereafter be amended so as again to make it applicable with respect to such affiliate.

[See main edition for text of (6) and (7)]

(8) Foreign affiliate defined

For purposes of this subsection and section 210(a) of the Social Security Act—

(A) In general

A foreign affiliate of an American employer is any foreign entity in which such American employer has not less than a 10-percent interest.

(B) Determination of 10-percent interest

For purposes of subparagraph (A), an American employer has a 10-percent interest in any entity if such employer has such an interest directly (or through one or more entities)—

(i) in the case of a corporation, in the voting stock thereof, and

(ii) in the case of any other entity, in the profits thereof.

(9) American employer as separate entity

Each American employer which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413(c)(2)(C), relating to special refunds in the case of employees of certain foreign entities, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

(10) Regulations

Regulations of the Secretary to carry out the purposes of this subsection shall be designed to make the requirements imposed on American employers with respect to services covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title with respect to the taxes imposed by this chapter.

(m) Service in the uniformed services

For purposes of this chapter—

[See main edition for text of (1)]

(2) Active duty

The term "active duty" means "active duty" as described in paragraph (21) of section 101 of title 38, United States Code, except that it shall also include "active duty for training" as described in paragraph (22) of such section.

(3) Inactive duty training

The term "inactive duty training" means "inactive duty training" as described in paragraph (23) of such section 101.

(n) Member of a uniformed service

For purposes of this chapter, the term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component as defined in section 101(27) of title 38, United States Code), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey, the National Oceanic and Atmospheric Administration Corps, or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

[See main edition for text of (1) to (4)]

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military, naval, or air service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Military Selective Service Act, has been selected for active military, naval, or air service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

[*See main edition for text of* (*o*) *to* (*q*)]

(r) Election of coverage of religious orders

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Effective date for election

(A) A certificate of election of coverage shall be in effect, for purposes of subsection (b)(8) and for purposes of section 210(a)(8) of the Social Security Act, for the period beginning with whichever of the following may be designated by the order or subdivision thereof:

[*See main edition for text of* (*i*) *to* (*iii*)]

Whenever a date is designated under clause (iii), the election shall apply to services performed before the quarter in which the certificate is filed only if the member performing such services was a member at the time such services were performed and is living on the first day of the quarter in which such certificate is filed.

[*See main edition for text of* (*B*)]

[(4) Repealed. Pub. L. 98–21, title I, § 102(b)(3)(B), Apr. 20, 1983, 97 Stat. 71]

[*See main edition for text of* (*s*) *and* (*t*)]

(u) Application of hospital insurance tax to Federal employment

(1) In general

For purposes of the taxes imposed by sections 3101(b) and 3111(b), subsection (b) shall be applied without regard to paragraph (5) thereof.

[*See main edition for text of* (*2*)]

(v) Treatment of certain deferred compensation and salary reduction arrangements

(1) Certain employer contributions treated as wages

Nothing in any paragraph of subsection (a) (other than paragraph (1)) shall exclude from the term "wages"—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(a)(8), or

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise).

(2) Treatment of certain nonqualified deferred compensation plans

(A) In general

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

(i) when the services are performed, or

(ii) when there is no substantial risk of forefeiture [1] of the rights to such amount.

The preceding sentence shall not apply to any excess parachute payment (as defined in section 280G(b)).

(B) Taxed only once

Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) Nonqualified deferred compensation plan

For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (a)(5).

(3) Exempt governmental deferred compensation plan

For purposes of subsection (a)(5), the term "exempt governmental deferred compensation plan" means any plan providing for deferral of compensation established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing. Such term shall not include—

(A) any plan to which section 83, 402(b), 403(c), 457(a), or 457(e)(1) applies, and

(B) any annuity contract described in section 403(b).

(w) Exemption of churches and qualified church-controlled organizations

(1) General rule

Any church or qualified church-controlled organization (as defined in paragraph (3)) may make an election within the time period described in paragraph (2), in accordance with such procedures as the Secretary determines to be appropriate, that services performed in the employ of such church or organization shall be excluded from employment for purposes of title II of the Social Security Act and chapter 21 of this Code [2]. An election may be made under this subsection only if the church or qualified church-controlled organization states that such church or organization is opposed for religious reasons to the payment of the tax imposed under section 3111.

(2) Timing and duration of election

An election under this subsection must be made prior to the first date, more than 90 days after the date of the enactment of this subsection, on which a quarterly employment tax return for the tax imposed under section 3111 is due, or would be due but for the election, from such church or organization. An election under this subsection shall apply to current and future employees, and shall apply to service performed after December 31, 1983. The election may not be revoked by the church or organization, but shall be permanently revoked by the Secretary if such church or organization fails to furnish the information required under section 6051 to the Secretary for a period of 2 years or more with respect to remuneration paid for such services by such church or organization, and, upon request by the Secretary, fails to furnish all such previously unfurnished information for the period covered by the election. Such revocation shall apply retroactively to the beginning of the 2-year period for which the information was not furnished.

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[1] So in original. Probably should be "forfeiture".

[2] See References in Text note below.

(3) Definitions

(A) For purposes of this subsection, the term "church" means a church, a convention or association of churches, or an elementary or secondary school which is controlled, operated, or principally supported by a church or by a convention or association of churches.

(B) For purposes of this subsection, the term "qualified church-controlled organization" means any church-controlled tax-exempt organization described in section 501(c)(3), other than an organization which—

(i) offers goods, services, or facilities for sale, other than on an incidental basis, to the general public, other than goods, services, or facilities which are sold at a nominal charge which is substantially less than the cost of providing such goods, services, or facilities; and

(ii) normally receives more than 25 percent of its support from either (I) governmental sources, or (II) receipts from admissions, sales of merchandise, performance of services, or furnishing of facilities, in activities which are not unrelated trades or businesses, or both.

(As amended Apr. 20, 1983, Pub. L. 98–21, title I, §§ 101(b), (c)(2), 102(b), title III, §§ 321(a), (e)(1), 322(a)(2), 323(a)(1), 324(a), 327(a)(1), (b)(1), 328(a), 97 Stat. 69, 70, 118, 119, 121, 122, 126–128; July 18, 1984, Pub. L. 98–369, div. A, title I, § 67(c), title IV, § 491(d)(36), title V, § 531(d)(1)(A), div. B, title VI, §§ 2601(b), 2603(a)(2), (b), 2661(*o*)(3), 2663(i), (j)(5)(C), 98 Stat. 587, 851, 884, 1124, 1128, 1159, 1169, 1171.)

References in Text

The Social Security Act, referred to in subsecs. (a)(1), (15), (b), (j)(2)(D), (4)(B), (*l*)(1), (6), (8), (r)(3)(A), (w)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title II of the Social Security Act is classified generally to subchapter II (§ 401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 201, 210, 218, 223, 230, and 233 of the Social Security Act are classified to sections 401, 410, 418, 423, 430, and 433, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (a)(5)(F), is classified to section 1002(2)(B)(ii) of Title 29, Labor.

Level V of the Executive Schedule, referred to in subsec. (b)(5)(D)(iii), is set out in section 5316 of Title 5, Government Organization and Employees.

The Military Selective Service Act, referred to in subsec. (n)(5)(B), is act June 24, 1948, ch. 625, 62 Stat. 604, as amended, which is classified principally to section 451 et seq. of Title 50, Appendix, War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50, Appendix, and Tables.

This Code, referred to in subsec. (w)(1), means the Internal Revenue Code of 1954, which comprises this title.

The date of enactment of this subsection, referred to in subsec. (w)(2), is the date of enactment of Pub. L. 98–369, which enacted subsec. (w), and which was approved July 18, 1984.

Amendments

1984—Subsec. (a). Pub. L. 98–369, § 531(d)(1)(A)(i), inserted "(including benefits)" before "paid in any medium" in introductory provisions.

Subsec. (a)(5)(C) to (G). Pub. L. 98–369, § 491(d)(36), struck out subpar. (C), which provided: "under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a)," and redesignated subpars, (D) to (G) as (C) to (F), respectively.

Subsec. (a)(20). Pub. L. 98–369, § 531(d)(1)(A)(ii), added par. (20).

Subsec. (b)(1). Pub. L. 98–369, § 2663(i)(1), struck out "(A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (7 U.S.C. 1461–1468), or (B)".

Subsec. (b)(5)(B). Pub. L. 98–369, § 2601(b)(1), in amending subpar. (B) generally, substituted provision broadening social security coverage for newly hired Federal civilian employees effective with remuneration paid after Dec. 31, 1983, by providing that persons transferring from other government service to civilian service be covered under social security, unless the other service was in an international organization, or the person is returning to civilian service after temporary military or reserve duty and is exercising his reemployment rights under chapter 43 of title 38.

Subsec. (b)(5)(C) to (G). Pub. L. 98–369, § 2601(b)(2), substituted subpar. designations (C) to (G) for former designations (i) to (v), respectively, in subpar. (D), as so redesignated, redesignated cls. (I) to (III) as (i) to (iii), respectively, and amended generally, subpar. (G), as so redesignated, designating provision relating to service performed by an individual who is not subject to subchapter III of chapter 83 of title 5 as cl. (i), and in cl. (i) as so designated, inserting reference to another retirement system established by a law of the United States for Federal employees, other than for members of the uniformed services and adding cls. (ii) and (iii), and provision for determining for purposes of this subparagraph whether an individual is subject to subchapter III of chapter 83 of title 5 or any other retirement system.

Subsec. (b)(8). Pub. L. 98–369, § 2603(a)(2), designated existing provisions as subpar. (A), in subpar. (A) as so designated, substituted "this subparagraph" for "this paragraph", and added subpar. (B).

Subsec. (b)(10)(B). Pub. L. 98–369, § 2663(j)(5)(C), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Subsec. (i)(2). Pub. L. 98–369, § 2663(i)(2), substituted "chapter 3 and section 1009 of title 37, United States Code" for "section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act".

Subsec. (m)(2). Pub. L. 98–369, § 2663(i)(3), substituted "paragraph (21) of section 101 of title 38, United States Code" for "section 102 of the Servicemen's and Veterans' Survivor Benefits Act" and "paragraph (22) of such section" for "such section".

Subsec. (m)(3). Pub. L. 98–369, § 2663(i)(4), substituted "paragraph (23) of such section 101" for "such section 102".

Subsec. (n). Pub. L. 98–369, § 2663(i)(5), in provision preceding par. (1) substituted "a reserve component as defined in section 101(27) of title 38, United States

Code" for "a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act", and inserted ", the National Oceanic and Atmospheric Administration Corps,".

Subsec. (n)(5). Pub. L. 98-369, § 2663(i)(5)(C), substituted "military, naval, or air" for "military or naval" in two places.

Subsec. (n)(5)(B). Pub. L. 98-369, § 2663(i)(5)(D), substituted "Military Selective Service Act" for "Universal Military Training and Service Act".

Subsec. (v)(1)(B). Pub. L. 98-369, § 2661(*o*)(3), substituted "section 414(h)(2) where the pick up referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)" for "section 414(h)(2)".

Subsec. (v)(2)(A). Pub. L. 98-369, § 67(c), added provision that the preceding sentence shall not apply to any excess parachute payment (as defined in section 280G(b)).

Subsec. (w). Pub. L. 98-369, § 2603(b), added subsec. (w).

1983—Subsec. (a). Pub. L. 98-21, § 327(b)(1), added to the matter following the last numbered paragraph a provision that nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter.

Pub. L. 98-21, § 324(a)(3)(D), substituted reference to subpar. (A) of par. (2) for reference to subpar. (B) thereof in the matter following the last numbered paragraph.

Subsec. (a)(2). Pub. L. 98-21, § 324(a)(3)(A), struck out "(A) retirement, or", and redesignated subpars. (B) to (D) as (A) to (C), respectively.

Subsec. (a)(3). Pub. L. 98-21, § 324(a)(3)(B), struck out par. (3) which had related to any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (a)(5)(D). Pub. L. 98-21, § 328(a), substituted "section 219(b)(2)" for "section 219".

Subsec. (a)(5)(E) to (G). Pub. L. 98-21, § 324(a)(2), added subpars. (E) to (G).

Subsec. (a)(9). Pub. L. 98-21, § 324(a)(3)(B), struck out par. (9) which had related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained age 62, if such employee did not work for the employer in the period for which such payment was made.

Subsec. (a)(13)(A)(iii). Pub. L. 98-21, § 324(a)(3)(C), struck out cl. (iii) which had related to the case of retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer.

Subsec. (a)(19). Pub. L. 98-21, § 327(a)(1), added par. (19).

Subsec. (b). Pub. L. 98-21, § 323(a)(1), substituted "a citizen or resident of the United States" for "a citizen of the United States" in the matter preceding par. (1).

Pub. L. 98-21, § 322(a)(2), added cl. (C) to the matter preceding par. (1).

Subsec. (b)(5). Pub. L. 98-21, § 101(b)(1), amended par. (5) generally. Prior to the amendment par. (5) read: "Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 3111 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;".

Subsec. (b)(6). Pub. L. 98-21, § 101(b)(1), amended par. (6) generally. Prior to the amendment par. (6) read:

"(6)(A) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law of the United States;

"(B) service performed, by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

"(i) service performed in the employ of a corporation which is wholly owned by the United States;

"(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

"(iii) service performed in the employ of a State, county, or community committee under the Commodity Stabilization Service;

"(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

"(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

"(C) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

"(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

"(ii) in the legislative branch;

"(iii) in a penal institution of the United States by an inmate thereof;

"(iv) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training;

"(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency; or

"(vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code, does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);".

Subsec. (b)(8). Pub. L. 98-21, § 102(b)(1), struck out the subpar. (A) designation preceding "service performed", struck out subpar. (B) which had related to service performed by employees of nonprofit organizations, and in par. (8), as so designated substituted "except that this paragraph shall not apply" for "except that this subparagraph shall not apply".

Subsec. (i)(5). Pub. L. 98-21, § 101(c)(2), added par. (5).

Subsec. (k). Pub. L. 98-21, § 102(b)(2), struck out subsec. (k) which had related to exemption of religious, charitable and certain other organizations.

Subsec. (*l*). Pub. L. 98-21, § 321(a)(1), in heading substituted "Agreements entered into by American employers with respect to foreign affiliates" for "Agreements entered into by domestic corporations with respect to foreign subsidiaries".

Subsec. (*l*)(1). Pub. L. 98-21, § 321(a)(1), substituted "affiliates" for "subsidiaries" in par. (1) heading, and in first sentence of provisions preceding subpar. (A), substituted "at the American employer's request" for "at the request of any domestic corporation", "any American employer (as defined in subsection (h)) who" for "any such corporation which", "such manner and form" for "such form and manner", and "affiliates" for "subsidiaries" after "such employer's foreign", and added "or residents" after "citizens".

Pub. L. 98-21, § 321(e)(1), substituted "American employer" for "domestic corporation", "affiliate" for "subsidiary" and "citizens or residents" for "citizens" wherever appearing in the second and third sentences of the provisions preceding subpar. (A) and substituted "American employer" for "domestic corporation" in subpars. (A) and (B).

Subsec. (*l*)(2) to (5). Pub. L. 98-21, § 321(e)(1), substituted, wherever appearing, "American employer" for "domestic corporation", "American employers" for "domestic corporations", "affiliate" for "subsidiary", "affiliates" for "subsidiaries", "foreign entity" for "foreign corporation", "foreign entities" for "foreign corporations", and "citizens or residents" for "citizens".

Subsec. (*l*)(8). Pub. L. 98-21, § 321(a)(2), amended par. (8) generally, substituting provision defining a foreign affiliate for provision defining a foreign subsidiary of a domestic corporation which, for the purposes of this subsection and section 210(a) of the Social Security Act, had been defined as a foreign corporation not less than 20 percent of the voting stock of which was owned by such domestic corporation, or a foreign corporation more than 50 percent of the voting stock of which was owned by the foreign corporation described above.

Subsec. (*l*)(9), (10). Pub. L. 98-21, § 321(e)(1), substituted, wherever appearing, "American employer" for "domestic corporation", "American employers" for "domestic corporations", and "foreign entities" for "foreign corporations".

Subsec. (r)(3)(A). Pub. L. 98-21, § 102(b)(3)(A), substituted "subsection (b)(8)" and "section 210(a)(8)" for "subsection (b)(8)(A)" and "section 210(a)(8)(A)", respectively, in the provisions preceding cl. (i).

Subsec. (r)(4). Pub. L. 98-21, § 102(b)(3)(B), struck out par. (4) which had related to coordination with coverage of lay employees.

Subsec. (u)(1). Pub. L. 98-21, § 101(b)(2), substituted "sections 3101(b) and 3111(b), subsection (b) shall be applied without regard to paragraph (5) thereof" for "sections 3101(b) and 3111(b)—

"(A) paragraph (6) of subsection (b) shall be applied without regard to subparagraphs (A), (B), and (C)(i), (ii), and (vi) thereof, and

"(B) paragraph (5) of subsection (b) (and the provisions of law referred to therein) shall not apply".

Subsec. (v). Pub. L. 98-21, § 324(a)(1), added subsec. (v).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 67(c) of Pub. L. 98-369 applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98-369, set out as an Effective Date note under section 280G of this title.

Amendment by section 491(d)(36) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Amendment by section 531(d)(1)(A) of Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

Amendment by section 2601(b) of Pub. L. 98-369 effective with respect to service performed after Dec. 31, 1983, with enumerated exceptions, see section 2601(f) of Pub. L. 98-369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

Amendment by section 2603(a)(2), (b) of Pub. L. 98-369 applicable to service performed after Dec. 31, 1983, see section 2603(e) of Pub. L. 98-369, set out as a note under section 410 of Title 42.

Section 2661(*o*)(3) of Pub. L. 98-369 provided in part that the amendment of subsec. (v)(1)(B) of this section by Pub. L. 98-369 is effective Jan. 1, 1984.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of Title 42.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 101(d) of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title VI, § 2662(a), July 18, 1984, 98 Stat. 1159, provided that: "The amendments made by this section [amending this section and sections 409 and 410 of Title 42, The Public Health and Welfare] shall be effective with respect to service performed after December 31, 1983."

Section 102(c) of Pub. L. 98-21 provided that: "The amendments made by the preceding provisions of this section [amending this section and section 410 of Title 42] shall be effective with respect to service performed after December 31, 1983 (but the provisions of sections 2 and 3 of Public Law 94-563 [set out as notes below] and section 312(c) of Public Law 95-216 [set out as a note below] shall continue in effect, to the extent applicable, as though such amendments had not been made)."

Amendment by section 321 of Pub. L. 98-21, applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98-21 set out as a note under section 406 of this title.

Section 322(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending sections 1402 and 3121 of this title and sections 410 and 411 of Title 42, The Public Health and Welfare] shall be effective for taxable years beginning on or after the date of the enactment of this Act [Apr. 20, 1983]."

Section 323(c)(1) of Pub. L. 98-21 provided that: "The amendments made by subsection (a) [amending this section and section 410 of Title 42] shall apply to remuneration paid after December 31, 1983."

Section 324(d) of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title VI, § 2662(f)(2), July 18, 1984, 98 Stat. 1159, provided that:

"(1) Except as otherwise provided in this subsection, the amendments made by this section [amending sections 3121 and 3306 of this title and sections 403 and 409 of Title 42 and enacting a provision set out as a note under section 3306 of this title] shall apply to remuneration paid after December 31, 1983. For purposes of applying such amendments to remuneration paid after December 31, 1983, which would have been taken into account before January 1, 1984, if such amendments had applied to periods before January 1, 1984, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

"(2) Except as otherwise provided in this subsection, the amendments made by subsection (b) [amending section 3306 of this title and enacting a provision set out as a note under section 3306 of this title] shall apply to remuneration paid after December 31, 1984. For purposes of applying such amendments to remuneration paid after December 31, 1984, which would have been taken into account before January 1, 1985, if such amendments had applied to periods before January 1, 1985, such remuneration shall be taken into account when paid (or, at the election of the payor, at the time which would be appropriate if such amendments had applied).

"(3) The amendments made by this section shall not apply to employer contributions made during 1984 and attributable to services performed during 1983 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1954) if, under the terms of such arrangement as in effect on March 24, 1983—

"(A) the employee makes an election with respect to such contribution before January 1, 1984, and

"(B) the employer identifies the amount of such contribution before January 1, 1984.

In the case of the amendments made by subsection (b), the preceding sentence shall be applied by substituting '1985' for '1984' each place it appears and by substituting 'during 1984' for 'during 1983'.

"(4) In the case of an agreement in existence on March 24, 1983, between a nonqualified deferred compensation plan (as defined in section 3121(v)(2)(C) of the Internal Revenue Code of 1954, as added by this section) and an individual—

"(A) the amendments made by this section (other than subsection (b)) shall apply with respect to services performed by such individual after December 31, 1983, and

"(B) the amendments made by subsection (b) shall apply with respect to services performed by such individual after December 31, 1984.

The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies. For purposes of this paragraph, any plan or agreement to make payments described in paragraph (2), (3), or (13)(A)(iii) of section 3121(a) of such Code (as in effect on the day before the date of the enactment of this Act [Apr. 20, 1983]) shall be treated as a nonqualified deferred compensation plan."

Section 327(d) of Pub. L. 98-21, as amended by Pub. L. 98-369, div. B, title VI, § 2662(g), July 18, 1984, 98 Stat. 1160, provided that:

"(1) The amendment made by subsection (a) [amending section 3121 of this title and section 409 of Title 42] shall apply to remuneration paid after December 31, 1983.

"(2) The amendments made by subsection (b) and subsection (c)(4) [amending sections 3121 and 3306 of this title and section 409 of Title 42] shall apply to remuneration (other than amounts excluded under section 119 of the Internal Revenue Code of 1954) paid after March 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid.

"(3) The amendments made by paragraphs (1), (2), and (3) of subsection (c) [amending section 3306 of this title] shall apply to remuneration paid after December 31, 1984."

Section 328(d) of Pub. L. 98-21 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending sections 3121 and 3306 of this title and section 409 of Title 42] shall apply to remuneration paid after December 31, 1983.

"(2) The amendments made by subsection (c) [amending section 3306 of this title] shall apply to remuneration paid after December 31, 1984."

FEDERAL LEGISLATIVE BRANCH EMPLOYEES; EXCLUSION OF CERTAIN RETIREMENT CONTRIBUTIONS FOR PURPOSES OF SUBSECTION (b)(5)(G)

Federal employees not to be deemed subject to Federal retirement system for purposes of subsec. (b)(5)(G) of this section if employees are contributing reduced amounts by reason of Federal Employees' Retirement Contribution Temporary Adjustment Act of 1983, see section 2601(c) of Pub. L. 98-369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

SERVICE PERFORMED FOR NONPROFIT ORGANIZATIONS BY FEDERAL EMPLOYEES

For purposes of subsec. (b)(5) of this section as in effect in January 1983 and as in effect on and after January 1, 1984, service performed in the employ of a nonprofit organization described in section 501(c)(3) of this title by an employee who is required by law to be subject to subchapter III of chapter 83 of Title 5, Government Organization and Employees, with respect to such service, is considered to be service performed in the employ of an instrumentality of the United States, see section 2601(e) of Pub. L. 98-369, set out as a note under section 410 of Title 42, The Public Health and Welfare.

REFUNDS TO CHURCHES OR QUALIFIED CHURCH-CONTROLLED ORGANIZATIONS

Section 2603(f) of Pub. L. 98-369 provided that: "In any case where a church or qualified church-controlled organization makes an election under section 3121(w) of the Internal Revenue Code of 1954, the Secretary of the Treasury shall refund (without interest) to such church or organization any taxes paid under sections 3101 and 3111 of such Code with respect to service performed after December 31, 1983, which is covered under such election. The refund shall be conditional upon the church or organization agreeing to pay to each employee (or former employee) the portion of the refund attributable to the tax imposed on such employee (or former employee) under section 3101, and such employee (or former employee) may not receive any other refund payment of such taxes."

SOCIAL SECURITY COVERAGE OF RETIRED FEDERAL JUDGES ON ACTIVE DUTY

Pub. L. 98-118, § 4, Oct. 11, 1983, 97 Stat. 803, provided that: "Notwithstanding section 101(d) of the Social Security Amendments of 1983 [section 101(d) of Pub. L. 98-21, set out as an Effective Date of 1983 Amendment note above], the amendments made by section 101(c) of such Act [amending this section and section 409 of Title 42, The Public Health and Welfare] shall apply only with respect to remuneration paid after December 31, 1985. Remuneration paid prior to January 1, 1986, under section 371(b) of title 28, United States Code, to an individual performing service under section 294 of such title, shall not be included in the term "wages" for purposes of section 209 of the Social Security Act [42 U.S.C. 409] or section 3121(a) of the Internal Revenue Code of 1954."

TREATMENT OF CERTAIN MEDICAL FACULTY PRACTICE PLANS

Section 125 of Pub. L. 98-21 provided that:

"(a) GENERAL RULE.—For purposes of subsection (s) of section 3121 of the Internal Revenue Code of 1954 (relating to concurrent employment by 2 or more employers)—

"(1) the following entities shall be deemed to be related corporations:

"(A) a State university which employs health professionals as faculty members at a medical school, and

"(B) a faculty practice plan described in section 501(c)(3) of such Code and exempt from tax under section 501(a) of such Code—

"(i) which employs faculty members of such medical school, and

"(ii) 30 percent or more of the employees of which are concurrently employed by such medical school; and

"(2) remuneration which is disbursed by such faculty practice plan to a health professional employed by both such entities shall be deemed to have been actually disbursed by such university as a common paymaster and not to have been actually disbursed by such faculty practice plan.

"(b) Effective Date.—The provisions of subsection (a) shall apply to remuneration paid after December 31, 1983."

Waiver of Exemption by Nonprofit Organization; Termination of Certificate Period On or After March 31, 1983, Prohibited

Section 102(d) of Pub. L. 98-21 provided that: "The period for which a certificate is in effect under section 3121(k) of the Internal Revenue Code of 1954 may not be terminated under paragraph (1)(D) or (2) thereof on or after March 31, 1983; but no such certificate shall be effective with respect to any service to which the amendments made by this section [amending this section and section 410 of Title 42, The Public Health and Welfare] apply."

Section Referred to in Other Sections

This section is referred to in sections 51, 176, 221, 401, 406, 412, 1402, 1563, 3101, 3102, 3111, 3122, 3124, 3125, 3231, 3306, 3401, 3509, 6051, 6053, 6103, 6413, 6652 of this title; title 20 section 125; title 29 sections 1082, 1802; title 42 sections 401, 409, 410, 415, 418, 429, 430; title 45 sections 231b, 231e; title 49 section 3101.

§ 3122. Federal service

Section Referred to in Other Sections

This section is referred to in sections 6205, 6413 of this title; title 42 sections 405, 430.

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

Chapter Referred to in Other Sections

This chapter is referred to in sections 3121, 3301, 3306, 3503, 6103 of this title; title 31 section 9502; title 42 section 1307; title 45 sections 358, 591, 1207.

Subchapter A—Tax on Employees

§ 3201. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the following percentage of the compensation received during any calendar year by such employee for services rendered by such employee:

In the case of compensation received during:	The rate shall be:
1985	7.05
1986 or 1987	7.15
1988 or 1989	7.51
1990 or thereafter	7.65.

(b) Tier 2 tax

In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the following percentage of the compensation received during any calendar year by such employee for services rendered by such employee:

In the case of compensation received during:	The rate shall be:
1985	3.50
1986 or thereafter	4.25.

(c) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(As amended Aug. 12, 1983, Pub. L. 98-76, title II, §§ 211(a), 221, 97 Stat. 419, 420.)

Amendments

1983—Pub. L. 98-76, § 221, amended section generally, substituting a two tiered tax system with accompanying tax rate tables and a cross reference to section 3231 of this title, for provisions which had taxed an employee at 2.75 percent of so much of the compensation paid in any calendar month to such employee for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month and which had provided that the rate of tax imposed by subsection (a) be increased by the rate of the tax imposed with respect to wages by section 3101(a) plus the rate imposed by section 3101(b) of so much of the compensation paid in any calendar month to such employee for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month.

Pub. L. 98-76, § 211(a), substituted "2.75 percent" for "2.0 percent".

Effective and Termination Dates of 1983 Amendment

Section 212 of Pub. L. 98-76 provided that: "The amendments made by this part [amending sections 3201, 3211, and 3221 of this title and section 430 of Title 42, The Public Health and Welfare] shall apply to compensation paid for services rendered after December 31, 1983, and before January 1, 1985."

Section 227(a) of Pub. L. 98-76 provided that: "The amendments made by sections 221, 222, 223, and 225 [amending sections 3201, 3202, 3211, 3221, and 3231 of this title and section 430 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1984."

Section Referred to in Other Sections

This section is referred to in sections 72, 275, 1402, 3202, 3231, 3502, 6051, 6053, 6205, 6413, 6652 of this title; title 45 sections 231, 231e, 231f-1, 231n-1.

§ 3202. Deduction of tax from compensation

(a) Requirement

The taxes imposed by section 3201 shall be collected by the employer of the taxpayer by deducting the amount of the taxes from the compensation of the employee as and when paid. An employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (3) of section 3231(e) is applicable may deduct an amount equivalent to such taxes with respect to such tips from any compensation of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

[See main edition for text of (b)]

(c) Special rule for tips

[See main edition for text of (1)]

(2) If the taxes imposed by section 3201, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceed the compensation of the employee

(excluding tips) from which the employer is required to collect the taxes under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following quarter) an amount of money equal to the amount of the excess.

[*See main edition for text of* (*3*)]

(4) If the taxes imposed by section 3201 with respect to tips which constitute compensation exceed the portion of such taxes which can be collected by the employer from the compensation of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

(As amended Aug. 12, 1983, Pub. L. 98-76, title II, § 225(a)(2), (c)(1)(A), (B), (2)-(5), 97 Stat. 425.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-76, § 225(a)(2), (c)(1)(A), (2), substituted "taxes imposed by section 3201" for "tax imposed by section 3201", substituted "the amount of the taxes" for "the amount of the tax", and "such taxes" for "such tax", and struck out provisions that if an employee was paid compensation by more than one employer for services rendered during any calendar month and the aggregate of such compensation was in excess of an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month, the tax to be deducted by each employer other than a subordinate unit of a national railway-labor-organization employer from the compensation paid by him to the employee with respect to such month would be that proportion of the tax with respect to such compensation paid by all such employers which the compensation paid by him to the employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month; and that in the event that the compensation so paid by such employers to the employee for services rendered during such month was less than an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month, each subordinate unit of a national railway-labor-organization employer would deduct such proportion of any additional tax as the compensation paid by such employer to such employee for services rendered during such month bears to the total compensation paid by all such employers to such employee for services rendered during such month.

Subsec. (c)(2). Pub. L. 98-76, § 225(c)(1)(B), (3), (5), substituted "taxes imposed by section 3201" for "tax imposed by section 3201", "the taxes under paragraph (1)" for "the tax under paragraph (1)", and "exceed" for "exceeds".

Subsec. (c)(4). Pub. L. 98-76, § 225(c)(1)(B), (4), (5), substituted "taxes imposed by section 3201" for "tax imposed by section 3201", "such taxes" for "such tax", and "exceed" for "exceeds".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 3505, 6053 of this title.

Subchapter B—Tax on Employee Representatives

§ 3211. Rate of tax

(a) Imposition of taxes

(1) Tier 1 tax

In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the following percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative:

In the case of compensation received during:	The rate shall be:
1985	14.10
1986 or 1987	14.30
1988 or 1989	15.02
1990 or thereafter	15.30.

(2) Tier 2 tax

In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the following percentage of the compensation received during any calendar year by such employee representatives for services rendered by such employee representative:

In the case of compensation received during:	The rate shall be:
1985	13.75
1986 or thereafter	14.75.

(3) Cross reference

For application of different contribution bases with respect to the taxes imposed by paragraphs (1) and (2), see section 3231(e)(2).

[*See main edition for text of* (*b*)]

(As amended Aug. 12, 1983, Pub. L. 98-76, title II, §§ 211(c), 223, 97 Stat. 419, 421.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-76, § 223, substituted provisions imposing a two tiered tax on each employee representative equal to the percentage of the compensation received during any calendar year by such employee representative for services rendered as is set out in accompanying tables, for provisions that had imposed on each employee representative a tax equal to 12.75 percent plus the sum of the rates of tax imposed with respect to wages by sections 3101(a), 3101(b), 3111(a), and 3111(b) of so much of the compensation paid in any calendar month to such employee representative for services rendered by him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wage" as defined in section 3121 for any month.

Pub. L. 98-76, § 211(c), substituted "12.75 percent" for "11.75 percent".

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 223 of Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of this title.

Amendment by section 211 of Pub. L. 98-76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98-76, set out as a note under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 275, 1402, 3231, 3502, 6051, 6413 of this title; title 45 sections 231, 231e, 231f-1, 231n, 231n-1.

Subchapter C—Tax on Employers

§ 3221. Rate of tax

(a) Tier 1 tax

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentage of compensation paid during any calendar year by such employer for services rendered to such employer:

In the case of compensation paid during:	The rate shall be:
1985	7.05
1986 or 1987	7.15
1988 or 1989	7.51
1990 or thereafter	7.65.

(b) Tier 2 tax

In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentage of compensation paid during any calendar year by such employer for services rendered to such employer:

In the case of compensation paid during:	The rate shall be:
1985	13.75
1986 or thereafter	14.75.

[See main edition for text of (c) and (d)]

(e) Cross reference

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).

(As amended Aug. 12, 1983, Pub. L. 98-76, title II, §§ 211(b), 222, 97 Stat. 419, 420.)

AMENDMENTS

1983—Subsec. (a). Pub. L. 98-76, § 222(a), in amending subsec. (a) generally, substituted provisions imposing an excise tax on employers, with respect to having individuals in his employ, equal to a percentage of compensation paid as set out in an accompanying table, for provisions which imposed an excise tax on employers, with respect to having individuals in his employ, equal to 12.75 percent of so much of the compensation paid in any calendar month by such employer for services rendered to him as was not in excess of an amount equal to one-twelfth of the current maximum annual taxable "wages" as defined in section 3121 for any month, with certain exceptions dealing with multiple employers.

Pub. L. 98-76, § 211(b), substituted "12.75 percent" for "11.75 percent".

Subsec. (b). Pub. L. 98-76, § 222(a), in amending subsec. (b) generally, substituted provisions imposing a second tier excise tax on employers equal to a percentage of compensation paid as set out in an accompanying table, for provisions that the rate of tax imposed by former subsec. (a) would be increased by the rate of tax imposed with respect to wages by section 3111(a) plus the rate imposed by section 3111(b).

Subsec. (e). Pub. L. 98-76, § 222(b), added subsec. (e).

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENT

Amendment by section 222 of Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of this title.

Amendment by section 211 of Pub. L. 98-76 applicable to compensation paid for services rendered after Dec. 31, 1983, and before Jan. 1, 1985, see section 212 of Pub. L. 98-76, set out as a note under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 72, 3211, 3231, 6205, 6413 of this title; title 45 sections 231f-1, 231n, 231n-1.

Subchapter D—General Provisions

§ 3231. Definitions

[See main edition for text of (a) to (d)]

(e) Compensation

For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. Such term does not include (i) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability, (ii) tips (except as is provided under paragraph (3)), or (iii) an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $25. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this

chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) Application of contribution bases

(A) Compensation in excess of applicable base excluded

(i) In general

The term "compensation" does not include that part of remuneration paid during any calendar year to an individual by an employer after remuneration equal to the applicable base has been paid during such calendar year to such individual by such employer for services rendered as an employee to such employer.

(ii) Remuneration not treated as compensation excluded

There shall not be taken into account under clause (i) remuneration which (without regard to clause (i)) is not treated as compensation under this subsection.

(B) Applicable base

(i) Tier 1 taxes

Except as provided in clause (ii), the term "applicable base" means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

(ii) Tier 2 taxes, etc.

For purposes of—

(I) the taxes imposed by sections 3201(b), 3211(a)(2), and 3221(b), and

(II) computing average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974 (except with respect to annuity amounts determined under subsection (a) or (f)(3) of section 3 of such Act),

clause (2) of the first sentence, and the second sentence, of subsection (c) of section 230 of the Social Security Act shall be disregarded.

(C) Successor employers

For purposes of this paragraph, the second sentence of section 3121(a)(1) (relating to successor employers) shall apply, except that—

(i) the term "services" shall be substituted for "employment" each place it appears,

(ii) the term "compensation" shall be substituted for "remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection)" each place it appears, and

(iii) the terms "employer", "services", and "compensation" shall have the meanings given such terms by this section.

(3) Solely for purposes of the taxes imposed by section 3201 and other provisions of this chapter insofar as they relate to such taxes, the term "compensation" also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(4)(A) For purposes of applying sections 3201(a), 3211(a)(1), and 3221(a), in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, clause (i) of the second sentence of paragraph (1) shall exclude from the term "compensation" only—

[*See main edition for text of* (*i*) *and* (*ii*), (*B*) *to* (*D*)]

(5) The term "compensation" shall not include any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

(6)[1] The term "compensation" shall not include any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127.

(6)[1] The term "compensation" shall not include any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans).

[*See main edition for text of* (*f*) *and* (*g*)]

(h) Tips constituting compensation, time deemed paid

For purposes of this chapter, tips which constitute compensation for purposes of the taxes imposed under section 3201 shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

(i) Concurrent employment by 2 or more employers

For purposes of this chapter, if 2 or more related corporations which are employers concurrently employ the same individual and compensate such individual through a common paymaster which is 1 of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(As amended Aug. 12, 1983, Pub. L. 98-76, title II, § 225(a)(1), (3), (b), (c)(1)(C), (6)-(8), 97 Stat. 424, 425; July 18, 1984, Pub. L. 98-369, div. A, title V, § 531(d)(2), 98 Stat. 884; Oct. 31, 1984, Pub. L. 98-611, § 1(f), 98 Stat. 3178; Oct. 31, 1984, Pub. L. 98-612, § 1(c), 98 Stat. 3181.)

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[1] So in original. There are two pars. designated (6).

REFERENCES IN TEXT

Section 230 of the Social Security Act, referred to in subsec. (e)(2)(B), is classified to section 430 of Title 42, The Public Health and Welfare.

Section 3(a), (f)(3), (j) of the Railroad Retirement Act of 1974, referred to in subsec. (e)(2)(B)(ii)(II), is classified to section 231b(a), (f)(3), (j) of Title 45, Railroads.

AMENDMENTS

1984—Subsec. (e)(5). Pub. L. 98-369, § 531(d)(2), added par. (5).

Subsec. (e)(6). Pub. L. 98-611 added the par. (6) relating to amounts excludable under section 127.

Pub. L. 98-612 added the par. (6) relating to amounts excludable under section 120.

1983—Subsec. (e)(1). Pub. L. 98-76, § 225(a)(3), struck out provisions that compensation which was paid in one calendar month but which would be payable in a prior or subsequent taxable month but for the fact prescribed date of payment would fall on a Saturday, Sunday or legal holiday would be deemed to have been paid in such prior or subsequent taxable month and that compensation which was earned during the period for which the Secretary would require a return of taxes under this chapter to be made and which was payable during the calendar month following such period would be deemed to have been paid during such period only.

Subsec. (e)(2). Pub. L. 98-76, § 225(a)(1), amended par. (2) generally, substituting provisions which exclude compensation in excess of applicable base, which define "applicable base", and which provide for the applicability of successor employer provisions to this paragraph, for provisions that a payment made by an employer to an individual through the employer's payroll would be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment was made, that an employee receiving retroactive wage payments would be deemed to be paid compensation in the period during which such compensation was earned only upon a written request by such employee, made within six months following the payment, and a showing that such compensation was earned during a period other than the period in which it was paid, that an employee would be deemed to be paid "for time lost" the amount he was paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he was paid by the employer for loss of earnings resulting from his displacement to a less remunerative position or occupation, and that if a payment was made by an employer with respect to a personal injury and included pay for time lost, the total payment would be deemed to be paid for time lost unless, at the time of payment, a part of such payment was specifically apportioned to factors other than time lost, in which event only such part of the payment as was not so apportioned would be deemed to be paid for time lost.

Subsec. (e)(3). Pub. L. 98-76, § 225(c)(1)(C), (6), substituted "taxes imposed by section 3201" for "tax imposed by section 3201", and "such taxes" for "such tax".

Subsec. (e)(4)(A). Pub. L. 98-76, § 225(c)(7), substituted "3201(a), 3211(a)(1), and 3221(a)" for "3201(b) and 3221(b) (and so much of section 3211(a) as relates to the rates of the taxes imposed by sections 3101 and 3111)".

Subsec. (h). Pub. L. 98-76, § 225(c)(8), substituted "taxes imposed by section 3201" for "tax imposed by section 3201", and struck out "; and tips so deemed to be paid in any month shall be deemed paid for services rendered in such month" following "time received".

Subsec. (i). Pub. L. 98-76, § 225(b), added subsec. (i).

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 1(d)(3) of Pub. L. 98-612 provided that: "The amendment made by subsection (c) [enacting subsec. (e)(6) of this section] shall apply to remuneration paid after December 31, 1984."

Amendment by Pub. L. 98-611 applicable to remuneration paid after Dec. 31, 1984, see section 1(g)(3) of Pub. L. 98-611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to remuneration paid after Dec. 31, 1984, see section 227(a) of Pub. L. 98-76, set out as a note under section 3201 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1402, 3121, 3201, 3202, 3211, 3212, 3221, 6053, 6413, 6652 of this title; title 42 sections 410, 411.

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 6103, 6317, 6513, 6612 of this title; title 29 sections 49d, 1302; title 42 sections 1101, 1104, 1307.

§ 3301. Rate of tax

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to—

(1) 6.2 percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployed [1] compensation account (established by section 905(a) of the Social Security Act); or

(2) 6.0 percent, in the case of such first calendar year and each calendar year thereafter;

of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).

(Aug. 16, 1954, ch. 736, 68A Stat. 439; Sept. 13, 1960, Pub. L. 86-778, title V, § 523(a), 74 Stat. 980; Mar. 24, 1961, Pub. L. 87-6, § 14(a), 75 Stat. 16; May 29, 1963, Pub. L. 88-31, § 2(a), 77 Stat. 51; Aug. 10, 1970, Pub. L. 91-373, title III, § 301(a), 84 Stat. 713; June 30, 1972, Pub. L. 92-329, 2(a), 86 Stat. 398; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1903(a)(11), 90 Stat. 1808; Oct. 20, 1976, Pub. L. 94-566, title II, § 211(b), 90 Stat. 2676; Sept. 3, 1982, Pub. L. 97-248, title II, § 271(b)(1), (c)(1), 96 Stat. 554, 555.)

AMENDMENTS

1982—Par. (1). Pub. L. 97-248, § 271(c)(1)(A), substituted "6.2 percent" for "3.5 percent".

Pub. L. 97-248, § 271(b)(1), substituted "3.5 percent" for "3.4 percent".

Par. (2). Pub. L. 97-248, § 271(c)(1)(B), substituted "6.0 percent" for "3.2 percent".

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[1] So in original. Probably should be "unemployment".

Effective Date of 1982 Amendment

Section 271(d)(1), (2), formerly 271(b)(1), (2), of Pub. L. 97-248, as redesignated by Pub. L. 98-601, § 1(a), Oct. 30, 1984, 98 Stat. 3147, provided that:

"(1) Subsections (a) and (b).—The amendments made by subsections (a) and (b) [amending sections 3301, 3306, and 6157 of this title and sections 1101 and 1105 of Title 42, The Public Health and Welfare] shall apply to remuneration paid after December 31, 1982.

"(2) Subsection (c).—The amendments made by subsection (c) [amending sections 3301, 3302, and 6157 of this title and section 1101 of Title 42] shall apply to remuneration paid after December 31, 1984."

Section Referred to in Other Sections

This section is referred to in sections 3302, 3305, 3306, 3308, 6157 of this title; title 42 sections 1101, 1105.

§ 3302. Credits against tax

[*See main edition for text of* (*a*)]

(b) Additional credit

In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31 of such year, or with respect to any provisions thereof so certified, equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 5.4 percent, whichever rate is lower.

(c) Limit on total credits

[*See main edition for text of* (*1*)]

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A)(i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any), multiplied by a fraction, the numerator of which is the State's average annual wage in covered employment for the calendar year in which the determination is made and the determination [2] of which is the wage base under this chapter, by which—

(i) 2.7 [3] multiplied by a fraction, the numerator of which is the wage base under this chapter and the denominator of which is the estimated United States average annual wage in covered employment for the calendar year in which the determination is to be made, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year; and

[*See main edition for text of* (*C*)]

The provisions of the preceding sentence shall not be applicable with respect to the taxable year beginning January 1, 1975, or any succeeding taxable year which begins before January 1, 1980; and, for purposes of such sentence, January 1, 1980, shall be deemed to be the first January 1 occurring after January 1, 1974, and consecutive taxable years in the period commencing January 1, 1980, shall be determined as if the taxable year which begins on January 1, 1980, were the taxable year immediately succeeding the taxable year which began on January 1, 1974. Subparagraph (C) shall not apply with respect to any taxable year to which it would otherwise apply (but subparagraph (B) shall apply to such taxable year) if the Secretary of Labor determines (on or before November 10 of such taxable year) that the State meets the requirements of subsection (f)(2)(B) for such taxable year.

(3) If the Secretary of Labor determines that a State, or State agency, has not—

[*See main edition for text of* (*A*) *to* (*B*)]

then, in the case of a taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 7½ percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.

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[2] So in original. Probably should be "denominator".

[3] So in original. The word "percent" probably should follow "2.7".

(d) Definitions and special rules relating to subsection (c)

(1) Rate of tax deemed to be 6 percent

In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 6 percent in lieu of the rate provided by such section.

[*See main edition for text of (2) and (3)*]

(4) Average employer contribution rate

For purposes of subparagraphs (B) and (C) of subsection (c)(2), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

[*See main edition for text of (A)*]

(B)(i) for purposes of subparagraph (B) of subsection (c)(2), the total of the wages (as determined without any limitation on amount) attributable to such State subject to contributions under this chapter with respect to such calendar year, and

(ii) for purposes of subparagraph (C) of subsection (c)(2), the total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.

For purposes of subparagraph (C) of subsection (c)(2), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

[*See main edition for text of (5) to (7); (e)*]

(f) Limitation on credit reduction

(1) Limitation

In the case of any State which meets the requirements of paragraph (2) with respect to any taxable year the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers subject to the unemployment compensation law of such State shall not exceed the greater of—

[*See main edition for text of (A) and (B), (2) to (7)*]

(8) Partial limitation

(A) In the case of a State which would meet the requirements of this subsection for a taxable year prior to 1987 but for its failure to meet one of the requirements contained in subparagraph (C) or (D) of paragraph (2), the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction is in effect for taxpayers in such State) shall be reduced by 0.1 percentage point.

(B) In the case of a State which does not meet the requirements of paragraph (2) but meets the requirements of subparagraphs (A) and (B) of paragraph (2) and which also meets the requirements of section 1202(b)(8)(B) of the Social Security Act with respect to such taxable year, the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction is in effect for taxpayers in such State) shall be further reduced by an additional 0.1 percentage point.

(C) In no case shall the application of subparagraphs (A) and (B) reduce the credit reduction otherwise applicable under subsection (c)(2) below the limitation under paragraph (1).

[*See main edition for text of (g)*]

(Aug. 16, 1954, ch. 736, 68A Stat. 439; Sept. 13, 1960, Pub. L. 86-778, title V, § 523(b), 74 Stat. 980; Mar. 24, 1961, Pub. L. 87-6, § 14(b), 75 Stat. 16; Sept. 26, 1961, Pub. L. 87-321, § 1(a), 75 Stat. 683; May 29, 1963, Pub. L. 88-31, § 2(b), 77 Stat. 51; Nov. 7, 1963, Pub. L. 88-173, § 1(a)-(c), 77 Stat. 305; Aug. 10, 1970, Pub. L. 91-373, title I, § 142(a), (b), 84 Stat. 707; Jan. 3, 1975, Pub. L. 93-618, title II, § 239(e), 88 Stat. 2025; June 30, 1975, Pub. L. 94-45, title I, § 110(a), title III, § 302, 89 Stat. 239, 243; Oct. 4, 1976, Pub. L. 94-455, title XIX, §§ 1903(a)(12), 1906(b)(13)(A), 90 Stat. 1808, 1834; Apr. 12, 1977, Pub. L. 95-19, title II, § 201(a), 91 Stat. 43; Dec. 24, 1980, Pub. L. 96-589, § 6(f), 94 Stat. 3409; Aug. 13, 1981, Pub. L. 97-35, title XXIV, § 2406(a), 95 Stat. 876; Sept. 3, 1982, Pub. L. 97-248, title II, §§ 271(c)(2), (3)(A), (B), 272(a), 273(a), 96 Stat. 555-557; Apr. 20, 1983, Pub. L. 98-21, title V, §§ 512(a)(1), (b), 513(a)-(c), 97 Stat. 146, 147.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (c)(2), (f)(2)(D), (5)(A)(i), (8)(B), and (g)(2)(A), (B), (3)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XII of the Social Security Act is classified generally to subchapter XII (§ 1321 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. Sections 901(d)(1) and 1202(b)(8)(B) of the Social Security Act are classified to sections 1101(d)(1) and 1322(b)(8)(B), respectively, of Title 42. For complete classification of this act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1983—Subsec. (c)(2)(B). Pub. L. 98-21, § 513(c), added ", multiplied by a fraction, the numerator of which is the State's average annual wage in covered employment for the calendar year in which the determination is made and the determination of which is the wage base under this chapter," in provisions preceding cl. (i).

Subsec. (c)(2)(B)(i). Pub. L. 98-21, § 513(b), added "multiplied by a fraction, the numerator of which is the wage base under this chapter and the denominator of which is the estimated United States average annual wage in covered employment for the calendar year in which the determination is to be made" after "2.7".

Subsec. (d)(4)(B). Pub. L. 98-21, § 513(a), amended subpar. (B) generally, adding cl. (i), designating existing provisions as cl. (ii), and in (ii) as so designated, adding reference to the purposes of subsec. (c)(2)(C).

Subsec. (f)(1). Pub. L. 98-21, § 512(b), struck out "beginning before January 1, 1988," after "any taxable year".

Subsec. (f)(8). Pub. L. 98-21, § 512(a)(1), added par. (8).

1982—Subsec. (b). Pub. L. 97-248, § 271(c)(2)(A), substituted "5.4 percent" for "2.7 percent".

Subsec. (c)(2)(A). Pub. L. 97-248, § 271(c)(3)(A), substituted "5 percent" for "10 percent" in two places.

Subsec. (c)(3). Pub. L. 97-248, § 271(c)(3)(B), substituted "7½ percent" for "15 percent" in provisions following subpar. (B).

Subsec. (d)(1). Pub. L. 97-248, § 271(c)(2)(B), substituted "6 percent" for "3 percent" in par. heading and text.

Effective Date of 1983 Amendment

Section 512(a)(2) of Pub. L. 98-21 provided that: "The amendment made by paragraph (1) [enacting subsec. (f)(8) of this section] shall apply with respect to taxable year 1983 and taxable years thereafter."

Section 513(d) of Pub. L. 98-21 provided that: "The amendments made by this section [amending subsecs. (c)(2)(B) and (d)(4)(B) of this section] shall be effective for taxable year 1983 and taxable years thereafter."

Effective Date of 1982 Amendment

Amendment by section 271(c)(2), (3)(A), (B) of Pub. L. 97-248 applicable to remuneration paid after Dec. 31, 1984, see section 271(d)(2) of Pub. L. 97-248, as amended, set out as a note under section 3301 of this title.

Transitional Rule for Certain Employees and Small Businesses

Section 271(d)(3), (4), formerly 271(b)(3), of Pub. L. 97-248, as redesignated and amended by Pub. L. 98-601, § 1(a), Oct. 30, 1984, 98 Stat. 3147, provided that:

"(3) Transitional rule for certain employees.—

"(A) In general.—Notwithstanding section 3303 of the Internal Revenue Code of 1954, in the case of taxable years beginning after December 31, 1984, and before January 1, 1989, a taxpayer shall be allowed the additional credit under section 3302(b) of such Code with respect to any employee covered by a qualified specific industry provision if the requirements of subparagraph (B) are met with respect to such employee.

"(B) Requirements.—The requirements of this subparagraph are met for any taxable year with respect to any employee covered by a specific industry provision if the amount of contributions required to be paid for the taxable year to the unemployment fund of the State with respect to such employee are not less than the product of the required rate multiplied by the wages paid by the employer during the taxable year.

"(C) Required rate.—For purposes of subparagraph (B), the required rate for any taxable year is the sum of—

"(i) the rate at which contributions were required to be made under the specific industry provision as in effect on August 10, 1982, and

"(ii) the applicable percentage of the excess of 5.4 percent over the rate described in clause (i).

"(D) Applicable percentage.—For purposes of subparagraph (C), the term 'applicable percentage' means—

"(i) 20 percent in the case of taxable year 1985,

"(ii) 40 percent in the case of taxable year 1986,

"(iii) 60 percent in the case of taxable year 1987, and

"(iv) 80 percent in the case of taxable year 1988.

"(E) Qualified specific industry provision.—For purposes of this paragraph, the term, 'qualified specific industry provision' means a provision contained in a State unemployment compensation law (as in effect on August 10, 1982)—

"(i) which applies to employees in a specific industry or to an otherwise defined type of employees, and

"(ii) under which employers may elect to make contributions at a specified rate (without experience rating) which exceeds 2.7 percent.

"(4) Transitional rule for certain small businesses.—

"(A) In general.—Notwithstanding section 3303 of the Internal Revenue Code of 1954, in the case of taxable years beginning after December 31, 1984, and before January 1, 1989, a taxpayer shall be allowed the additional credit under section 3302(b) of such Code with respect to any employee covered by a qualified small business provision if the requirements of subparagraph (B) are met with respect to such employee.

"(B) Requirements.—The requirements of this subparagraph are met for any taxable year with respect to any employee covered by a qualified small business provision if the amount of contributions required to be paid for the taxable year to the unemployment fund of the State with respect to such employee are not less than the product of the required rate multiplied by the wages paid by the employer during the taxable year.

"(C) Required rate.—For purposes of subparagraph (B), the required rate for any taxable year is the sum of—

"(i) 3.1 percent, plus

"(ii) the applicable percentage (as defined in paragraph (3)(D)) of the excess of 5.4 percent over the rate described in clause (i).

"(D) Qualified small business provision.—For purposes of this paragraph, the term 'qualified small business provision' means a provision contained in a State unemployment compensation law (as in effect on the date of the enactment of this paragraph [Oct. 30, 1984]) which provides a maximum rate at which an employer is subject to contribution for wages paid during a calendar quarter if the total wages paid by such employer during such calendar quarter are less than $50,000.

"(E) Definition.—For purposes of this paragraph, the term 'wages' means the remuneration subject to contributions under the State unemployment compensation law, except that for purposes of subparagraph (D) the amount of total wages paid by an employer shall be determined without regard to any limitation on the amount subject to contribution."

[Section 1(b) of Pub. L. 98-601 provided that: "The amendment made by subsection (a) [amending note above] shall apply to remuneration paid after December 31, 1984."]

Section Referred to in Other Sections

This section is referred to in sections 3303, 3304, 3305, 3306 of this title; title 42 sections 1101, 1322.

§ 3303. Conditions of additional credit allowance

Treatment of Certain Charitable Organizations Retroactively Determined To Be Described in Section 501(c)(3) of This Title

Pub. L. 98-21, title V, § 524, Apr. 20, 1983, 97 Stat. 149, provided that:

"If—

"(1) an organization did not make an election to make payments (in lieu of contributions) as provided in section 3309(a)(2) of the Internal Revenue Code of 1954 before April 1, 1972, because such organization, as of such date, was treated as an organization described in section 501(c)(4) of such Code,

"(2) the Internal Revenue Service subsequently determined that such organization was described in section 501(c)(3) of such Code, and

"(3) such organization made such an election before the earlier of—

"(A) the date 18 months after such election was first available to it under the State law, or

"(B) January 1, 1984,

then section 3303(f) of such Code shall be applied with respect to such organization as if it did not contain the requirement that the election be made before April 1, 1972, and by substituting 'January 1, 1982' for 'January 1, 1969'."

§ 3304. Approval of State laws

(a) Requirements

The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that—

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

(B) the amounts specified by section 903(c)(2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices; and

(C) nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;

[*See main edition for text of* (*5*)]

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that—

[*See main edition for text of* (*i*)]

(ii) with respect to services in any other capacity for an educational institution to which section 3309(a)(1) applies—

(I) compensation payable on the basis of such services shall be denied to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that

[*See main edition for text of* (*II*)]

(iii) with respect to any services described in clause (i) or (ii), compensation payable on the basis of such services shall be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess, and [4]

(iv) with respect to any services described in clause (i) or (ii), compensation payable on the basis of services in any such capacity shall be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions, and

(v) with respect to services to which section 3309(a)(1) applies, if such services are provided to or on behalf of an educational institution, compensation may be denied under the same circumstances as described in clauses (i) through (iv), and

[*See main edition for text of* (*B*), (*7*) *to* (*16*)]

(17) any interest required to be paid on advances under title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund; and

(18) all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

[*See main edition for text of* (*b*) *to* (*f*)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title V, §§ 515(b), 521(a), 523(a), 97 Stat. 147, 148.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(4)(b), (15)(A)(ii), (16)(A), (17), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Part A of title IV and title XII of the Social Security Act are classified generally to part A (§ 601 et seq.) of subchapter IV and subchapter XII (§ 1321 et seq.), respectively, of chapter 7 of Title 42. Section 903(c)(2) of that Act is classified to section 1103(c)(2) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1305 of Title 42 and Tables.

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[4] So in original. The word "and" probably should not appear.

AMENDMENTS

1983—Subsec. (a)(4)(C). Pub. L. 98-21, § 523(a), added subpar. (C).

Subsec. (a)(6)(A)(ii)(I), (iii), (iv). Pub. L. 98-21, § 521(a)(2), substituted "shall be denied" for "may be denied".

Subsec. (a)(6)(A)(v). Pub. L. 98-21, § 521(a)(1), added cl. (v).

Subsec. (a)(17), (18). Pub. L. 98-21, § 515(b), added par. (17) and redesignated former par. (17) as (18).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 521(b) of Pub. L. 98-21 provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending subsec. (a)(6)(A) of this section] shall apply in the case of compensation paid for weeks beginning on or after April 1, 1984.

"(2) In the case of a State with respect to which the Secretary of Labor has determined that State legislation is required in order to comply with the amendment made by this section, the amendment made by this section shall apply in the case of compensation paid for weeks which begin on or after April 1, 1984, and after the end of the first session of the State legislature which begins after the date of the enactment of this Act [Apr. 20, 1983], or which began prior to the date of the enactment of this Act and remained in session for at least twenty-five calendar days after such date of enactment. For purposes of the preceding sentence, the term 'session' means a regular, special, budget, or other session of a State legislature."

Section 523(c) of Pub. L. 98-21 provided that: "The amendments made by this section [amending subsec. (a)(4) of this section and section 503 of Title 42, The Public Health and Welfare] shall take effect on the date of the enactment of this Act [Apr. 20, 1983]."

ARRANGEMENTS TO PREVENT PAYMENTS OF UNEMPLOYMENT COMPENSATION TO RETIREES AND PRISONERS

Pub. L. 98-135, title II, § 206, Oct. 24, 1983, 97 Stat. 861, provided that:

"(a) The Secretary of Labor, the Director of the Office of Personnel Management, and the Attorney General are directed to enter into arrangements to make available to the States, computer or other data regarding current and retired Federal employees and Federal prisoners so that States may review the eligibility of these individuals for unemployment compensation, and take action where appropriate.

"(b) The Secretary of Labor shall report to the Congress, prior to January 31, 1984, on arrangements which have been entered into under subsection (a), and any arrangements which could be entered into with other appropriate State agencies, for the purpose of ensuring that unemployment compensation is not paid to retired individuals or prisoners in violation of law. The report shall include any recommendations for further legislation which might be necessary to aid in preventing such payments."

FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982

Subtitle A (§§ 601-606) of title VI of Pub. L. 97-248, as amended by Pub. L. 97-424, title V, § 544(a), (d), Jan. 6, 1983, 96 Stat. 2196; Pub. L. 97-448, title III, § 310(a), Jan. 12, 1983, 96 Stat. 2411; Pub. L. 98-21, title V, §§ 501, 502, 504, 505, Apr. 20, 1983, 97 Stat. 141, 144; Pub. L. 98-92, § 1(a), Sept. 2, 1983, 97 Stat. 608; Pub. L. 98-118, § 1, Oct. 11, 1983, 97 Stat. 803; Pub. L. 98-135, title I, §§ 101, 102, Oct. 24, 1983, 97 Stat. 857, provided that:

[See main edition for text of Sec. 601]

"FEDERAL-STATE AGREEMENTS

"SEC. 602. [*See main edition for text of* (a) *to* (c)]

"(d) For purposes of any agreement under this subtitle—

[*See main edition for text of* (1) *and* (2)]

"(3) the maximum amount of Federal supplemental compensation payable to any individual for whom an account is established under subsection (e) shall not exceed the lesser of (A) the amount established in such account for such individual, or (B) in the case of an individual filing a claim under the interstate benefit payment plan for Federal supplemental compensation, the amount which would have been established in such account if the amount established in such account were determined by reference to the applicable limit under subparagraph (A)(ii) of subsection (e)(2) applicable in the State in which the individual is filing such interstate claim under the interstate benefit payment plan for the week in which he is filing such claim.

Solely for purposes of paragraph (2), the amendment made by section 2404(a) of the Omnibus Budget Reconciliation Act of 1981 [section 2404(a) of Pub. L. 97-35, enacting par. (5) of section 202(a) of Pub. L. 91-373 set out as a note below] shall be deemed to be in effect for all weeks beginning on or after September 12, 1982.

"(e) [*See main edition for text of* (1)]

"(2)(A)(i) Except as provided in subparagraph (B), the amount established in such account shall be equal to the lesser of—

"(I) 55 per centum of the total amount of regular compensation (including dependents' allowances) payable to the individual with respect to the benefit year (as determined under the State law) on the basis of which he most recently received regular compensation, or

"(II) the applicable limit times his average weekly benefit amount for his benefit year.

"(ii) For purposes of clause (i)—

"(I) in the case of an account from which Federal supplemental compensation was payable to an individual for a week beginning before October 19, 1983, the applicable limit shall be the applicable limit in effect in the State under this paragraph (as in effect on the day before the date of the enactment of the Federal Supplemental Compensation Amendments of 1983 [Oct. 24, 1983]) for the last week beginning before October 19, 1983, or

"(II) in the case of an account from which Federal supplemental compensation is first payable for a week beginning after October 18, 1983, the applicable limit shall be the applicable limit determined under the following table with respect to the first week for which Federal supplemental compensation is payable from such account:

"In the case of weeks during a:	The applicable limit is:
6-percent period	14
5-percent period	12
4-percent period	10
Low-unemployment period	8.

"(B) In the case of any account from which Federal supplemental compensation was first payable for a week which begins after March 31, 1983, and before October 19, 1983, the amount established in such account under subparagraph (A) shall be increased by the individual's additional entitlement. In no event shall such increase result in the individual's receiving more Federal supplemental compensation for weeks beginning after October 18, 1983, than the subparagraph (A) entitlement.

"(C) For purposes of subparagraph (B) and this subparagraph—

"(i) The term 'additional entitlement' means the lesser of—

"(I) ½ of the subparagraph (A) entitlement, or

"(II) the individual's average weekly benefit amount for the benefit year multiplied by the applicable limit determined under clause (ii).

"(ii) The applicable limit determined under this clause is—

"(I) 5 if all of the amount in the individual's Federal supplemental compensation account (determined without regard to subparagraph (B)) is payable to the individual for weeks beginning before October 18, 1983, and

"(II) in the case of an individual not described in subclause (I), 4 (2 if the State is in a 4-percent period or a low-unemployment period for the first week beginning after October 18, 1983).

"(iii) The term 'subparagraph (A) entitlement' means the amount which would have been established in the account if Federal supplemental compensation were first payable from such account for the first week beginning after October 18, 1983.

"(3)(A) For purposes of this subsection, the terms '6-percent period', '5-percent period', '4-percent period', and 'low-unemployment period', mean, with respect to any State, the period which—

"(i) begins with the third week after the first week for which the applicable trigger is on, and

"(ii) ends with the second week after the first week for which the applicable trigger is off.

"(B)(i) In the case of a 6-percent period, 5-percent period, 4-percent period, or low-unemployment period, as the case may be, the applicable trigger is on for any week if—

"(I) the rate of insured unemployment in the State for the period consisting of such week and the immediately preceding 12 weeks falls within the applicable range, or

"(II) the rate of insured unemployment in the State for the period consisting of the last week beginning in the second calendar quarter ending before the week for which the trigger determination is being made and all weeks preceding such last week which began on or after January 1, 1982, equals or exceeds 5.5 percent in the case of a 6-percent period (or, in the case of a 5-percent period, equals or exceeds 4.5 percent but is less than 5.5 percent).

Subclause (II) shall not apply in the case of a 4-percent period or low-unemployment period.

"(ii) In the case of a 6-percent period, 5-percent period, 4-percent period, or low-unemployment period, as the case may be, the applicable trigger is off for any week if subclause (I) of clause (i) is not satisfied (or in the case of a 6-percent period or a 5-percent period, both subclauses (I) and (II) of clause (i) are not satisfied).

"(iii) In the case of any 5-percent period, 4-percent period, or low-unemployment period, as the case may be, notwithstanding clauses (i) and (ii), the applicable trigger shall be off for any week if the applicable trigger for a period with a higher applicable limit is on for such week.

"(C) For purposes of this paragraph, the applicable range is as follows:

"In the case of a:	The applicable range is:
6-percent period	A rate equal to or exceeding 6 percent.
5-percent period	A rate equal to or exceeding 5 percent but less than 6 percent.
4-percent period	A rate equal to or exceeding 4 percent but less than 5 percent.
Low-unemployment period	A rate less than 4 percent.

"(D)(i) No 6-percent period, 5-percent period, 4-percent period, or low-unemployment period, as the case may be, which is in effect for the first week beginning after October 18, 1983, or any week thereafter, shall last for a period of less than 13 weeks beginning after October 18, 1983.

"(ii) The applicable limit in any State shall not be reduced or increased by more than 2 during any 13-week period beginning with the week for which such a reduction (or increase) would otherwise take effect. The preceding sentence shall not apply to any increase (or decrease) which takes effect for the first week beginning after October 18, 1983.

"(E) For purposes of this subsection—

"(i) The rate of insured unemployment for any period shall be determined in the same manner as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 [section 203 of Pub. L. 91-373, set out below]; except that, for purposes of determining the rate of insured unemployment for the period described in subparagraph (B)(i)(II), the rate of insured unemployment shall be determined by reference to the average monthly covered employment under the State law for so much of such period as does not fall in the last 6 months thereof.

"(ii) The amount of an individual's average weekly benefit amount shall be determined in the same manner as determined for purposes of section 202(b)(1)(C) of such Act [section 202(b)(1)(C) of Pub. L. 91-373, set out below].

"(4) The amount of Federal supplemental compensation payable to an eligible individual shall not exceed the amount in such individual's account established under this subsection.

"(5)(A) Except as provided in subparagraph (B), the maximum amount of Federal supplemental compensation payable to an individual shall not be reduced by reason of any trade readjustment allowance to which the individual was entitled under the Trade Act of 1974.

"(B) If an individual received any trade readjustment allowance under the Trade Act of 1974 [section 2101 et seq. of Title 19, Customs Duties] in respect of any benefit year, the maximum amount of Federal supplemental compensation payable under this subtitle in respect of such benefit year shall be reduced (but not below zero) so that (to the extent possible by making such a reduction) the aggregate amount of—

"(i) regular compensation,

"(ii) extended compensation,

"(iii) trade readjustment allowances, and

"(iv) Federal supplemental compensation,

payable in respect of such benefit year does not exceed the aggregate amount which would have been so payable had the individual not been entitled to any trade readjustment allowance.

"(f) [*See main edition for text of (1)*]

"(2) No Federal supplemental compensation shall be payable to any individual under an agreement entered into under this subtitle for any week beginning after March 31, 1985.

"(g) The payment of Federal supplemental compensation shall not be denied to any recipient (who submits documentation prescribed by the Secretary) for any week because the recipient is in training or attending an accredited educational institution on a substantially full-time basis, or because of the application of State law to any such recipient relating to the availability for work, the active search for work, or the refusal to accept work on account of such training or attendance, unless the State agency determines that such training or attendance will not improve the opportunities for employment of the recipient.

[*See main edition for text of Secs. 603 and 604*]

"DEFINITIONS

"SEC. 605. For purposes of this subtitle—

[See main edition for text of (1)]

"(2) the term 'period of eligibility' means, with respect to any individual, any week which begins on or after September 12, 1982, and begins before April 1, 1985; except that an individual shall not have a period of eligibility unless—

"(A) his benefit year ends on or after June 1, 1982, or

"(B) such individual was entitled to extended compensation for a week which begins on or after June 1, 1982.

[See main edition for text of Sec. 606]

Pub. L. 98-135, § 1, 97 Stat. 857, provided that: "This Act [amending section 3306 of this title and sections 1323 and 1397b of Title 42, The Public Health and Welfare, enacting provisions set out as notes under sections 3304 and 3306 of this title and section 1323 of Title 42, and amending provisions set out as notes under this section] may be cited as the 'Federal Supplemental Compensation Amendments of 1983'."

Section 103 of title I of Pub. L. 98-135 provided that:

"(a) GENERAL RULE.—The amendments made by this title [amending sections 602(d)(3), (e)(2), (3), (f)(2), and 605(2) of Pub. L. 97-248, set out above] shall apply to weeks beginning after October 18, 1983.

"(b) TRANSITIONAL RULE.—In the case of any eligible individual who exhausted his rights to Federal supplemental compensation (by reason of the payment of all of the amount in his Federal supplemental compensation account) before the first week beginning after October 18, 1983, such individual's eligibility for additional weeks of compensation by reason of the amendments made by this title [amending sections 602(d)(3), (e)(2), (3), (f)(2), and 605(2) of Pub. L. 97-248, set out above] shall not be limited or terminated by reason of any event, or failure to meet any requirement of law relating to eligibility for unemployment compensation, occurring after the date of such exhaustion of rights and before the beginning of the first week beginning after October 18, 1983 (and the period after such exhaustion and before the beginning of such first week shall not be counted for purposes of determining the expiration of the two years following the end of his benefit year for purposes of section 602(b) of the Federal Supplemental Compensation Act of 1982 [section 602(b) of Pub. L. 97-248, set out above]).

"(c) MODIFICATION OF AGREEMENTS.—The Secretary of Labor shall, at the earliest practicable date, after the date of the enactment of this Act [Oct. 24, 1983], propose to each State with which he has in effect an agreement under section 602 of the Federal Supplemental Compensation Act of 1982 [section 602 of Pub. L. 97-248, set out above] a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act in accordance with the amendments made by this title [amending sections 602(d)(3), (e)(2), (3), (f)(2), and 605(2) of Pub. L. 97-248, set out above]. Notwithstanding any other provision of law, if any State fails or refuses within the three-week period beginning on the date the Secretary of Labor proposes such modification to such State, to enter into such modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before the close of such three-week period.

"(d) NEW PERIODS BEGIN WITH FIRST WEEK AFTER OCTOBER 18, 1983.—For purposes of determining whether any 6-percent period, 5-percent period, 4-percent period, or low-unemployment period is in effect during weeks beginning after October 18, 1983, the amendments made by this title [amending sections 602(d)(3), (e)(2), (3), (f)(2), and 605(2) of Pub. L. 97-248, set out above] shall be treated as in effect during all periods before the first week beginning after October 18, 1983."

Section 1(b)-(d) of Pub. L. 98-92 provided that:

"(b) The amendment made by subsection (a) [amending section 602(e)(2) of Pub. L. 97-248, set out above] shall apply to weeks beginning after July 24, 1983.

"(c)(1) In the case of an account established before the week beginning June 5, 1983, the applicable limit under section 602(e)(2)(A)(ii) of the Federal Supplemental Compensation Act of 1982 [section 602(e)(2)(A)(ii) of Pub. L. 97-248, set out above] shall in no event be less than the number of weeks applicable to such State for the week beginning March 27, 1983, under section 602(e)(2) of such Act (as in effect for such week) reduced by four.

"(2) Paragraph (1) shall apply only to compensation for weeks of unemployment beginning on or after the date of the enactment of this Act [Sept. 2, 1983].

"(d) In the case of any eligible individual who (without regard to the amendment made by subsection (a) [amending section 602(e)(2) of Pub. L. 97-248, set out above] or the provisions of subsection (c)) exhausted his rights to Federal supplemental compensation (by reason of the payment of all of the amount in his Federal supplemental compensation account) before the first week beginning after the date of the enactment of this Act [Sept. 2, 1983], such individual's eligibility for additional compensation by reason of the amendment made by subsection (a) or the provisions of subsection (c) for any week of unemployment shall not be limited or terminated by reason of any event, or failure to meet any requirement of law relating to eligibility for unemployment compensation, occurring after the date of such exhaustion of rights and before the beginning of the first week beginning after the date of the enactment of this Act."

Section 503 of part A (§§ 501-505) of title V of Pub. L. 98-21 provided that:

"(a) The amendments made by this part [enacting section 602(e)(2), (3), (5), (g) and amending sections 602(d)(3), (e)(4), (f)(2), and 605(2) of Pub. L. 97-248, set out above] shall apply to weeks beginning after March 31, 1983.

"(b) In the case of any eligible individual—

"(1) to whom any Federal supplemental compensation was payable for any week beginning before April 1, 1983, and

"(2) who exhausted his rights to such compensation (by reason of the payment of all the amount in his Federal supplemental compensation account) before the first week beginning after March 31, 1983,

such individual's eligibility for additional weeks of compensation by reason of the amendments made by this part [see subsec. (a) of this section] shall not be limited or terminated by reason of any event, or failure to meet any requirement of law relating to eligibility for unemployment compensation, occurring after the date of such exhaustion of rights and before April 1, 1983 (and the period after such exhaustion and before April 1, 1983, shall not be counted for purposes of determining the expiration of the two years following the end of his benefit year for purposes of section 602(b) of the Federal Supplemental Compensation Act of 1982 [section 602(b) of Pub. L. 97-248, set out above]).

"(c) The Secretary of Labor shall, at the earliest practicable date after the date of the enactment of this Act [Apr. 20, 1983], propose to each State with which he has in effect an agreement under section 602 of the Federal Supplemental Compensation Act of 1982 [section 602 of Pub. L. 97-248, set out above] a modification of such agreement designed to provide for the payment of Federal supplemental compensation under such Act [subtitle A of title VI of Pub. L. 97-248, set out above] in accordance with the amendments made by this part [see subsec. (a) of this section]. Notwithstanding any other provision of law, if any State fails or refuses, within the 3-week period beginning on the date the Secretary of Labor proposed such a modification to such State, to enter into such a modification of such agreement, the Secretary of Labor shall terminate such agreement effective with the end of the last week which ends on or before such 3-week period."

APPLICATION OF FEDERAL SUPPLEMENTAL COMPENSATION ACT OF 1982 WITH RESPECT TO WEEKS BEGINNING AFTER MARCH 31, 1983

Pub. L. 98-13, Mar. 29, 1983, 97 Stat. 54, provided: "That, with respect to weeks beginning after March 31, 1983, the Federal Supplemental Compensation Act of 1982 [subtitle A of title VI of Pub. L. 97-248, set out as a note above] shall be applied as if the provisions contained in part A of title V of the conference report [H. Rept. No. 98-47] on the bill H.R. 1900 [part A (§§ 501-505) of title V of Pub. L. 98-21, Apr. 20, 1983, 97 Stat. 141-144, amending subtitle A of title VI of Pub. L. 97-248, set out as a note above] were enacted into law on the date of the enactment of this Act [Mar. 29, 1983]."

FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970

Pub. L. 91-373, title II, §§ 201-207, Aug. 10, 1970, 84 Stat. 708, as amended by Pub. L. 92-599, title V, § 501, Oct. 27, 1972, 86 Stat. 1326; Pub. L. 93-53, § 5, July 1, 1973, 87 Stat. 137; Pub. L. 93-233, § 20, Dec. 31, 1973, 87 Stat. 974; Pub. L. 93-256, § 2, Mar. 28, 1974, 88 Stat. 52; Pub. L. 93-329, § 2, June 30, 1974, 88 Stat. 288; Pub. L. 93-368, § 3, Aug. 7, 1974, 88 Stat. 420; Pub. L. 93-572, §§ 106, 107, 108, Dec. 31, 1974, 88 Stat. 1872; Pub. L. 94-45, title I, § 102(b), June 30, 1975, 89 Stat. 238; Pub. L. 94-566, title I, § 116(d)(1), (2), title II, § 212(a), title III, § 311(a), (b), Oct. 20, 1976, 90 Stat. 2672, 2677, 2678; Pub. L. 96-364, title IV, § 416(a), Sept. 26, 1980, 94 Stat. 1310; Pub. L. 96-499, title X, §§ 1022(a), 1024(a), Dec. 5, 1980, 94 Stat. 2656, 2658; Pub. L. 97-35, title XXIV, §§ 2401(a), (b), 2402(a), 2403(a), 2404(a), (b), title XXV, § 2505(b), Aug. 13, 1981, 95 Stat. 874, 875, 876, 884; Pub. L. 97-248, title I, § 191(a), Sept. 3, 1982, 96 Stat. 407; Pub. L. 97-258, § 5(b), Sept. 13, 1982, 96 Stat. 1068, 1081; Pub. L. 98-21, title V, § 522(a), Apr. 20, 1983, 97 Stat. 148, provided:

[*See main edition for text of Sec. 201*]

"SEC. 202. [Payment of Extended Compensation]

"(a) [State Law Requirements] [*See main edition for text of (1) and (2)*]

"(3)(A) Notwithstanding the provisions of paragraph (2), payment of extended compensation under this Act [see Short Title of 1970 Amendment note under section 3311 of this title] shall not be made to any individual for any week of unemployment in his eligibility period—

[*See main edition for text of (i)*]

"(ii) during which he fails to actively engage in seeking work, unless such individual is not actively engaged in seeking work because such individual is, as determined in accordance with State law—

"(I) before any court of the United States or any State pursuant to a lawfully issued summons to appear for jury duty (as such term may be defined by the Secretary of Labor), or

"(II) hospitalized for treatment of an emergency or a life-threatening condition (as such term may be defined by such Secretary),

if such exemptions in clauses (I) and (II) apply to recipients of regular benefits, and the State chooses to apply such exemptions for recipients of extended benefits.

[*See main edition for text of (B) to (F), (4) to (6); (b) and (c); Secs. 203 to 207*]

[Section 522(b) of Pub. L. 98-21 provided that: "The amendment made by this section [amending section 202(a)(3)(A)(ii) of Pub. L. 91-373, set out as a note above] shall become effective on the date of the enactment of this Act [Apr. 20, 1983]."]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30, 170, 3302, 3303, 3305, 3309, 3310, 6103 of this title; title 19 section 2319; title 42 sections 602, 1103, 1320b-7, 1322.

§ 3305. Applicability of State law

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3304, 3306 of this title; title 5 section 8501; title 42 section 503.

§ 3306. Definitions

[*See main edition for text of (a)*]

(b) Wages

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

[*See main edition for text of (1)*]

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workman's[5] compensation law), or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or

(C) death;

[(3) Repealed. Pub. L. 98-21, title III, § 324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]

[*See main edition for text of (4)*]

(5) any payment made to, or on behalf of, an employee or his beneficiary—

[*See main edition for text of (A) and (B)*]

(C) under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) for such payment,

(D) under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

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[5] So in original. Probably should be "workmen's".

(E) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3)), or

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974;

[*See main edition for text of* (*6*) *and* (*7*)]

[(8) Repealed. Pub. L. 98-21, title III, § 324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]

[*See main edition for text of* (*9*)]

(10) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, or (ii) retirement for disability, and

[*See main edition for text of* (*B*)]

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(11) remuneration for agricultural labor paid in any medium other than cash;

(12) any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans);

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129,[6]

(14) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119;

(15) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died; or

(16) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages. Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter.

(c) Employment

For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(1) agricultural labor (as defined in subsection (k)) unless—

[*See main edition for text of* (*A*)]

(B) such labor is not agricultural labor performed before January 1, 1986, by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

[*See main edition for text of* (*2*) *to* (*20*); (*d*) *to* (*q*)]

(r) Treatment of certain deferred compensation and salary reduction arrangements

(1) Certain employer contributions treated as wages

Nothing in any paragraph of subsection (b) (other than paragraph (1)) shall exclude from the term "wages"—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(a)(8), or

(B) any amount treated as an employer contribution under section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement

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[6] So in original. The comma probably should be a semicolon.

(whether evidenced by a written instrument or otherwise).

(2) Treatment of certain nonqualified deferred compensation plans

(A) In general

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

(i) when the services are performed, or

(ii) when there is no substantial risk of forfeiture of the rights to such amount.

(B) Taxed only once

Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) Nonqualified deferred compensation plan

For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (b)(5).

(s) Tips treated as wages

For purposes of this chapter, the term "wages" includes tips which are—

(1) received while performing services which constitute employment, and

(2) included in a written statement furnished to the employer pursuant to section 6053(a).

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, §§ 324(b)(1)-(4)(B), 327(c), 328(c), 97 Stat. 123, 124, 127, 128; Oct. 24, 1983, Pub. L. 98-135, title II, §§ 201(a), 202, 97 Stat. 860; July 18, 1984, Pub. L. 98-369, div. A, title IV, § 491(d)(37), title V, § 531(d)(3), div. B, title VI, § 2661(*o*)(4), 98 Stat. 851, 884, 1159.)

REFERENCES IN TEXT

Section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974, referred to in subsec. (b)(5)(F), is classified to section 1002(2)(B)(ii) of Title 29, Labor.

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369, § 531(d)(3)(A), in the provisions preceding par. (1), inserted "(including benefits)".

Subsec. (b)(5)(C) to (G). Pub. L. 98-369, § 491(d)(37), struck out subpar. (C) which provided: "under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a)," and redesignated subpars. (D) to (G) as (C) to (F), respectively.

Subsec. (b)(16). Pub. L. 98-369, § 531(d)(3)(B), added par. (16).

Subsec. (r)(1)(B). Pub. L. 98-369, § 2661(*o*)(4), substituted "section 414(h)(2) where the pickup referred to in such section is pursuant to a salary reduction agreement (whether evidenced by a written instrument or otherwise)" for "section 414(h)(2)".

Subsec. (s). Pub. L. 98-369, § 1073(a), added subsec. (s).

1983—Subsec. (b). Pub. L. 98-21, § 327(c)(4), added a flush sentence at the end of subsec. (b) providing that nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter.

Pub. L. 98-21, § 324(b)(4)(B), added a flush sentence at the end of subsec. (b) providing that, except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.

Subsec. (b)(2). Pub. L. 98-21, § 324(b)(3)(A), (4)(A), struck out "(A) retirement or", redesignated subpars. (B) to (D) as (A) to (C), respectively, and in subpar. (A), as so redesignated, substituted "sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term 'wages' only payments which are received under a workman's compensation law)" for "sickness or accident disability".

Subsec. (b)(3). Pub. L. 98-21, § 324(b)(3)(B), struck out par. (3) which related to any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement.

Subsec. (b)(5)(D). Pub. L. 98-21, § 328(c), substituted "section 219(b)(2)" for "section 219".

Subsec. (b)(5)(E) to (G). Pub. L. 98-21, § 324(b)(2), added subpars. (E) to (G).

Subsec. (b)(8). Pub. L. 98-21, § 324(b)(3)(B), struck out par. (8) which related to any payment (other than vacation or sick pay) made to an employee after the month in which he attained the age of 65, if he did not work for the employer in the period for which such payment was made.

Subsec. (b)(10)(A). Pub. L. 98-21, § 324(b)(3)(C), struck out cl. (iii) which had related to retirement after attaining an age specified in the plan referred to in subpar. (B) or in a pension plan of the employer.

Subsec. (b)(14). Pub. L. 98-21, § 327(c)(1)-(3), added par. (14).

Subsec. (b)(15). Pub. L. 98-135, § 201(a), added par. (15).

Subsec. (c)(1)(B). Pub. L. 98-135, § 202, substituted "1986" for "1984".

Subsec. (r). Pub. L. 98-21, § 324(b)(1), added subsec. (r).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(37) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Amendment by section 531(d)(3) of Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

Section 1073(b) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendment made by subsection (a) [enacting subsec. (s) of this section] shall take effect on January 1, 1986.

"(2) EXCEPTION FOR CERTAIN STATES.—In the case of any State the legislature of which—

"(A) did not meet in a regular session which begins during 1984 and after the date of the enactment of this Act [July 18, 1984], and

"(B) did not meet in a session which began before the date of the enactment of this Act and remained in session for at least 25 calendar days after such date of enactment,

the amendment made by subsection (a) shall take effect on January 1, 1987."

Section 2661(*o*)(4) of Pub. L. 98-369 provided in part that the amendment of subsec. (r)(1)(B) of this section by section 2661(*o*)(4) of Pub. L. 98-369 is effective Jan. 1, 1985.

Effective Date of 1983 Amendments

Section 201(b) of Pub. L. 98-135 provided that: "The amendments made by subsection (a) [enacting subsec. (b)(15) of this section] shall apply to remuneration paid after the date of the enactment of this Act [Oct. 24, 1983]."

Amendment by section 324 of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1984, except for certain employer contributions made during 1984 under a qualified cash or deferred arrangement, and except in the case of an agreement with certain nonqualified deferred compensation plans in existence on Mar. 24, 1983, see section 324(d) of Pub. L. 98-21 set out as a note under section 3121 of this title.

Amendment by section 327(c)(1)-(3) of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1984, see section 327(d)(3) of Pub. L. 98-21, as amended, set out as a note under section 3121 of this title.

Amendment by section 327(c)(4) of Pub. L. 98-21 applicable to remuneration (other than amounts excluded under 26 U.S.C. 119) paid after Mar. 4, 1983, and to any such remuneration paid on or before such date which the employer treated as wages when paid, see section 327(d)(2) of Pub. L. 98-21, as amended, set out as a note under section 3121 of this title.

Amendment by section 328(c) of Pub. L. 98-21 applicable to remuneration paid after Dec. 31, 1984, see section 328(d)(2) of Pub. L. 98-21, set out as a note under section 3121 of this title.

Effective and Termination Dates of 1982 Amendments

Amendment of subsec. (b)(1) by Pub. L. 97-248 applicable to remuneration paid after Dec. 31, 1982, see section 271(d)(1) of Pub. L. 97-248, as amended, set out as a note under section 3301 of this title.

Effective and Termination Dates of 1981 Amendment

Section 822(b) of Pub. L. 97-34, as amended by Pub. L. 97-362, title II, § 203, Oct. 25, 1982, 96 Stat. 1733; Pub. L. 98-369, div. A, title X, § 1074, July 18, 1984, 98 Stat. 1053, provided that: "The amendments made by subsection (a) [enacting subsec. (c)(18) of this section] shall be effective with respect to remuneration paid after December 31, 1980, and before January 1, 1985."

Administration of Provisions Covering Payments to Employees on Account of Sickness or Accident Disability

Section 324(b)(4)(C) of Pub. L. 98-21 provided that: "Rules similar to the rules of subsections (d) and (e) of section 3 of the Act entitled 'An Act to amend the Omnibus Reconciliation Act of 1981 to restore minimum benefits under the Social Security Act' (Public Law 97-123), approved December 29, 1981 [set out as notes under section 3121 of this title], shall apply in the administration of section 3306(b)(2)(A) of such Code (as amended by subparagraph (A))."

Section Referred to in Other Sections

This section is referred to in sections 51, 3301, 3305, 3309, 3323, 6157 of this title.

§ 3307. Deductions as constructive payments

Section Referred to in Other Sections

This section is referred to in section 3323 of this title.

§ 3308. Instrumentalities of the United States

Section Referred to in Other Sections

This section is referred to in section 3323 of this title.

§ 3310. Judicial review

[See main edition for text of (a) to (d)]

[(e) Repealed. Pub. L. 98-620, title IV, § 402(28)(A), Nov. 8, 1984, 98 Stat. 3359]

(As amended Pub. L. 98-620, title IV, § 402(28)(A), Nov. 8, 1984, 98 Stat. 3359.)

Amendments

1984—Subsec. (e). Pub. L. 98-620 struck out subsec. (e) which had provided that any judicial proceedings under this section were entitled to, and upon request of the Secretary of Labor or of the State would receive, a preference and would be heard and determined as expeditiously as possible.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

CHAPTER 23A—RAILROAD UNEMPLOYMENT REPAYMENT TAX

Sec.	
3321.	Imposition of tax.
3322.	Taxable period.
3323.	Other definitions.

Chapter Referred to in Other Sections

This chapter is referred to in sections 6157, 6317, 6513 of this title.

§ 3321. Imposition of tax

(a) General rule

There is hereby imposed on every rail employer for each taxable period an excise tax, with respect to having individuals in his employ, equal to the applicable percentage of the total rail wages paid by him during the taxable period.

(b) Tax on employee representatives

(1) In general

There is hereby imposed on the income of each employee representative a tax equal to the applicable percentage of the rail wages paid to him during the taxable period.

(2) Determination of wages

The rail wages of an employee representative for purposes of paragraph (1) shall be determined in the same manner and with the same effect as if the employee organization by which such employee representative is employed were a rail employer.

(c) Rate of tax

For purposes of this section—

(1) For taxable period July 1 through December 31, 1986

The applicable percentage for the taxable period beginning on July 1, 1986, and ending on December 31, 1986, shall be 2 percent.

(2) Subsequent taxable periods

The applicable percentage for any taxable period beginning after 1986 shall be the sum of—

(A) 2 percent, plus

(B) 0.3 percent for each preceding taxable period.

In no event shall the applicable percentage exceed 5 percent.

(Added Pub. L. 98-76, title II, § 231(a), Aug. 12, 1983, 97 Stat. 426.)

EFFECTIVE DATE

Section 231(d) of Pub. L. 98-76 provided that: "The amendments made by this section [enacting this chapter and amending sections 6157, 6201, 6317, 6513, and 6601 of this title] shall apply to remuneration paid after June 30, 1986."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6157, 6201, 6317, 6601 of this title.

§ 3322. Taxable period

(a) General rule

For purposes of this chapter, except as provided in subsection (b), the term "taxable period" means—

(1) the period beginning on July 1, 1986, and ending on December 31, 1986,

(2) each calendar year after 1986 and before 1990, and

(3) the period beginning on January 1, 1990, and ending on September 30, 1990.

(b) Earlier termination if loans to rail unemployment fund repaid

The tax imposed by this chapter shall not apply to any rail wages paid on or after the first January 1 after 1986 as of which there is—

(1) no balance of transfers to the railroad unemployment insurance account under section 10(d) of the Railroad Unemployment Insurance Act, and

(2) no unpaid interest on such transfers.

(Added Pub. L. 98-76, title II, § 231(a), Aug. 12, 1983, 97 Stat. 427.)

REFERENCES IN TEXT

Section 10(d) of the Railroad Unemployment Insurance Act, referred to in subsec. (b)(1), is classified to section 360(d) of Title 45, Railroads.

§ 3323. Other definitions

(a) Rail employer

For purposes of this chapter, the term "rail employer" means any person who is an employer as defined in section 1 of the Railroad Unemployment Insurance Act.

(b) Rail wages

(1) In general

For purposes of this chapter, the term "rail wages" means wages as defined in section 3306(b) with the modifications specified in paragraph (2).

(2) Modifications

In applying subsection (b) of section 3306 for purposes of paragraph (1)—

(A) Only railroad employment taken into account

Such subsection (b) shall be applied—

(i) by substituting "rail employment" for "employment" each place it appears, and

(ii) by substituting "rail employer" for "employer" each place it appears.

(B) Wage base for first taxable period

In the case of the taxable period beginning on July 1, 1986, and ending on December 31, 1986, such subsection (b) shall be applied by substituting "$3,500" for "$7,000" each place it appears in paragraph (1) thereof.

(C) Wage base for last taxable period

In the case of the taxable period beginning on January 1, 1990, and ending on September 30, 1990, such subsection (b) shall be applied by substituting "$5,250" for "$7,000" each place it appears in paragraph (1) thereof.

(c) Rail employment

For purposes of this chapter, the term "rail employment" means services performed by an individual as a rail employee or employee representative.

(d) Rail employee and employee representative

For purposes of this chapter—

(1) Rail employee

The term "rail employee" means any person who is an employee as defined in section 1 of the Railroad Unemployment Insurance Act.

(2) Employee representative

The term "employee representative" has the meaning given such term by section 1 of the Railroad Unemployment Insurance Act.

(e) Concurrent employment by 2 or more rail employers

For purposes of this chapter, if 2 or more related corporations which are rail employers concurrently employ the same individual and compensate such individual through a common paymaster which is 1 of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(f) Certain rules made applicable

For purposes of this chapter, rules similar to the rules of sections 3307 and 3308 shall apply.

(Added Pub. L. 98-76, title II, § 231(a), Aug. 12, 1983, 97 Stat. 427.)

REFERENCES IN TEXT

Section 1 of the Railroad Unemployment Insurance Act, referred to in subsecs. (a) and (d), is classified to section 351 of Title 45, Railroads.

CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES

Sec.
3406. Backup withholding.

AMENDMENTS

1983—Pub. L. 98-67, title I, §§ 102(a), 104(d)(4), Aug. 5, 1983, 97 Stat. 369, 380, added item 3406 and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 31, 274, 280F, 3121, 3306, 3502, 3507, 3509, 6011, 6013, 6051, 6103, 6361, 6362, 6365, 6414, 6501, 6513, 6682, 7654, 7872 of this title; title 5 section 5901; title 42 section 409; title 48 section 1421i.

§ 3401. Definitions

(a) Wages

For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include remuneration paid—

[*See main edition for text of* (*1*) *to* (*11*)]

(12) to, or on behalf of, an employee or his beneficiary—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) for a payment described in section 219 if, at the time of such payment, it is reasonable to believe that the employee will be entitled to a deduction under such section for payment; or

[(D) Redesignated (C)]

[*See main edition for text of* (*13*) *to* (*17*)]

(18) for any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129;

(19) for any medical care reimbursement made to or for the benefit of an employee under a self-insured medical reimbursement plan (within the meaning of section 105(h)(6)); or

(20) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 117 or 132.

[*See main edition for text of* (*b*) *to* (*f*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 491(d)(38), title V, § 531(d)(4), 98 Stat. 851, 885.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 531(d)(4)(A), inserted "(including benefits)" in introductory provisions.

Subsec. (a)(12). Pub. L. 98-369, § 491(d)(38), struck out subpar. (C) which provided: "under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);" and redesignated subpar. (D) as (C).

Subsec. (a)(20). Pub. L. 98-369, § 531(d)(4)(B), added par. (20).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(38) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Amendment by section 531(d)(4) of Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30, 275, 3402, 3507, 3509, 4999, 6014, 6051, 6053, 6103, 6331, 6362 of this title.

§ 3402. Income tax collected at source

[*See main edition for text of* (*a*) *to* (*r*)]

[(s) **Repealed. Pub. L. 98-67, title I, § 104(d)(3), Aug. 5, 1983, 97 Stat. 380**]

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 104(d)(3), 97 Stat. 380.)

AMENDMENTS

1983—Subsec. (s). Pub. L. 98-67 struck out subsec. (s) which related to the extension of withholding to certain payments where the identifying number was not furnished or was inaccurate. See section 3406 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31, 275, 3401, 3405, 3406, 3505, 3507, 3509, 4999, 6040, 6051, 6205, 6413, 6682, 7205 of this title; title 10 section 1408; title 42 section 662.

§ 3403. Liability for tax

[*See main edition for text*]

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369.)

AMENDMENTS

1983—Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

§ 3405. Special rules for pensions, annuities, and certain other deferred income

[*See main edition for text of* (*a*)]

(b) Nonperiodic distribution

[*See main edition for text of* (*1*)]

(2) Amount of withholding

[*See main edition for text of* (*A*) *and* (*B*)]

(C) Special rule for distributions by reason of death

In the case of any nonperiodic distribution from or under any plan or contract described in section 401(a), 403(a), or 403(b)—

(i) which is made by reason of a participant's death, and

(ii) with respect to which the requirements of clauses (ii) and (iv) of subsection (d)(4)(A) are met,

subparagraph (A) or (B) (as the case may be) shall be applied by taking into account the exclusion from gross income provided by section 101(b) (whether or not allowable).

[See main edition for text of (3); (c)]

(d) Definitions and special rules

For purposes of this section—

(1) Designated distribution

[See main edition for text of (A)]

(B) Exceptions

The term "designated distribution" shall not include—

(i) any amount which is wages without regard to this section,

(ii) the portion of a distribution or payment which it is reasonable to believe is not includible in gross income, and

(iii)[2] any amount which is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount or which would be so subject but for a tax treaty.

(iii)[2] any distribution described in section 404(k)(2).

[See main edition for text of (2) to (7)]

(8) Maximum amount withheld

The maximum amount to be withheld under this section on any designated distribution shall not exceed the sum of the amount of money and the fair market value of other property (other than employer securities of the employer corporation (within the meaning of section 402(a)(3))) received in the distribution. No amount shall be required to be withheld under this section in the case of any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of $200) in lieu of fractional shares.

[See main edition for text of (9) to (11)]

(12) Failure to provide correct TIN

If—

(A) a payee fails to furnish his TIN to the payor in the manner required by the Secretary, or

(B) the Secretary notifies the payor before any payment or distribution that the TIN furnished by the payee is incorrect,

no election under subsection (a)(2) or (b)(3) shall be treated as in effect and subsection (a)(4) shall not apply to such payee.

[See main edition for text of (e)]

(As amended Pub. L. 98-369, div. A, title V, § 542(c), title VII, §§ 714(j)(1), (4), (5), 722(h)(4)(A), July 18, 1984, 98 Stat. 891, 962, 963, 976.)

AMENDMENTS

1984—Subsec. (b)(2)(C). Pub. L. 98-369, § 714(j)(1), substituted "nonperiodic distribution" for "distribution described in subparagraph (B)" and "subparagraph (A) or (B) (as the case may be) shall be applied by taking into account" for "the Secretary, in prescribing tables or procedures under paragraph (1), shall take into account", designated phrase "which is made by reason of a participant's death" as cl. (i) and added cl. (ii).

Subsec. (d)(1)(B)(iii). Pub. L. 98-369, § 714(j)(4), added the cl. (iii) relating to amounts subject to withholding under subchapter A of chapter 3.

Pub. L. 98-369, § 542(c), added the cl. (iii) relating to distributions described in section 404(k)(2). Directory lanugage that section (d)(1)(B) be amended by striking out "and" at the end of cl. (i) and substituting ", or" for the period at the end of cl. (ii) could not be executed in view of prior amendment by section 714(j)(4) of Pub. L. 98-369, which struck out "and" at the end of cl. (i) and substituted ", and" for the period at the end of cl. (ii).

Subsec. (d)(8). Pub. L. 98-369, § 714(j)(5), freed from withholding requirement any designated distribution which consists only of employer securities of the employer corporation (within the meaning of section 402(a)(3)) and cash (not in excess of $200) in lieu of fractional shares.

Subsec. (d)(12). Pub. L. 98-369, § 722(h)(4), added par. (12).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 542(c) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 542(d) of Pub. L. 98-369, set out as a note under section 404 of this title.

Amendment by section 714 of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 722(h)(4)(A) of Pub. L. 98-369 applicable to payments or distributions after Dec. 31, 1984, unless the payor elects to have such amendment apply to payments or distributions before Jan. 1, 1985, see section 722(h)(5)(B) of Pub. L. 98-369, set out as a note under section 643 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3402, 6047, 6652 of this title; title 5 section 8348.

§ 3406. Backup withholding

(a) Requirement to deduct and withhold

(1) In general

In the case of any reportable payment, if—

(A) the payee fails to furnish his TIN to the payor in the manner required,

(B) the Secretary notifies the payor that the TIN furnished by the payee is incorrect,

(C) there has been a notified payee underreporting described in subsection (c), or

(D) there has been a payee certification failure described in subsection (d),

then the payor shall deduct and withhold from such payment a tax equal to 20 percent of such payment.

(2) Subparagraphs (C) and (D) of paragraph (1) apply only to interest and dividend payments

Subparagraphs (C) and (D) of paragraph (1) shall apply only to reportable interest or dividend payments.

(b) Reportable payment, etc.

For purposes of this section—

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[2] So in original. There are two cls. designated "(iii)".

(1) Reportable payment

The term "reportable payment" means—

(A) any reportable interest or dividend payment, and

(B) any other reportable payment.

(2) Reportable interest or dividend payment

(A) In general

The term "reportable interest or dividend payment" means any payment of a kind, and to a payee, required to be shown on a return required under—

(i) section 6049(a) (relating to payments of interest),

(ii) section 6042(a) (relating to payments of dividends), or

(iii) section 6044 (relating to payments of patronage dividends) but only to the extent such payment is in money.

(B) Special rule for patronage dividends

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term "reportable interest or dividend payment" shall not include any payment to which section 6044 (relating to patronage dividends) applies unless 50 percent or more of such payment is in money.

(3) Other reportable payment

The term "other reportable payment" means any payment of a kind, and to a payee, required to be shown on a return required under—

(A) section 6041 (relating to certain information at source),

(B) section 6041A(a) (relating to payments of remuneration for services),

(C) section 6045 (relating to returns of brokers), or

(D) section 6050A (relating to reporting requirements of certain fishing boat operators), but only to the extent such payment is in money and represents a share of the proceeds of the catch.

(4) Whether payment is of reportable kind determined without regard to minimum amount

The determination of whether any payment is of a kind required to be shown on a return described in paragraph (2) or (3) shall be made without regard to any minimum amount which must be paid before a return is required.

(5) Exception for certain small payments

To the extent provided in regulations, the term "reportable payment" shall not include any payment which—

(A) does not exceed $10, and

(B) if determined for a 1-year period, would not exceed $10.

(6) Other reportable payments include payments described in section 6041(a) or 6041(A)(a) [3] only where aggregate for calendar year is $600 or more

Any payment of a kind required to be shown on a return required under section 6041(a) or 6041A(a) which is made during any calendar year shall be treated as a reportable payment only if—

(A) the aggregate amount of such payment and all previous payments described in such sections by the payor to the payee during such calendar year equals or exceeds $600,

(B) the payor was required under section 6041(a) or 6041A(a) to file a return for the preceding calendar year with respect to payments to the payee, or

(C) during the preceding calendar year, the payor made reportable payments to the payee with respect to which amounts were required to be deducted and withheld under subsection (a).

(7) Exception for certain window payments of interest, etc.

For purposes of subparagraphs (C) and (D) of subsection (a)(1), the term "reportable interest or dividend payment" shall not include any payment—

(A) in redemption of a coupon on a bearer instrument or in redemption of a United States savings bond, or

(B) to the extent provided in regulations, of interest on instruments similar to those described in subparagraph (A).

The preceding sentence shall not apply for purposes of determining whether there is payee underreporting described in subsection (c).

(c) Notified payee underreporting with respect to interest and dividends

(1) Notified payee underreporting

If—

(A) the Secretary determines with respect to any payee that there has been payee underreporting,

(B) at least 4 notices have been mailed by the Secretary to the payee (over a period of at least 120 days) with respect to the underreporting, and

(C) in the case of any payee who has filed a return for the taxable year, any deficiency of tax attributable to such failure has been assessed,

the Secretary may notify payors of reportable interest or dividend payments with respect to such payee of the requirement to deduct and withhold under subsection (a)(1)(C) (but not the reasons for the withholding under subsection (a)(1)(C)).

(2) Payee underreporting defined

For purposes of this section, there has been payee underreporting if for any taxable year the Secretary determines that—

(A) the payee failed to include in his return of tax under chapter 1 for such year any portion of a reportable interest or dividend payment required to be shown on such return, or

(B) the payee may be required to file a return for such year and to include a reportable interest or dividend payment in such return, but failed to file such return.

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[3] So in original. Probably should be "6041A(a)".

(3) Determination by secretary to stop (or not to start) withholding

(A) In general

If the Secretary determines that—

(i) there was no payee underreporting,

(ii) any payee underreporting has been corrected (and any tax, penalty, or interest with respect to the payee underreporting has been paid),

(iii) withholding under subsection (a)(1)(C) has caused (or would cause) undue hardship to the payee and it is unlikely that any payee underreporting by such payee will occur again, or

(iv) there is a bona fide dispute as to whether there has been any payee underreporting,

then the Secretary shall take the action described in subparagraph (B).

(B) Secretary to take action to stop (or not to start) withholding

For purposes of subparagraph (A), if at the time of the Secretary's determination under subparagraph (A)—

(i) no notice has been given under paragraph (1) to any payor with respect to the underreporting, the Secretary shall not give any such notice, or

(ii) if such notice has been given, the Secretary shall—

(I) provide the payee with a written certification that withholding under subsection (a)(1)(C) is to stop, and

(II) notify the applicable payors (and brokers) that such withholding is to stop.

(C) Time for taking action where notice to payor has been given

In any case where notice has been given under paragraph (1) to any payor with respect to any underreporting, if the Secretary makes a determination under subparagraph (A) during the 12-month period ending on October 15 of any calendar year—

(i) except as provided in clause (ii), the Secretary shall take the action described in subparagraph (B)(ii) to bring about the stopping of withholding no later than December 1 of such calendar year, or

(ii) in the case of—

(I) a no payee underreporting determination under clause (i) of subparagraph (A), or

(II) a hardship determination under clause (iii) of subparagraph (A),

such action shall be taken no later than the 45th day after the day on which the Secretary made the determination.

(D) Opportunity to request determination

The Secretary shall prescribe procedures under which—

(i) a payee may request a determination under subparagraph (A), and

(ii) the payee may provide information with respect to such request.

(4) Payor notifies payee of withholding because of payee underreporting

Any payor required to withhold any tax under subsection (a)(1)(C) shall, at the time such withholding begins, notify the payee of such withholding.

(5) Payee may be required to notify Secretary who his payors and brokers are

For purposes of this section, the Secretary may require any payee of reportable interest or dividend payments who is subject to withholding under subsection (a)(1)(C) to notify the Secretary of—

(A) all payors from whom the payee receives reportable interest or dividend payments, and

(B) all brokers with whom the payee has accounts which may involve reportable interest or dividend payments.

The Secretary may notify any such broker that such payee is subject to withholding under subsection (a)(1)(C).

(d) Interest and dividend backup withholding applies to new accounts and instruments unless payee certifies that he is not subject to such withholding

(1) In general

There is a payee certification failure unless the payee has certified to the payor, under penalty of perjury, that such payee is not subject to withholding under subsection (a)(1)(C).

(2) Special rules for readily tradable instruments

(A) In general

Subsection (a)(1)(D) shall apply to any reportable interest or dividend payment to any payee on any readily tradable instrument if (and only if) the payor was notified by a broker under subparagraph (B) or no certification was provided to the payor by the payee under paragraph (1) and—

(i) such instrument was acquired directly by the payee from the payor, or

(ii) such instrument is held by the payor as nominee for the payee.

(B) Broker notifies payor

If—

(i) a payee acquires any readily tradable instrument through a broker, and

(ii) with respect to such acquisition—

(I) the payee fails to furnish his TIN to the broker in the manner required under subsection (a)(1)(A),

(II) the Secretary notifies such broker before such acquisition that the TIN furnished by the payee is incorrect,

(III) the Secretary notifies such broker before such acquisition that such payee is subject to withholding under subsection (a)(1)(C), or

(IV) the payee does not provide a certification to such broker under subparagraph (C),

such broker shall, within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C), or (D) of subsection (a)(1), respectively.

(C) Time for payee to provide certification to broker

In the case of any readily tradable instrument acquired by a payee through a broker, the certification described in paragraph (1) may be provided by the payee to such broker—

(i) at any time after the payee's account with the broker was established and before the acquisition of such instrument, or

(ii) in connection with the acquisition of such instrument.

(3) Exception for existing accounts, etc.

This subsection and subsection (a)(1)(D) shall not apply to any reportable interest or dividend payment which is paid or credited—

(A) in the case of interest or any other amount of a kind reportable under section 6049, with respect to any account (whatever called) established before January 1, 1984, or with respect to any instrument acquired before January 1, 1984,

(B) in the case of dividends or any other amount reportable under section 6042, on any stock or other instrument acquired before January 1, 1984, or

(C) in the case of patronage dividends or other amounts of a kind reportable under section 6044, with respect to any membership acquired, or contract entered into, before January 1, 1984.

(4) Exception for readily tradable instruments acquired through existing brokerage accounts

Subparagraph (B) of paragraph (2) shall not apply with respect to a readily tradable instrument which was acquired through an account with a broker if—

(A) such account was established before January 1, 1984, and

(B) during 1983, such broker bought or sold instruments for the payee (or acted as a nominee for the payee) through such account.

The preceding sentence shall not apply with respect to any readily tradable instrument acquired through such account after the broker was notified by the Secretary that the payee is subject to withholding under subsection (a)(1)(C).

(e) Period for which withholding is in effect

(1) Failure to furnish TIN

In the case of any failure by a payee to furnish his TIN to a payor in the manner required, subsection (a) shall apply to any reportable payment made by such payor during the period during which the TIN has not been furnished in the manner required. The Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

(2) Notification of incorrect number

In any case in which the Secretary notifies the payor that the TIN furnished by the payee is incorrect, subsection (a) shall apply to any reportable payment made by such payor—

(A) after the close of the 30th day after the day on which the payor received such notification, and

(B) before the payee furnishes another TIN in the manner required.

(3) Notified payee underreporting described in subsection (c)

(A) In general

In the case of any notified payee underreporting described in subsection (c), subsection (a) shall apply to any reportable interest or dividend payment made—

(i) after the close of the 30th day after the day on which the payor received notification from the Secretary of such underreporting, and

(ii) before the stop date.

(B) Stop date

For purposes of this subsection, the term "stop date" means the determination effective date or, if later, the earlier of—

(i) the day on which the payor received notification from the Secretary under subsection (c)(3)(B) to stop withholding, or

(ii) the day on which the payor receives from the payee a certification provided by the Secretary under subsection (c)(3)(B).

(C) Determination effective date

For purposes of this subsection—

(i) In general

Except as provided in clause (ii), the determination effective date of any determination under subsection (c)(3)(A) which is made during the 12-month period ending on October 15 of any calendar year shall be the first January 1 following such October 15.

(ii) Determination that there was no underreporting; hardship

In the case of any determination under clause (i) or (iii) of subsection (c)(3)(A), the determination effective date shall be the date on which the Secretary's determination is made.

(4) Failure to provide certification that payee is not subject to withholding

(A) In general

In the case of any payee certification failure described in subsection (d)(1), subsection (a) shall apply to any reportable interest or dividend payment made during the period during which the certification described in subsection (d)(1) has not been furnished to the payor.

(B) Special rule for readily tradable instruments acquired through broker where notification

In the case of any readily tradable instrument acquired by the payee through a broker, the period described in subparagraph (A) shall start with payments to the payee made after the close of the 30th day after the payor receives notification from a broker under subsection (d)(2)(B).

(5) 30-day grace periods

(A) Start-up

If the payor elects the application of this subparagraph with respect to the payee, subsection (a) shall also apply to any reportable payment made during the 30-day period described in paragraph (2)(A), (3)(A), or (4)(B).

(B) Stopping

Unless the payor elects not to have this subparagraph apply with respect to the payee, subsection (a) shall also apply to any reportable payment made after the close of the period described in paragraph (1), (2), or (4) (as the case may be) and before the 30th day after the close of such period. A similar rule shall also apply with respect to the period described in paragraph (3)(A) where the stop date is determined under clause (i) or (ii) of paragraph (3)(B).

(C) Election of shorter grace period

The payor may elect a period shorter than the grace period set forth in subparagraph (A) or (B), as the case may be.

(f) Confidentiality of information

(1) In general

No person may use any information obtained under this section (including any failure to certify under subsection (d)) except for purposes of meeting any requirement under this section or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103.

(2) Cross reference

For provision providing for civil damages for violation of paragraph (1), see section 7431.

(g) Exceptions

(1) Payments to certain payees

Subsection (a) shall not apply to any payment made to—

(A) any organization or governmental unit described in subparagraph (B), (C), (D), (E), or (F) of section 6049(b)(4), or

(B) any other person specified in regulations.

(2) Amounts for which withholding otherwise required

Subsection (a) shall not apply to any amount for which withholding is otherwise required by this title.

(3) Exemption while waiting for TIN

The Secretary shall prescribe regulations for exemptions from the tax imposed by subsection (a) during the period during which a person is waiting for receipt of a TIN.

(h) Other definitions and special rules

For purposes of this section—

(1) Obviously incorrect number

A person shall be treated as failing to furnish his TIN if the TIN furnished does not contain the proper number of digits.

(2) Payee furnishes 2 incorrect TINs

If the payee furnishes the payor 2 incorrect TINs in any 3-year period, the payor shall, after receiving notice of the second incorrect TIN, treat the payee as not having furnished another TIN under subsection (e)(2)(B) until the day on which the payor receives notification from the Secretary that a correct TIN has been furnished.

(3) Joint payees

Except to the extent otherwise provided in regulations, any payment to joint payees shall be treated as if all the payment were made to the first person listed in the payment.

(4) Payor defined

The term "payor" means, with respect to any reportable payment, a person required to file a return described in paragraph (2) or (3) of subsection (b) with respect to such payment.

(5) Broker

(A) In general

The term "broker" has the meaning given to such term by section 6045(c)(1).

(B) Only 1 broker per acquisition

If, but for this subparagraph, there would be more than 1 broker with respect to any acquisition, only the broker having the closest contact with the payee shall be treated as the broker.

(C) Payor not treated as broker

In the case of any instrument, such term shall not include any person who is the payor with respect to such instrument.

(6) Readily tradable instrument

The term "readily tradable instrument" means—

(A) any instrument which is part of an issue any portion of which is traded on an established securities market (within the meaning of section 453(f)(5)), and

(B) except as otherwise provided in regulations prescribed by the Secretary, any instrument which is regularly quoted by brokers or dealers making a market.

(7) Original issue discount

To the extent provided in regulations, rules similar to the rules of paragraph (6) of section 6049(d) shall apply.

(8) Requirement of notice to payee

Whenever the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect, the Secretary shall at the same time furnish a copy of such notice to the payor, and the payor shall promptly furnish such copy to the payee.

(9) Requirement of notice to Secretary

If the Secretary notifies a payor under paragraph (1)(B) of subsection (a) that the TIN furnished by any payee is incorrect and such payee subsequently furnishes another TIN to the payor, the payor shall promptly notify the Secretary of the other TIN so furnished.

(10) Coordination with other sections

For purposes of section 31, this chapter (other than section 3402(n)), and so much of subtitle F (other than section 7205) as relates to this chapter, payments which are subject to withholding under this section shall be treated as if they were wages paid by an employer to an employee (and amounts deducted and withheld under this section shall be treated as if deducted and withheld under section 3402).

(i) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98-67, title I, § 104(a), Aug. 5, 1983, 97 Stat. 371, and amended Pub. L. 98-369, div. A, title I, § 152(a), title VII, § 722(h)(1), (2), July 18, 1984, 98 Stat. 691, 975.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-369, § 722(h)(2), substituted "(but not the reasons for the withholding under subsection (a)(1)(C))" for "(but not the reasons therefor)".

Subsec. (d)(2)(A). Pub. L. 98-369, § 722(h)(1)(A), added "the payor was notified by a broker under subparagraph (B) or" after "if (and only if)" in provisions preceding cl. (i), struck out cl. (i) which read "the payor was notified by a broker under subparagraph (B)," and redesignated cls. (ii) and (iii) as (i) and (ii), respectively.

Subsec. (d)(2)(B). Pub. L. 98-369, § 722(h)(1)(B), in amending subpar. (B) generally, reenacted cl. (i), in cl. (ii) added "with respect to such acquisition—", added subcls. (I) and (II), redesignated former subcls. (I) and (II) as (III) and (IV), respectively, and in subcl. (III) substituted "the Secretary notifies such broker" for "such broker is notified by the Secretary", and in provisions following cl. (ii) substituted "shall within such period as the Secretary may prescribe by regulations (but not later than 15 days after such acquisition), notify the payor that such payee is subject to withholding under subparagraph (A), (B), (C) or (D) of subsection (a)(1)," for "within 15 days after the date of the acquisition notify the payor that such payee is subject to withholding under subsection (a)(1)(D) (or subsection (a)(1)(C) in the case of a notification described in clause (ii)(II)."

Subsec. (e)(1). Pub. L. 98-369, § 152(a), added provision that the Secretary may require that a TIN required to be furnished under subsection (a)(1)(A) be provided under penalties of perjury only with respect to interest, dividends, patronage dividends, and amounts subject to broker reporting.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 152(b) of Pub. L. 98-369 provided that: "The amendment made by this section [amending subsec. (e) of this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 722(h)(1), (2) of Pub. L. 98-369 applicable as if included in amendments made by Interest and Dividend Tax Compliance Act of 1983, Pub. L. 98-67, see section 722(h)(5)(A) of Pub. L. 98-369, set out as a note under section 643 of this title.

EFFECTIVE DATE

Section applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as an Effective Date of 1983 Amendment note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31, 643, 6682, 6705, 7205, 7431 of this title.

[§§ 3451 to 3456. Repealed. Pub. L. 98-67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369]

REPEAL OF WITHHOLDING ON INTEREST AND DIVIDENDS

Pub. L. 98-67, title I, § 102(a)-(d), Aug. 5, 1983, 97 Stat. 369, provided that:

"(a) IN GENERAL.—Subtitle A of title III of the Tax Equity and Fiscal Responsibility Act of 1982 (relating to withholding of tax from interest and dividends) [subtitle A (§§ 301-308) of title III of Pub. L. 97-248, which enacted sections 3451 to 3456 of this title, amended sections 31, 274, 275, 643, 661, 3403, 3502, 3507, 6013, 6015, 6042, 6044, 6051, 6365, 6401, 6413, 6654, 6682, 7205, 7215, 7654, and 7701 of this title and enacted a provision set out as a note above] is hereby repealed as of the close of June 30, 1983.

"(b) CONFORMING AMENDMENT.—Except as provided in this section, the Internal Revenue Code of 1954 shall be applied and administered as if such subtitle A (and the amendments made by such subtitle A) had not been enacted.

"(c) REPEAL NOT TO APPLY TO AMOUNTS DEDUCTED AND WITHHELD BEFORE SEPTEMBER 2, 1983.—

"(1) IN GENERAL.—If, notwithstanding the repeal made by subsection (a) (and the provisions of subsection (b)), an amount is deducted and withheld before September 2, 1983, under subchapter B of chapter 24 of the Internal Revenue Code of 1954 (as in effect before its repeal by subsection (a)), the repeal made by subsection (a) (and the provisions of subsection (b)) shall not apply to the amount so deducted and withheld.

"(2) ELECTION TO HAVE PARAGRAPH (1) NOT APPLY.—Paragraph (1) shall not apply with respect to any payor who elects (at the time and in the manner prescribed by the Secretary of the Treasury or his delegate) to have paragraph (1) not apply.

"(d) ESTIMATED TAX PAYMENTS.—For purposes of determining the amount of any addition to tax under section 6654 of the Internal Revenue Code of 1954 with respect to any installment required to be paid before July 1, 1983, the amount of the credit allowed by section 31 of such Code for any taxable year which includes any portion of the period beginning July 1, 1983, and ending December 31, 1983, shall be increased by an amount equal to 10 percent of the aggregate amount of payments—

"(1) which are received during the portion of such taxable year after June 30, 1983, and before January 1, 1984, and

"(2) which (but for the repeal made by subsection (a)) would have been subject to withholding under subchapter B of chapter 24 of such Code (determined without regard to any exemption described in section 3452 of such subchapter B)."

CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

Sec.
3510. Credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984.

AMENDMENTS

1983—Pub. L. 98-67 repealed amendments made by section 307 of Pub. L. 97-248. See 1982 Amendment note below.

Pub. L. 98-21, title I, § 123(b)(2), Apr. 20, 1983, 97 Stat. 88, added item 3510.

§ 3501. Collection and payment of taxes

(a) General rule

The taxes imposed by this subtitle shall be collected by the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

(b) Taxes with respect to non-cash fringe benefits

The taxes imposed by this subtitle with respect to non-cash fringe benefits shall be collected (or paid) by the employer at the time and in the manner prescribed by the Secretary by regulations.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title V, § 531(d)(5), 98 Stat. 885.)

AMENDMENTS

1984—Pub. L. 98-369 designated existing provisions as subsec. (a), added heading, and added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

§ 3502. Nondeductibility of taxes in computing taxable income

[*See main edition for text*]

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369.)

AMENDMENTS

1983—Subsecs. (b), (c). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

§ 3507. Advance payment of earned income credit

[*See main edition for text of* (*a*)]

(b) Earned income eligibility certificate

For purposes of this title, an earned income eligibility certificate is a statement furnished by an employee to the employer which—

(1) certifies that the employee will be eligible to receive the credit provided by section 32 for the taxable year,

[*See main edition for text of* (*2*) *and* (*3*)]

For purposes of this section, a certificate shall be treated as being in effect with respect to a spouse if such a certificate will be in effect on the first status determination date following the date on which the employee furnishes the statement in question.

(c) Earned income advance amount

[*See main edition for text of* (*1*)]

(2) Advance amount tables

The tables referred to in paragraph (1)(B)—

[*See main edition for text of* (*A*)]

(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

(i) of not more than 11 percent of the first $5,000 of earned income, which

(ii) phases out between $6,500 and $11,000 of earned income, or

(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 32 as if it were a credit—

(i) of not more than 11 percent of the first $2,500 of earned income, which

(ii) phases out between $3,250 and $5,500 of earned income.

[*See main edition for text of* (*d*)]

(e) Furnishing and taking effect of certificates

For purposes of this section—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Change of status

(A) Requirement to revoke or furnish new certificate

If, after an employee has furnished an earned income eligibility certificate under this section, there has been a change of circumstances which has the effect of—

(i) making the employee ineligible for the credit provided by section 32 for the taxable year, or

(ii) causing an earned income eligibility certificate to be in effect with respect to the spouse of the employee,

the employee shall, within 10 days after such change in circumstances, furnish the employer with a revocation of such certificate or with a new certificate (as the case may be). Such a revocation (or such a new certificate) shall take effect under the rules provided by paragraph (1)(B) for a later certificate and shall be made in such form as the Secretary shall by regulations prescribe.

[*See main edition for text of* (*B*), (*4*) *and* (*5*)]

(As amended Pub. L. 98-67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369; Pub. L. 98-369, div. A, title IV, § 474(r)(30), title X, § 1042(d)(3), (4), July 18, 1984, 98 Stat. 845, 1044.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-369, § 474(r)(30), substituted "section 32" for "section 43".

Subsec. (c)(2)(B). Pub. L. 98-369, § 474(r)(30), substituted "section 32" for "section 43" in the provisions preceding cl. (i).

Subsec. (c)(2)(B)(i). Pub. L. 98-369, § 1042(d)(3), substituted "11 percent" for "10 percent".

Subsec. (c)(2)(B)(ii). Pub. L. 98-369, § 1042(d)(3), substituted "$6,500 and $11,000" for "$6,000 and $10,000".

Subsec. (c)(2)(C). Pub. L. 98-369, § 474(r)(30), substituted "section 32" for "section 43" in the provisions preceding cl. (i).

Subsec. (c)(2)(C)(i). Pub. L. 98-369, § 1042(d)(4), substituted "11 percent" for "10 percent".

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Subsec. (c)(2)(C)(ii). Pub. L. 98-369, § 1042(d)(4), substituted "$3,250 and $5,500" for "$3,000 and $5,000".

Subsec. (c)(3)(A)(i). Pub. L. 98-369, § 474(r)(30), substituted "section 32" for "section 43".

1983—Subsec. (d)(4). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(30) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 1042(d) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 1042(e) of Pub. L. 98-369, set out as a note under section 32 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32, 6012, 6051, 6302 of this title; title 42 sections 602, 1382a, 1383.

[§ 3510. Omitted]

CODIFICATION

Section, added Pub. L. 98-21, title I, § 123(b)(1), Apr. 20, 1983, 97 Stat. 88, which provided a credit for increased social security employee taxes and railroad retirement tier 1 employee taxes imposed during 1984, expired pursuant to section 123(b)(3) of Pub. L. 98-21 which provided that this section was applicable to remuneration paid during 1984.

Subtitle D—Miscellaneous Excise Taxes

Chapter Sec.
46. Golden parachute payments 4999

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, § 67(d)(2), July 18, 1984, 98 Stat. 587, added item for chapter 46.

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 6110, 6501, 6652, 6676, 6678, 7463, 7851 of this title.

CHAPTER 31—RETAIL EXCISE TAXES

Subchapter A—Special Fuels

§ 4041. Imposition of tax

(a) Diesel fuel and special motor fuels

(1) Diesel fuel

There is hereby imposed a tax of 15 cents a gallon on any liquid (other than any product taxable under section 4081)—

[*See main edition for text of* (*A*) *and* (*B*), (*2*) *and* (*3*); (*b*) *to* (*j*)]

(k) Fuels containing alcohol

(1) In general

Under regulations prescribed by the Secretary, in the case of the sale or use of any liquid at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3))—

(A) subsection (a)(1) shall be applied by substituting "9 cents" for "15 cents", and

(B) subsection (a)(2) shall be applied by substituting "3 cents" for "9 cents", and

(C) no tax shall be imposed by subsection (c).

[*See main edition for text of* (*2*) *and* (*3*)]

(*l*) Exemption for certain helicopter uses

No tax shall be imposed under this section on any liquid sold for use in, or used in, a helicopter for the purpose of—

(1) transporting individuals, equipment, or supplies in—

(A) the exploration for, or the development or removal of, hard minerals, or

(B) the exploration for oil or gas, or

(2) the planting, cultivation, cutting or transportation of, or caring for, trees (including logging operation),

but only if the helicopter does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to the Airport and Airway Improvement Act of 1982 during such use.

(m) Certain alcohol fuels

(1) In general

In the case of the sale or use of any partially exempt methanol or ethanol fuel—

(A) subsection (a)(2) shall be applied by substituting "4½ cents" for "9 cents", and

(B) no tax shall be imposed by subsection (c).

(2) Partially exempt methanol or ethanol fuel

The term "partially exempt methanol or ethanol fuel" means any liquid at least 85 percent of which consists of methanol, ethanol, or other alcohol produced from natural gas.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IX, §§ 911(a), 912(a), 913(a), title X, § 1018(a), 98 Stat. 1005, 1007, 1008, 1021.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 911(a), substituted "15 cents" for "9 cents".

Subsec. (k)(1). Pub. L. 98-369, § 912(a), in amending par. (1) generally, substituted "liquid" for "liquid fuel" in provisions preceding subpar. (A), in subpar. (A), substituted "subsection (a)(1) shall be applied by substituting '9 cents' for '15 cents', and" for "subsection (a) shall be applied by substituting '4 cents' for '9 cents' each place it appears, and", added subpar. (B), and redesignated former subpar. (B) as (C).

Subsec. (*l*)(1). Pub. L. 98-369, § 1018(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (m). Pub. L. 98-369, § 913(a), added subsec. (m).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 911(a) of Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

Amendment by section 912(a) of Pub. L. 98-369 effective Jan. 1, 1985, see section 912(g) of Pub. L. 98-369, set out as a note under section 40 of this title.

Section 913(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 40 and 4041 of this title] shall take effect on August 1, 1984."

Section 1018(c)(1) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (*l*)(1) of this section] shall take effect on April 1, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40, 4082, 4293, 6206, 6416, 6420, 6421, 6427, 9502, 9503 of this title.

Subchapter B—Heavy Trucks and Trailers

§ 4051. Imposition of tax on heavy trucks and trailers sold at retail

[See main edition for text of (a)]

(b) Separate purchase of truck or trailer and parts and accessories therefor

Under regulations prescribed by the Secretary—

[See main edition for text of (1) and (2)]

(3) Installers secondarily liable for tax

The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by paragraph (1).

[See main edition for text of (c)]

(d) Temporary reduction in tax on certain piggyback trailers

(1) In general

In the case of piggyback trailers or semitrailers sold within the 1-year period beginning on the date of the enactment of the Tax Reform Act of 1984, subsection (a) shall be applied by substituting "6 percent" for "12 percent".

(2) Piggyback trailers or semitrailers

For purposes of this subsection, the term "piggyback trailers or semitrailers" means any trailer or semitrailer—

(A) which is designed for use principally in connection with trailer-on-flatcar service by rail, and

(B)(i) both the seller and the purchaser of which are registered in a manner similar to registration under section 4222, and

(ii) with respect to which the purchaser certifies (at such time and in such form and manner as the Secretary prescribes by regulations) to the seller that such trailer or semitrailer—

(I) will be used, or resold for use, principally in connection with such service, or

(II) will be incorporated into an article which will be so used or resold.

(3) Additional tax where nonqualified use

If any piggyback trailer or semitrailer was subject to tax under subsection (a) at the 6 percent rate and such trailer or semitrailer is used or resold for use other than for a use described in paragraph (2)—

(A) such use or resale shall be treated as a sale to which subsection (a) applies,

(B) the amount of the tax imposed under subsection (a) on such sale shall be equal to the amount of the tax which was imposed on the first retail sale, and

(C) the person so using or reselling such trailer or semitrailer shall be liable for the tax imposed by subsection (a).

(e) Transitional rule

In the case of any article taxable under subsection (a) on which tax was imposed under section 4061(a),[1] subsection (a) shall be applied by substituting "2 percent" for "12 percent".

(As amended Pub. L. 98-369, div. A, title VII, § 734(g), title IX, § 921, July 18, 1984, 98 Stat. 980, 1009.)

REFERENCES IN TEXT

The date of the enactment of the Tax Reform Act of 1984, referred to in subsec. (d)(1), is the date of enactment of division A of Pub. L. 98-369, which was approved July 18, 1984.

Section 4061, referred to in subsec. (e), was repealed by Pub. L. 98-369, div. A, title VII, § 735(a)(1), July 18, 1984, 98 Stat. 980.

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98-369, § 734(g), substituted "The owners of the trade or business installing the parts or accessories shall be secondarily liable for the tax imposed by paragraph (1)" for "In addition to the owner, lessee, or operator of the vehicle, the owner of the trade or business installing the part or accessory shall be liable for the tax imposed by paragraph (1)".

Subsecs. (d), (e). Pub. L. 98-369, § 921, added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 736 of Pub. L. 98-369 provided that: "Except as otherwise provided in this subtitle, any amendment made by this subtitle [subtitle C, §§ 731 to 736, of title VII of div. A of Pub. L. 98-369, amending sections 48, 1366, 4051 to 4053, 4071 to 4073, 4081, 4082, 4216, 4218, 4221 to 4223, 4227, 4481, 6401, 6412, 6416, 6427, 6511, and 9502, repealing sections 4061 to 4063, enacting provisions set out as notes under section 4082, and amending provisions set out as notes under sections 4061 and 4081 of this title] shall take effect as if included in the provisions of the Highway Revenue Act of 1982 [Pub. L. 97-424] to which such amendment relates."

§ 4052. Definitions and special rules

[See main edition for text of (a)]

(b) Determination of price

(1) In general

In determining price for purposes of this subchapter—

(A) there shall be included any charge incident to placing the article in condition ready for use,

(B) there shall be excluded—

(i) the amount of the tax imposed by this subchapter,

(ii) if stated as a separate charge, the amount of any retail sales tax imposed by any State or political subdivision thereof or the District of Columbia, whether the liability for such tax is imposed on the vendor or vendee,

(iii) the fair market value (including any tax imposed by section 4071) at retail of any tires (not including any metal rim or rim base), and

(iv) the value of any component of such article if—

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[1] See References in Text note below.

(I) such component is furnished by the first user of such article, and

(II) such component has been used before such furnishing, and

[*See main edition for text of* (*C*), (*2*)]

(c) Certain combinations not treated as manufacture

(1) In general

For purposes of this subchapter (other than subsection (a)(3)(B)), a person shall not be treated as engaged in the manufacture of any article by reason of merely combining such article with any item listed in paragraph (2).

(2) Items

The items listed in this paragraph are any coupling device (including any fifth wheel), wrecker crane, loading and unloading equipment (including any crane, hoist, winch, or power liftgate), aerial ladder or tower, snow and ice control equipment, earthmoving, excavation and construction equipment, spreader, sleeper cab, cab shield, or wood or metal floor.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-369, div. A, title VII, §§ 731, 735(b)(2), July 18, 1984, 98 Stat. 976, 981.)

AMENDMENTS

1984—Subsec. (b)(1)(B)(iv). Pub. L. 98-369, § 731, added cl. (iv).

Subsec. (c). Pub. L. 98-369, § 735(b)(2), in amending subsec. (c) generally, designated existing provisions as par. (1), in par. (1) as so designated substituted "by reason of merely combining such article with any article listed in paragraph (2)" for "with any equipment or other item listed in section 4063(d)", and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

§ 4053. Exemptions

No tax shall be imposed by section 4051 on any of the following articles:

(1) Camper coaches bodies for self-propelled mobile homes

Any article designed—

(A) to be mounted or placed on automobile trucks, automobile truck chassis, or automobile chassis, and

(B) to be used primarily as living quarters or camping accommodations.

(2) Feed, seed, and fertilizer equipment

Any body primarily designed—

(A) to process or prepare seed, feed, or fertilizer for use on farms,

(B) to haul feed, seed, or fertilizer to and on farms,

(C) to spread feed, seed, or fertilizer on farms,

(D) to load or unload feed, seed, or fertilizer on farms, or

(E) for any combination of the foregoing.

(3) House trailers

Any house trailer.

(4) Ambulances, hearses, etc.

Any ambulance, hearse, or combination ambulance-hearse.

(5) Concrete mixers

Any article designed—

(A) to be placed or mounted on an automobile truck chassis or truck trailer or semitrailer chassis, and

(B) to be used to process or prepare concrete.

(6) Trash containers, etc.

Any box, container, receptacle, bin or other similar article—

(A) which is designed to be used as a trash container and is not designed for the transportation of freight other than trash, and

(B) which is not designed to be permanently mounted on or permanently affixed to an automobile truck chassis or body.

(7) Rail trailers and rail vans

Any chassis or body of a trailer or semitrailer which is designed for use both as a highway vehicle and a railroad car. For purposes of the preceding sentence, piggy-back trailer or semitrailer shall not be treated as designed for use as a railroad car.

(As amended Pub. L. 98-369, div. A, title VII, § 735(b)(1), July 18, 1984, 98 Stat. 981.)

AMENDMENTS

1984—Pub. L. 98-369 amended section generally, substituting provisions listing articles on which no tax under section 4051 shall be imposed for former provisions which stated that no tax be imposed under section 4051 on any article specified in subsection (a) of section 4063 and that the exemptions provided by section 4221(a) extended to the tax imposed by section 4051.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4221, 4222 of this title.

CHAPTER 32—MANUFACTURERS EXCISE TAXES

Subchapter A—Automotive and Related Items

Part	
I.	Gas guzzlers.
II.	Tires.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title VII, § 735(a)(3), (c)(5)(B), July 18, 1984, 98 Stat. 980, 982, substituted "Gas guzzlers" for "Motor vehicles" in item for part I, and struck out "and tubes" in item for part II analysis comprising subchapter A.

PART I—GAS GUZZLERS

Sec.
[4061 to 4063. Repealed.]
4064. Gas guzzlers tax.[1]

AMENDMENTS

1984—Pub. L. 98-369, div. A, title VII, § 735(a)(2), July 18, 1984, 98 Stat. 980, substituted "GAS GUZZLERS" for "MOTOR VEHICLES" in part I heading, and struck out items 4061 "Imposition of tax", 4062 "Articles classified as parts", and 4063 "Exemptions" in the analysis of sections comprising part I, and substituted "guzzlers" for "guzzler" in item 4064.

[§§ 4061 to 4063. Repealed. Pub. L. 98–369, div. A, title VII, § 735(a)(1), July 18, 1984, 98 Stat. 980]

Section 4061, acts Aug. 16, 1954, ch. 736, 68A Stat. 481; Mar. 30, 1955, ch. 18, § 3(a)(2), 69 Stat. 14; Aug. 12, 1955, ch. 865, § 1, 69 Stat. 709; Mar. 29, 1956, ch. 115, § 3(a)(2), 70 Stat. 66; June 29, 1956, ch. 462, title II, § 203, 70 Stat. 388; Mar. 29, 1957, Pub. L. 85-12, § 3(a)(1), 71 Stat. 9; June 30, 1958, Pub. L. 85-475, § 3(a)(1), 72 Stat. 259; June 30, 1959, Pub. L. 86-75, § 3(a)(1), 73 Stat. 157; June 30, 1960, Pub. L. 86-564, title II § 202(a)(1), 74 Stat. 290; June 29, 1961, Pub. L. 87-61, title II, § 204, 75 Stat. 126; June 30, 1961, Pub. L. 87-72, § 3(a)(1), 75 Stat. 193; June 28, 1962, Pub. L. 87-508, § 3(a)(1), 76 Stat. 114; June 29, 1963, Pub. L. 88-52, § 3(a)(1), 77 Stat. 72; June 30, 1964, Pub. L. 88-348, § 2(a)(1), 78 Stat. 237; June 21, 1965, Pub. L. 89-44, title II, § 201, 79 Stat. 136; Mar. 15, 1966, Pub. L. 89-368, title II, § 201(a), 80 Stat. 65; Apr. 12, 1968, Pub. L. 90-285, § 1(a)(1), 82 Stat. 92; June 28, 1968, Pub. L. 90-364, title I, § 105(a)(1), 82 Stat. 265; Dec. 30, 1969, Pub. L. 91-172, title VII, § 702(a)(1), 83 Stat. 660; Dec. 31, 1970, Pub. L. 91-605, title III, § 303(a)(3), (4), 84 Stat. 1743; Dec. 31, 1970, Pub. L. 91-614, title II, § 201(a)(1), 84 Stat. 1843; Dec. 10, 1971, Pub. L. 92-178, title IV, § 401(a)(1), (g) (1), 85 Stat. 530, 533; May 5, 1976, Pub. L. 94-280, title III, § 303(a)(3), (4), 90 Stat. 456; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Nov. 6, 1978, Pub. L. 95-599, title V, § 502(a)(2), (3), 92 Stat. 2756; Jan. 6, 1983, Pub. L. 97-424, title V, § 512(a)(1), (2), 96 Stat. 2173, 2174, related to the imposition of tax on trucks, buses, tractors, etc.

Section 4062, acts Aug. 16, 1954, ch. 736, 68A Stat. 482; Oct. 13, 1964, Pub. L. 88-653, § 5(b), 78 Stat. 1086; Nov. 13, 1966, Pub. L. 89-809, title II, § 212(a), 80 Stat. 1585; Dec. 10, 1971, Pub. L. 92-178, title IV, § 401(g)(2)(A)-(C), 85 Stat. 533, related to articles classified as parts.

Section 4063, acts Aug. 16, 1954, ch. 736, 68A Stat. 482; Aug. 11, 1955, ch. 805, § 1(g), 69 Stat. 690; Oct. 13, 1964, Pub. L. 88-653, § 5(a), 78 Stat. 1086; June 21, 1965, Pub. L. 89-44, title VIII, § 801(a), 79 Stat. 157; Dec. 30, 1969, Pub. L. 91-172, title IX, § 931(a), 83 Stat. 724; Dec. 31, 1970, Pub. L. 91-614, title III, § 303(a), 84 Stat. 1845; Dec. 10, 1971, Pub. L. 92-178, title IV, § 401(a)(2), (g)(3), 85 Stat. 530, 533; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), title XXI, § 2109(a), 90 Stat. 1834, 1904; Nov. 6, 1978, Pub. L. 95-600, title VII, § 701(ff)(1), 92 Stat. 2924; Nov. 9, 1978, Pub. L. 95-618, title II, § 231(a), 92 Stat. 3187; Jan. 6, 1983, Pub. L. 97-424, title V, § 512(a)(3), 96 Stat. 2174, related to exemptions from tax.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective as if included in the provisions of the Highway Revenue Act of 1982, Pub. L. 97-424, see section 736 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 4051 of this title.

FLOOR STOCK PROVISIONS

Pub. L. 97-424, title V, §§ 521-523, Jan. 6, 1983, 96 Stat. 2184-2186, as amended by Pub. L. 98-369, div. A, title VII, §§ 732(b), 734(a), (d), (e), July 18, 1984, 98 Stat. 997, 980, provided that:

"SEC. 521. FLOOR STOCKS TAXES.

"(a) 1983 TAX ON GASOLINE.—On gasoline subject to tax under section 4081 which, on April 1, 1983, is held by a dealer for sale, there is hereby imposed a floor stocks tax at the rate of 5 cents a gallon (4 cents a gallon in the case of a gallon of gasohol, as defined in section 4081(c)).

"(b) 1984 TAX ON TIRES.—On any article which would be subject to tax under section 4071(a) if sold by the manufacturer, producer, or importer on or after January 1, 1984, which on January 1, 1984, is held by a dealer and has not been used and is intended for sale, there shall be imposed a floor stocks tax equal to the excess of the amount of tax which would be imposed on such article if it were sold by the manufacturer, producer, or importer after January 1, 1984, over the amount of tax imposed under section 4071(a) on the sale of such article by the manufacturer, producer, or importer.

"(c) OVERPAYMENT OF FLOOR STOCKS TAXES.—Section 6416 shall apply in respect of the floor stocks taxes imposed by this section, so as to entitle, subject to all provisions of section 6416, any person paying such floor stocks taxes to a credit or refund thereof for any of the reasons specified in section 6416. All other provisions of law, including penalties, applicable with respect to the taxes imposed by section 4081 or 4071(a) (whichever is appropriate) shall apply to the floor stocks taxes imposed by this section.

"(d) DUE DATE OF TAXES.—The taxes imposed by this section shall be paid at such time after—

"(1) May 15, 1983, in the case of the tax imposed by subsection (a), or

"(2) February 15, 1984, in the case of the tax imposed by subsection (b),

as may be prescribed by the Secretary of the Treasury or his delegate.

"(e) TRANSFER OF FLOOR STOCKS TAXES TO HIGHWAY TRUST FUND.—For purposes of determining the amount transferred to the Highway Trust Fund for any period, the taxes imposed by this section shall be treated as if they were imposed by section 4081 or 4071 of the Internal Revenue Code of 1954, whichever is appropriate.

"SEC. 522. FLOOR STOCKS REFUNDS.

"(a) GENERAL RULE.—

"(1) IN GENERAL.—Where, before the day after the date of the enactment of this Act [Jan. 6, 1983], any tax-repealed article has been sold by the manufacturer, producer, or importer and on such day is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the tax paid by such manufacturer, producer, or importer on his sale of the article if—

"(A) claim for such credit or refund is filed with the Secretary of the Treasury or his delegate before October 1, 1983, based on a request submitted to the manufacturer, producer, or importer before July 1, 1983, by the dealer who held the article in respect of which the credit or refund is claimed, and

"(B) on or before October 1, 1983, reimbursement has been made to the dealer by the manufacturer, producer, or importer in an amount equal to the tax paid on the article or written consent has been obtained from the dealer to allowance of the credit or refund.

"(2) LIMITATION ON ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to credit or refund under paragraph (1) unless he has in his possession such evidence of the inventories with respect to which the credit or refund is claimed as may be required by regulations prescribed by the Secretary of the Treasury or his delegate under this subsection.

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[1] So in original. Does not conform to section catchline.

"(3) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4061, 4071, or 4091 (whichever is appropriate) shall, insofar as applicable and not inconsistent with paragraphs (1) and (2) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the tax.

"(b) REFUNDS WITH RESPECT TO CERTAIN CONSUMER PURCHASES OF TRUCKS AND TRAILERS.—

"(1) IN GENERAL.—Except as otherwise provided in paragraph (2), where after December 2, 1982, and before the day after the date of the enactment of this Act [Jan. 6, 1983], a tax-repealed article on which tax was imposed by section 4061(a) has been sold to an ultimate purchaser, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer of such article an amount equal to the tax paid by such manufacturer, producer, or importer on his sale of the article.

"(2) LIMITATION OF ELIGIBILITY FOR CREDIT OR REFUND.—No manufacturer, producer, or importer shall be entitled to a credit or refund under paragraph (1) with respect to an article unless—

"(A) he has in his possession such evidence of the sale of the article to an ultimate purchaser, and of the reimbursement of the tax to such purchaser, as may be required by regulations prescribed by the Secretary of the Treasury or his delegate under this subsection.

"(B) claim for such credit or refund is filed with the Secretary of the Treasury or his delegate before October 1, 1983, based on information submitted to the manufacturer, producer, or importer before July 1, 1983, by the person who sold the article (in respect of which the credit or refund is claimed) to the ultimate purchaser, and

"(C) on or before October 1, 1983, reimbursement has been made to the ultimate purchaser in an amount equal to the tax paid on the article.

"(3) OTHER LAWS APPLICABLE.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4061(a) shall, insofar as applicable and not inconsistent with paragraph (1) or (2) of this subsection, apply in respect of the credits and refunds provided for in paragraph (1) to the same extent as if the credits or refunds constituted overpayments of the tax.

"(c) CERTAIN USES BY MANUFACTURER, ETC.—In the case of any article which was subject to the tax imposed by section 4061(a) (as in effect on the day before the date of the enactment of this Act [Jan. 6, 1983]), any tax paid by reason of section 4218(a) (relating to use by manufacturer or importer considered sale) with respect to a tax-repealed article shall be deemed to be an overpayment of such tax if tax was imposed on such article after December 2, 1982, by reason of section 4218(a).

"(d) TRANSFER OF FLOOR STOCKS REFUNDS FROM HIGHWAY TRUST FUND.—The Secretary of the Treasury shall pay from time to time from the Highway Trust fund into the general fund of the Treasury amounts equivalent to the floor stocks refunds made under this section.

"SEC. 523. DEFINITIONS AND SPECIAL RULE.

"(a) IN GENERAL.—For purposes of this subtitle—

"(1) The term 'dealer' includes a wholesaler, jobber, distributor, or retailer.

"(2) An article shall be considered as 'held by a dealer' if title thereto has passed to such dealer (whether or not delivery to him has been made) and if for purposes of consumption title to such article or possession thereof has not at any time been transferred to any person other than a dealer.

"(3) The term 'tax-repealed article' means any article on which a tax was imposed by section 4061(a), 4061(b), or section 4091 as in effect on the day before the date of the enactment of this Act [Jan. 6, 1983], and which will not be subject to tax under section 4061(a), 4061(b), or 4091 as in effect on the day after the date of the enactment of this Act.

"(4) Except as otherwise expressly provided herein, any reference in this subtitle [sections 521 to 523 of Pub. L. 97-424] to a section or other provision shall be treated as a reference to a section or other provision of the Internal Revenue Code of 1954.

"(b) 1984 EXTENSION OF FLOOR STOCKS REFUND TO TIRES.—

"(1) IN GENERAL.—In the case of an article on which a tax was imposed by section 4071(a) as in effect on December 31, 1983, and which will not be subject to tax under such section (or will be subject to a lower rate of tax under such section) as in effect on January 1, 1984, such article shall be treated as a tax-repealed article for purposes of subsection (a) of section 522. Any tread rubber which was subject to tax under section 4071(a)(4) as in effect on December 31, 1983, and which on January 1, 1984, is part of a retread tire which is held by a dealer and has not been used and is intended for sale shall be treated as a tax-repealed article for purposes of subsection (a) of section 522.

"(2) ALLOWANCE OF REFUND.—Except as provided in paragraph (3), in the case of a tax-repealed article to which paragraph (1) applies, subsection (a) of section 522 shall be applied—

"(A) by treating January 1, 1984, as the day after the date of the enactment of this Act [Jan. 6, 1983], and

"(B) by substituting '1984' for '1983' each place it appears in paragraph (1) of such subsection (a).

"(3) SPECIAL RULES FOR TIRES TAXED AT LOWER RATE AFTER JANUARY 1, 1984.—In the case of any tire which is a tax-repealed article solely by reason of the amendment made by subsection (a)(1) or (d) of section 734 of the Tax Reform Act of 1984 [amending section 523(b)(1) of Pub. L. 97-424 set out above]—

"(A) the amount of the credit or refund under subsection (a) shall not exceed the excess of—

"(i) the tax imposed with respect to such tire by section 4071(a) as in effect on December 31, 1983, over

"(ii) the tax which would have been imposed with respect to such tire by section 4071(a) on January 1, 1984, and'

"(B) paragraph (1) of section 522(a) shall be applied—

"(i) by substituting 'January 1, 1985' for 'July 1, 1983', and

"(ii) by substituting 'April 1, 1985' for 'October 1, 1983' each place it appears."

PART II—TIRES

Sec.

4073. Exemption for tires with internal wire fastening.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title VII, § 735(c)(5)(A), (C), July 18, 1984, 98 Stat. 982, struck out "AND TUBES" from heading of part II, and substituted "Exemption for tires with internal wire fastening" for "Exemptions" in item 4073.

§ 4071. Imposition of tax

(a) Imposition and rate of tax

There is hereby imposed on tires of the type used on highway vehicles, if wholly or in part made of rubber, sold by the manufacturer, producer, or importer a tax at the following rates:

If the tire weighs:	The rate of tax is:
Not more than 40 lbs	No tax.
More than 40 lbs. but not more than 70 lbs.	15 cents per lb. in excess of 40 lbs.
More than 70 lbs. but not more than 90 lbs.	$4.50 plus 30 cents per lb. in excess of 70 lbs.
More than 90 lbs..............	$10.50 plus 50 cents per lb. in excess of 90 lbs.

(b) Special rule for manufacturers who sell at retail

Under regulations prescribed by the Secretary, if the manufacturer, producer, or importer of any tire delivers such tire to a retail store or retail outlet of such manufacturer, producer, or importer, he shall be liable for tax under subsection (a) in respect of such tire in the same manner as if it had been sold at the time it was delivered to such retail store or outlet. This subsection shall not apply to an article in respect to which tax has been imposed by subsection (a). Subsection (a) shall not apply to an article in respect of which tax has been imposed by this subsection.

(c) Determination of weight

For purposes of this section, weight shall be based on total weight exclusive of metal rims or rim bases. Total weight of the articles shall be determined under regulations prescribed by the Secretary.

[See main edition for text of (d)]

(e) Tires on imported articles

For the purposes of subsection (a), if an article imported into the United States is equipped with tires—

(1) the importer of the article shall be treated as the importer of the tires with which such article is equipped, and

(2) the sale of the article by the importer thereof shall be treated as the sale of the tires with which such article is equipped.

This subsection shall not apply with respect to the sale of an automobile bus chassis or an automobile bus body.

[(f) Repealed. Pub. L. 98–369, div. A, title VII, § 735(c)(2)(D), July 18, 1984, 98 Stat. 982]

(Aug. 16, 1954, ch. 736, 68A Stat. 482; June 29, 1956, ch. 462, title II, § 204(a), 70 Stat. 388; Apr. 22, 1960, Pub. L. 86–440, § 1(a), 74 Stat. 80; June 29, 1961, Pub. L. 87–61, title II, § 202, 75 Stat. 124; Aug. 1, 1966, Pub. L. 89–523, § 1(a), 80 Stat. 331; Dec. 31, 1970, Pub. L. 91–605, title III, § 303(a)(5), 84 Stat. 1744; Dec. 10, 1971, Pub. L. 92–178, title IV, § 401(f), 85 Stat. 533; May 5, 1976, Pub. L. 94–280, title III, § 303(a)(5), 90 Stat. 456; Oct. 4, 1976, Pub. L. 94–455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Nov. 6, 1978, Pub. L. 95–599, title V, § 502(a)(4), 92 Stat. 2756; Apr. 1, 1980, Pub. L. 96–222, title I, § 108(c)(2)(C), 94 Stat. 227; Dec. 24, 1980, Pub. L. 96–596, § 4(a)(1), 94 Stat. 3475; Dec. 24, 1980, Pub. L. 96–598, § 1(d), 94 Stat. 3486; Jan. 6, 1983, Pub. L. 97–424, title V, §§ 514(a), 516(a)(2), 96 Stat. 2181, 2182; July 18, 1984, Pub. L. 98–369, div. A, title VII, § 735(c)(2), 98 Stat. 982.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98–369, § 735(c)(2)(A), in the first sentence, struck out "or inner tube" after "any tire", and struck out "or tube" after "such tire" in two places.

Subsec. (c). Pub. L. 98–369, § 735(c)(2)(B), substituted "on total weight exclusive" for "on total weight, except that in the case of tires such total weight shall be exclusive".

Subsec. (e). Pub. L. 98–369, § 735(c)(2)(C), struck out "or inner tubes (other than bicycle tires and inner tubes)" after "equipped with tires" in provisions preceding par. (1), struck out "and inner tubes" before "with which such article is equipped" in pars. (1) and (2), and substituted "sale of an automobile bus chassis or an automobile bus body" for "sale of an article if a tax on such sale is imposed under section 4061 or if such article is an automobile bus chassis or an automobile bus body" in provisions following par. (2).

Subsec. (f). Pub. L. 98–369, § 735(c)(2)(D), struck out subsec. (f) which related to imported recapped or retreaded United States tires.

1983—Subsec. (a). Pub. L. 97–424, § 514(a), amended subsec. (a) generally, which had formerly provided: "There is hereby imposed upon the following articles, if wholly or in part of rubber, sold by the manufacturer, producer, or importer, a tax at the following rates:

"(1) Tires of the type used on highway vehicles, 9.75 cents a pound.

"(2) Other tires (other than laminated tires to which paragraph (5) applies), 4.875 cents a pound.

"(3) Inner tubes, for tires, 10 cents a pound.

"(4) Tread rubber, 5 cents a pound.

"(5) Laminated tires (not of the type used on highway vehicles) which consist wholly of scrap rubber from used tire casings with an internal metal fastening agent, 1 cent a pound."

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Section 514(b) of Pub. L. 97–424 provided that: "The amendment made by this section [amending subsec. (a) of this section] shall apply to articles sold on or after January 1, 1984".

§ 4072. Definitions

[See main edition for text of (a)]

(b) Tires of the type used on highway vehicles

For purposes of this part, the term "tires of the type used on highway vehicles" means tires of the type used on—

(1) motor vehicles which are highway vehicles, or

(2) vehicles of the type used in connection with motor vehicles which are highway vehicles.

[(c) Redesignated (b)]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title VII, § 735(c)(3), 98 Stat. 982.)

AMENDMENTS

1984—Subsecs. (b), (c). Pub. L. 98–369 redesignated subsec. (c) as (b) and struck out former subsec. (b) which defined the term "tread rubber".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section

736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

§ 4073. Exemption for tires with internal wire fastening

The tax imposed by section 4071 shall not apply to tires of extruded tiring with an internal wire fastening agent.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 735(c)(4), 98 Stat. 982.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "Exemption for tires with internal wire fastening" for "Exemptions" in section catchline, and in text struck out subsec. (a) relating to exemption from tax on tires not more than 20 inches in diameter and not more than $1\frac{3}{8}$ inches in cross section, struck out subsec. (c) relating to exemption from tax on tread rubber in certain cases, and struck out the letter designation "(b)" and subsection heading for subsec. (b) thereby designating text of former subsec. (b) as the entire text of the section.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

PART III—PETROLEUM PRODUCTS

SUBPART A—GASOLINE

§ 4081. Imposition of tax

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Gasoline mixed with alcohol

(1) In general

Under regulations prescribed by the Secretary, subsection (a) shall be applied—

(A) by substituting "3 cents" for "9 cents" in the case of the sale of any gasohol (the gasoline in which was not taxed under subparagraph (B)), and

(B) by substituting "$3\frac{1}{3}$ cents" for "9 cents" in the case of the sale of any gasoline for use in producing gasohol.

For purposes of this paragraph, the term "gasohol" means any mixture of gasoline if at least 10 percent of such mixture is alcohol.

(2) Later separation of gasoline

If any person separates the gasoline from a mixture of gasoline and alcohol on which tax was imposed under subsection (a) at a rate equivalent to 3 cents a gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such gasoline. The amount of tax imposed on any sale of such gasoline by such person shall be $5\frac{1}{3}$ cents a gallon.

(3) Alcohol defined

For purposes of this subsection, the term "alcohol" includes methanol and ethanol but does not include alcohol produced from petroleum, natural gas, or coal (including peat). Such term does not include alcohol with a proof of less than 190 (determined without regard to any added denaturants).

[*See main edition for text of* (*4*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 732(a)(1), (2), title IX, § 912(b), (f), 98 Stat. 976, 977, 1007.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-369, § 912(b)(A), (B) substituted "3 cents" for "4 cents" in subpar. (A), and "$3\frac{1}{3}$ cents" for "$4\frac{4}{9}$ cents" in subpar. (B).

Pub. L. 98-369, § 732(a)(1), struck out "by substituting '4 cents' for '9 cents' in the case of the sale of any gasoline" after "shall be applied" in the matter preceding subpar. (A), substituted "by substituting '4 cents' for '9 cents' in the case of the sale of any gasohol (the gasoline in which was not taxed under subparagraph (B)), and" for "in a mixture with alcohol, if at least 10 percent of the mixture is alcohol, or" in subpar. (A), substituted "by substituting '$4\frac{4}{9}$ cents' for '9 cents' in the case of the sale of any gasoline for use in producing gasohol" for "for use in producing a mixture at least 10 percent of which is alcohol" in subpar. (B) and added definition of "gasohol" after subpar. (B).

Subsec. (c)(2). Pub. L. 98-369, § 912(b)(A), (C), substituted "3 cents" for "4 cents" and "$5\frac{1}{3}$ cents" for "$4\frac{4}{9}$ cents".

Pub. L. 98-369, § 732(a)(2), substituted "at a rate equivalent to 4 cents a gallon" for "at a rate of 4 cents a gallon", and "$4\frac{4}{9}$ cents a gallon" for "5 cents a gallon".

Subsec. (c)(3). Pub. L. 98-369, § 912(f), substituted "coal (including peat)" for "coal".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 732(a)(1), (2) of Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

Amendment by section 912(b), (f) of Pub. L. 98-369 effective Jan. 1, 1985, see section 912(g) of Pub. L. 98-369, set out as a note under section 40 of this title.

EXTENSION OF PAYMENT DUE DATE FOR CERTAIN FUEL TAXES

Section 518 of Pub. L. 97-424, as amended by Pub. L. 98-369, div. A, title VII, § 734(i), July 18, 1984, 98 Stat. 980, provided that:

"(a) 14-DAY EXTENSION.—The Secretary shall prescribe regulations which permit any qualified person whose liability for tax under section 4081 of the Internal Revenue Code of 1954 is payable with respect to semi-monthly periods to pay such tax on or before the day which is 14 days after the close of such semimonthly period if such payment is made by wire transfer to, except as provided in regulations prescribed by the Secretary of the Treasury or his delegate, any Federal Reserve Bank.

[*See main edition for text of* (*b*) *and* (*c*)]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40, 4041, 4082, 4083, 4101, 4221, 6206, 6412, 6416, 6420, 6421, 6427, 9502, 9503 of this title; title 46 section 13106.

§ 4082. Definitions

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Wholesale distributor

As used in subsection (a), the term "wholesale distributor" includes—

(1) any person who—

(A) sells gasoline to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks, or

(B) purchases gasoline from a producer and distributes such gasoline to 10 or more retail gasoline stations under common management with such person,

(2) but only if such person elects to register with respect to the tax imposed by section 4081.

Such term does not include any person who (excluding the term "wholesale distributor" from subsection (a)) is a producer or importer.

(e) Certain sellers of gasoline for use in noncommercial aviation treated as producers

For purposes of this subpart, the term "producer" includes any person who regularly sells gasoline to owners, lessees, or operators of aircraft for use as fuel in such aircraft in noncommercial aviation (as defined in section 4041(c)(4)).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, §§ 733(a), 734(c)(1), 98 Stat. 977, 979.)

Amendments

1984—Subsec. (d). Pub. L. 98-369, § 733(a), in amending subsec. (d) generally, redesignated existing provisions of par. (1) as subpar. (A) and added subpar. (B), and in par. (2) added "but only if such person" before "elects".

Subsec. (e). Pub. L. 98-369, § 734(c)(1), added subpar. (e).

Effective Date of 1984 Amendment

Section 733(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (d) of this section] shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act [July 18, 1984]."

Section 734(c)(3) of Pub. L. 98-369 provided that: "The amendments made by this subsection [amending sections 4082 and 6427 of this title] shall take effect on the first day of the first calendar quarter beginning after the date of the enactment of this Act [July 18, 1984]."

Subpart C—Special Provisions Applicable to Petroleum Products

§ 4102. Inspection of records by local officers

Section Referred to in Other Sections

This section is referred to in section 6113 of this title.

Subchapter D—Recreational Equipment

PART I—SPORTING GOODS

Sec.
4162. Definitions; treatment of certain resales.

Amendments

1984—Pub. L. 98-369, div. A, title X, § 1015(d), July 18, 1984, 98 Stat. 1019, added item 4162.

§ 4161. Imposition of tax

(a) Sport fishing equipment

(1) Imposition of tax

There is hereby imposed on the sale of any article of sport fishing equipment by the manufacturer, producer, or importer a tax equal to 10 percent of the price for which so sold.

(2) 3 percent rate of tax for electric outboard motors and sonar devices suitable for finding fish

(A) In general

In the case of an electric outboard motor or a sonar device suitable for finding fish, paragraph (1) shall be applied by substituting "3 percent" for "10 percent".

(B) $30 limitation on tax imposed on sonar devices suitable for finding fish

The tax imposed by paragraph (1) on any sonar device suitable for finding fish shall not exceed $30.

(3) Parts or accessories sold in connection with taxable sale

In the case of any sale by the manufacturer, producer, or importer of any article of sport fishing equipment, such article shall be treated as including any parts or accessories of such article sold on or in connection therewith or with the sale thereof.

(b) Bows and arrows, etc.

(1) Bows and arrows

There is hereby imposed on the sale by the manufacturer, producer, or importer—

(A) of any bow which has a draw weight of 10 pounds or more, and

(B) of any arrow which—

(i) measures 18 inches overall or more in length, or

(ii) measures less than 18 inches overall in length but is suitable for use with a bow described in subparagraph (A). [1]

a tax equal to 11 percent of the price for which so sold.

(2) Parts and accessories

There is hereby imposed upon the sale by the manufacturer, producer, or importer—

(A) of any part or accessory suitable for inclusion in or attachment to a bow or arrow described in paragraph (1), and

(B) of any quiver suitable for use with arrows described in paragraph (1),

a tax equivalent to 11 percent of the price for which so sold.

(3) Coordination with subsection (a)

No tax shall be imposed under this subsection with respect to any article taxable under subsection (a).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, §§ 1015(a), 1017(a), (b), 98 Stat. 1017, 1021.)

Amendments

1984—Subsec. (a). Pub. L. 98-369, § 1015(a), in amending subsec. (a) generally, designated existing provisions as par. (1) and in par. (1) as so designated, substituted "any article of sport fishing equipment by the manufacturer, producer, or importer" for "fishing rods, creels, reels, and artificial lures, baits, and flies (including parts or accessories of such articles sold on or in connection therewith, or with the sale thereof) by the manufacturer, producer, or importer", and added pars. (2) and (3).

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[1] So in original. The period probably should be a comma.

Subsec. (b)(1)(B). Pub. L. 98-369, § 1017(a), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(2)(A). Pub. L. 98-369, § 1017(b)(2), struck out "(other than a fishing reel)" after "part or accessory".

Subsec. (b)(3). Pub. L. 98-369, § 1017(b)(1), added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1015(a) of Pub. L. 98-369 applicable with respect to articles sold by the manufacturer, producer, or importer after Sept. 30, 1984, see section 1015(e) of Pub. L. 98-369, set out as an Effective Date note under section 4162 of this title.

Section 1017(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsec. (b) of this section] shall apply with respect to articles sold by the manufacturer, producer, or importer after September 30, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4162, 6302, 9504 of this title; title 16 sections 669b, 777.

§ 4162. Definitions; treatment of certain resales

(a) Sport fishing equipment defined

For purposes of this part, the term "sport fishing equipment" means—

(1) fishing rods and poles (and component parts therefor),

(2) fishing reels,

(3) fly fishing lines, and other fishing lines not over 130 pounds test,

(4) fishing spears, spear guns, and spear tips,

(5) items of terminal tackle, including—

  (A) leaders,
  (B) artificial lures,
  (C) artificial baits,
  (D) artificial flies,
  (E) fishing hooks,
  (F) bobbers,
  (G) sinkers,
  (H) snaps,
  (I) drayles, and
  (J) swivels,

but not including natural bait or any item of terminal tackle designed for use and ordinarily used on fishing lines not described in paragraph (3), and

(6) the following items of fishing supplies and accessories—

  (A) fish stringers,
  (B) creels,
  (C) tackle boxes,
  (D) bags, baskets, and other containers designed to hold fish,
  (E) portable bait containers,
  (F) fishing vests,
  (G) landing nets,
  (H) gaff hooks,
  (I) fishing hood disgorgers, and
  (J) dressing for fishing lines and artificial flies,

(7) fishing tip-ups and tilts,

(8) fishing rod belts, fishing rodholders, fishing harnesses, fish fighting chairs, fishing outriggers, and fishing downriggers,

(9) electric outboard boat motors, and

(10) sonar devices suitable for finding fish.

(b) Sonar device suitable for finding fish

For purposes of this part, the term "sonar device suitable for finding fish" shall not include any sonar device which is—

(1) a graph recorder,

(2) a digital type,

(3) a meter readout, or

(4) a combination graph recorder or combination meter readout.

(c) Treatment of certain resales

(1) In general

If—

(A) the manufacturer, producer, or importer sells any article taxable under section 4161(a) to any person,

(B) the constructive sale price rules of section 4216(b) do not apply to such sale, and

(C) such person (or any other person) sells such article to a related person with respect to the manufacturer, producer, or importer,

then such related person shall be liable for tax under section 4161 in the same manner as if such related person were the manufacturer of the article.

(2) Credit for tax previously paid

If—

(A) tax is imposed on the sale of any article by reason of paragraph (1), and

(B) the related person establishes the amount of the tax which was paid on the sale described in paragraph (1)(A),

the amount of the tax so paid shall be allowed as a credit against the tax imposed by reason of paragraph (1).

(3) Related person

For purposes of this subsection, the term "related person" has the meaning given such term by section 168(e)(4)(D).

(4) Regulations

Except to the extent provided in regulations, rules similar to the rules of this subsection shall also apply in cases (not described in paragraph (1)) in which intermediaries or other devices are used for purposes of reducing the amount of the tax imposed by section 4161(a).

(Added Pub. L. 98-369, div. A, title X, § 1015(b), July 18, 1984, 98 Stat. 1017.)

EFFECTIVE DATE

Section 1015(e) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 4161 and 6302 of this title] shall apply with respect to articles sold by the manufacturer, producer, or importer after September 30, 1984.

"(2) TREATMENT OF CERTAIN RESALES.—Subsection (c) of section 4162 of the Internal Revenue Code of 1954 (relating to treatment of certain resales), as added by this section, shall apply to sales by related persons (as defined in such subsection) after the date of the enactment of this Act [July 18, 1984]."

Subchapter F—Special Provisions Applicable to Manufacturers Tax

§ 4216. Definition of price

[See main edition for text of (a)]

(b) Constructive sale price

(1) In general

If an article is—

[See main edition for text of (A) to (C)]

the tax under this chapter shall (if based on the price for which the article is sold) be computed on the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. In the case of an article sold at retail, the computation under the preceding sentence shall be on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. This paragraph shall not apply if paragraph (2) applies.

(2) Special rule

If an article is sold at retail or to a retailer, and if—

(A) the manufacturer, producer, or importer of such article regularly sells such articles at retail or to retailers, as the case may be,

(B) the manufacturer, producer, or importer of such article regularly sells such articles to one or more wholesale distributors in arm's length transactions and he establishes that his prices in such cases are determined without regard to any tax benefit under this paragraph, and

(C) the transaction is an arm's length transaction,

the tax under this chapter shall (if based on the price for which the article is sold) be computed on whichever of the following prices is the lower: (i) the price for which such article is sold, or (ii) the highest price for which such articles are sold by such manufacturer, producer, or importer to wholesale distributors (other than special dealers).

(3) Constructive sale price in case of certain articles

Except as provided in paragraph (4), for purposes of paragraph (1), if—

[See main edition for text of (A) and (B)]

the constructive sale price of such article shall be 90 percent of the lowest price for which such distributor regularly sells such article in arm's-length transactions to such independent retailers. The price determined under this paragraph shall not be adjusted for any exclusion (except for the tax imposed on such article) or readjustments under subsections (a) and (e) and under section 6416(b)(1). If both this paragraph and paragraph (4) apply with respect to an article, the constructive sale price for such article shall be the lower of the constructive sale price determined under this paragraph or paragraph (4).

[See main edition for text of (4)]

(5) Definition of lowest price

For purposes of paragraphs (1) and (3), the lowest price shall be determined—

(A) without requiring that any given percentage of sales be made at that price, and

(B) without including any fixed amount to which the purchaser has a right as a result of contractual arrangements existing at the time of the sale.

[(6) Redesignated (5)]

[See main edition for text of (c) to (e)]

[(f) Repealed. Pub. L. 98–369, div. A, title VII, § 735(c)(6)(F), July 18, 1984, 98 Stat. 983]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title VII, § 735(c)(6), 98 Stat. 982.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98–369, § 735(c)(6)(A), in provisions following subpar. (C) struck out "(other than an article the sale of which is taxable under section 4061(a))" in the second sentence, before "the computation under the preceding sentence", and struck out provision that in the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the computation under the first sentence of this paragraph shall be a percentage (not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade (determined without regard to any individual manufacturer's or producer's cost).

Subsec. (b)(2)(B) to (D). Pub. L. 98–369, § 735(c)(6)(B), added "and" at the end of subpar. (B), redesignated subpar. (D) as (C), and struck out former subpar. (C) which related to articles upon which tax is imposed under section 4061(a) of this title.

Subsec. (b)(3). Pub. L. 98–369, § 735(c)(6)(D), substituted "paragraph (4)" for "paragraphs (4) and (5)".

Subsec. (b)(5), (6). Pub. L. 98–369, § 735(c)(6)(C), (E), redesignated par. (6) as par. (5), in par. (5) as so redesignated, substituted "(1) and (3)" for "(1), (3) and (5)", and struck out former par. (5) which related to constructive sale price in the case of automobiles, trucks, etc.

Subsec. (f). Pub. L. 98–369, § 735(c)(6)(F), struck out subsec. (f) which related to certain trucks incorporating used components.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4052, 4162, 4217, 4223, 6416 of this title.

§ 4218. Use by manufacturer or importer considered sale

(a) General rule

If any person manufactures, produces, or imports an article (other than a tire taxable under section 4071) and uses it (otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him), then he shall be liable for tax under this chapter in the same manner as if such article were sold by him. This subsection shall not apply in the case of gasoline used by any person, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him. For the purpose of applying the first sentence of this subsection to coal taxable under section 4121, the words "(otherwise than as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him)" shall be disregarded.

(b) Tires

If any person manufactures, produces, or imports a tire taxable under section 4071, and sells it on or in connection with the sale of any article, or uses it, then he shall be liable for tax under this chapter in the same manner as if such article were sold by him.

(c) Computation of tax

Except as provided in section 4223(b), in any case in which a person is made liable for tax by the preceding provisions of this section, the tax (if based on the price for which the article is sold) shall be computed on the price at which such or similar articles are sold, in the ordinary course of trade, by manufacturers, producers, or importers, thereof, as determined by the Secretary.

[(d) Repealed. Pub. L. 98-369, div. A, title VII, § 735(c)(7)(C), July 18, 1984, 98 Stat. 983]

[(e) Redesignated (c)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 735(c)(7), 98 Stat. 983.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 735(c)(7)(D), substituted "(other than a tire taxable under section 4071)" for "(other than an article specified in subsection (b), (c), or (d))".

Subsec. (b). Pub. L. 98-369, § 735(c)(7)(A), (B), struck out "and tubes" after "Tires" in heading, and in text substituted "If" for "Except as provided in subsection (d), if", and struck out "or inner tube" before "taxable under section 4071".

Subsec. (c). Pub. L. 98-369, § 735(c)(7)(C), redesignated subsec. (e) as (c). Former subsec. (c), which related to automotive parts and accessories, was struck out.

Subsec. (d). Pub L. 98-369, § 735(c)(7)(C), struck out subsec. (d) which related to bicycle tires and tubes.

Subsec. (e). Pub. L. 98-369, § 735(c)(7)(C), redesignated subsec. (e) as (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4223 of this title.

Subchapter G—Exemptions, Registration, Etc.

§ 4221. Certain tax-free sales

(a) General rule

Under regulations prescribed by the Secretary, no tax shall be imposed under this chapter (other than under section 4121) on the sale by the manufacturer (or under section 4051 on the first retail sale) of an article—

[*See main edition for text of* (*1*) *to* (5)]

but only if such exportation or use is to occur before any other use. Paragraphs (4) and (5) shall not apply to the tax imposed by section 4064. In the case of taxes imposed by section 4051, 4071, or 4081, paragraphs (4) and (5) shall not apply on and after October 1, 1988.

[*See main edition for text of* (*b*)]

(c) Manufacturer relieved from liability in certain cases

In the case of any article sold free of tax under this section (other than a sale to which subsection (b) applies), and in the case of any article sold free of tax under section 4053(a)(6) or 4083, if the manufacturer in good faith accepts a certification by the purchaser that the article will be used in accordance with the applicable provisions of law, no tax shall thereafter be imposed under this chapter in respect of such sale by such manufacturer.

(d) Definitions

For purposes of this section—

(1) Manufacturer

The term "manufacturer" includes a producer or importer of an article, and, in the case of the tax imposed by section 4051, includes the retailer with respect to the first retail sale.

[*See main edition for text of* (*2*) *to* (*5*)]

(6) Use in further manufacture

An article shall be treated as sold for use in further manufacture if—

(A) such article is sold for use by the purchaser as material in the manufacture or production of, or as a component part of, another article taxable under this chapter to be manufactured or produced by him; or

(B) in the case of gasoline taxable under section 4081, such gasoline is sold for use by the purchaser, for nonfuel purposes, as a material in the manufacture or production of another article to be manufactured or produced by him.

[*See main edition for text of* (*7*)]

(e) Special rules

[*See main edition for text of* (*1*)]

(2) Tires

(A) Tax-free sales

Under regulations prescribed by the Secretary, no tax shall be imposed under section 4071 on the sale by the manufacturer of a tire if—

(i) such tire is sold for use by the purchaser for sale on or in connection with the sale of another article manufactured or produced by such purchaser; and

[*See main edition for text of* (*ii*)]

(B) Proof

Where a tire has been sold free of tax under this paragraph, this paragraph shall cease to apply unless, within the 6-moth period which begins on the date of the sale by him (or, if earlier on the date of the shipment by him), the manufacturer of such tire receives proof that the other article referred to in clause (ii) of subparagraph (A) has been sold in a manner which satisfies the requirements of such clause (ii) (including in the case of a sale for export, proof of export of such other article).

(C) Subsection (a)(1) does not apply

Paragraph (1) of subsection (a) shall not apply with respect to the tax imposed under section 4071 on the sale of a tire.

(3) Tires used on intercity, local, and school buses

Under regulations prescribed by the Secretary, the tax imposed by section 4071 shall not apply in the case of tires sold for use by the purchaser on or in connection with a qualified bus.

[(4) to (6) Repealed. Pub. L. 98-369, div. A, title VII, § 735(c)(8)(G), July 18, 1984, 98 Stat. 983]

(As amended Pub. L. 98-369, div. A, title VII, § 735(c)(8), July 18, 1984, 98 Stat. 983.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 735(c)(8)(A), added "(or under section 4051 on the first retail sale)".

Subsec. (c). Pub. L. 98-369, § 735(c)(8)(B), substituted "section 4053(a)(6)" for "section 4063(a)(6) or (7), 4063(b), 4063(e),".

Subsec. (d)(1). Pub. L. 98-369, § 735(c)(8)(C), added ", and, in the case of the tax imposed by section 4051, includes the retailer with respect to the first retail sale".

Subsec. (d)(6). Pub. L. 98-369, § 735(c)(8)(D)(i), struck out provision at end that for purposes of subparagraph (B), the rebuilding of a part or accessory which is exempt from tax under section 4063(c) shall not constitute the manufacture or production of such part or accessory.

Subsec. (d)(6)(A). Pub. L. 98-369, § 735(c)(8)(D)(ii), (iv), struck out "(other than an article referred to in subparagraph (B))" after "such article", and added "or" at the end thereof.

Subsec. (d)(6)(B), (C). Pub. L. 98-369, § 735(c)(8)(D)(i), (iii), redesignated subpar. (C) as (B) and struck out former subpar. (B) which related to parts or accessories taxable under former section 4061(b) of this title.

Subsec. (e)(2). Pub. L. 98-369, § 735(c)(8)(E), (F), struck out "and tubes" from heading, and in text struck out "or inner tube" and "or tube", as the case may be, after "tire" wherever appearing.

Subsec. (e)(3) to (6). Pub. L. 98-369, § 735(c)(8)(G), added par. (3), struck out par. (4) which related to bicycle tires or tubes sold to bicycle manufacturers in general, the definition of a bicycle tire, and proof, struck out par. (5) which related to tires, tubes and tread rubber used on intercity, local, and school buses, and struck out par. (6) which related to bus parts and accessories.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4041, 4222, 4223, 6416, 6421, 6427 of this title; title 15 section 2052.

§ 4222. Registration

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Registration in the case of certain other exemptions

The provisions of this section may be extended to, and made applicable with respect to, the exemptions provided by sections 4053(a)(6), 4064(b)(1)(C), 4083, and 4182(b), and the exemptions authorized under section 4293 in respect of the taxes imposed by this chapter, to the extent provided by regulations prescribed by the Secretary.

[*See main edition for text of* (*e*)]

(As amended Pub. L. 98-369, div. A, title VII, § 735(c)(9), July 18, 1984, 98 Stat. 983.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 substituted "4053(a)(6)" for "4063(a)(7), 4063(b), 4063(e)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4051, 4052 of this title.

§ 4223. Special rules relating to further manufacture

[*See main edition for text of* (*a*)]

(b) Computation of tax

If the manufacturer or producer referred to in subsection (a) incurs liability for tax under this chapter on his sale or use of an article referred to in subsection (a) and the tax is based on the price for which the article is sold, the article shall be treated as having been sold by him—

(1) at the price for which the article was sold by him (or, where the tax is on his use of the article, at the price referred to in section 4218(c)); or

[*See main edition for text of* (*2*)]

For purposes of this subsection, the price for which the article was sold shall be determined as provided in section 4216. For purposes of paragraph (2) no adjustment or readjustment shall be made in such price by reason of any discount, rebate, allowance, return or repossession of a container or covering, or otherwise. An election under paragraph (2) shall be made in the return reporting the tax applicable to the sale or use of the article, and may not be revoked.

(As amended Pub. L. 98-369, div. A, title VII, § 735(c)(10), July 18, 1984, 98 Stat. 983.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-369 substituted "4218(c)" for "section 4218(e)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

§ 4227. Cross references

[*See main edition for text of* (*1*)]

(2) For credit for taxes on tires, see section 6416(c).[1]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 735(c)(11), 98 Stat. 983.)

REFERENCES IN TEXT

Section 6416(c), referred to in par. (2), which related to credit for taxes paid on tires or inner tubes, was repealed by Pub. L. 98-369, div. A, title VII, § 735(c)(13)(E), July 18, 1984, 98 Stat. 984, and former subsec. (e) of section 6416 which related to refunds to exporter or shipper was redesignated subsec. (c).

AMENDMENTS

1984—Par. (2). Pub. L. 98-369 struck out "and tubes" after "on tires".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(5) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

CHAPTER 33—FACILITIES AND SERVICES

REPEAL OF SUBCHAPTER B

Table of subchapters for chapter 33 amended by striking out the item relating to subchapter B dealing with Communications, effective January 1, 1982, see Pub. L. 90-364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843. Repeal of item B was not executed in view of the amendment to section 4251 of this title by Pub. L. 96-499, Pub. L. 97-34, Pub. L. 97-248, and Pub. L. 98-369, extending the tax imposed to amounts paid pursuant to bills first rendered before Jan. 1, 1988.

Subchapter B—Communications

REPEAL

This subchapter, relating to the tax on communication, was repealed by Pub. L. 90-364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1982. In the case of communications services rendered before November 1, 1981, for which a bill has not been rendered before January 1, 1982, a bill shall be treated as having been first rendered on December 31, 1981. Repeal of this subchapter was not executed in view of the amendment to section 4251 of this title by Pub. L. 96-499, Pub. L. 97-34, Pub. L. 97-248, and Pub. L. 98-369, extending the tax imposed to amounts paid pursuant to bills first rendered before Jan. 1, 1988.

§ 4251. Imposition of tax

[*See main edition for text of* (a)]

(b) Definitions

For purposes of subsection (a)—

[*See main edition for text of* (*1*)]

(2) Applicable percentage

The term "applicable percentage" means—

With respect to amount paid pursuant to bills first rendered:	The percentage is:
During 1983, 1984, 1986, or 1987	3
During 1988 or thereafter	0.

[*See main edition for text of* (c)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 26, 98 Stat. 507.)

REPEAL

This subchapter, relating to the tax on communications, was repealed by Pub. L. 90-364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1982. In the case of communications services rendered before November 1, 1981, for which a bill has not been rendered before January 1, 1982, a bill shall be treated as having been first rendered on December 31, 1981.

Pub. L. 96-499, title XI, § 1151, Dec. 5, 1980, 94 Stat. 2694; Pub. L. 97-34, title VIII, § 821, Aug. 13, 1981, 95 Stat. 351; Pub. L. 97-248, title II, § 282(a), Sept. 3, 1982, 96 Stat. 568; Pub. L. 98-369, div. A, title I, § 26, July 18, 1984, 98 Stat. 507, amended section 4251 of this title, relating to the imposition of the tax on communications, extending the tax applicable under such section to amounts paid pursuant to bills first rendered before Jan. 1, 1988, without amending Pub. L. 90-364, title I, § 105(b)(3), June 28,

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[1] See References in Text note below.

1968, 82 Stat. 266, which, as amended, had repealed this subchapter, effective with respect to amounts paid pursuant to bills first rendered on or after Jan. 1, 1982.

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-369 substituted "During 1983, 1984, 1986, or 1987" for "During 1983, 1984, or 1985" in the item relating to an applicable percentage of 3 and substituted "During 1988 or thereafter" for "During 1986 or thereafter" in the item relating to an applicable percentage of 0.

§ 4252. Definitions

REPEAL

This subchapter, relating to the tax on communications was repealed by Pub. L. 90-364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1982. In the case of communications services rendered before November 1, 1981, for which a bill has not been rendered before January 1, 1982, a bill shall be treated as having been first rendered on December 31, 1981. Repeal of this subchapter was not executed in view of the amendment to section 4251 of this title by Pub. L. 96-499, Pub. L. 97-34, Pub. L. 97-248, and Pub. L. 98-369, extending the tax imposed to amounts paid pursuant to bills first rendered before Jan. 1, 1988.

§ 4253. Exemptions

REPEAL

This subchapter, relating to the tax on communications, was repealed by Pub. L. 90-364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1982. In the case of communications services rendered before November 1, 1981, for which a bill has not been rendered before January 1, 1982, a bill shall be treated as having been first rendered on December 31, 1981. Repeal of this subchapter was not executed in view of the amendment to section 4251 of this title by Pub. L. 96-499, Pub. L. 97-34, Pub. L. 97-248, and Pub. L. 98-369, extending the tax imposed to amounts paid pursuant to bills first rendered before Jan. 1, 1988.

§ 4254. Computation of tax

REPEAL

This subchapter, relating to the tax on communications was repealed by Pub. L. 90-364, title I, § 105(b)(3), June 28, 1968, 82 Stat. 266, as amended by Pub. L. 91-172, title VII, § 702(b)(3), Dec. 30, 1969, 83 Stat. 660; Pub. L. 91-614, title II, § 201(b)(3), Dec. 31, 1970, 84 Stat. 1843, effective with respect to amounts paid pursuant to bills first rendered on or after January 1, 1982. In the case of communications services rendered before November 1, 1981, for which a bill has not been rendered before January 1, 1982, a bill shall be treated as having been first rendered on December 31, 1981. Repeal of this subchapter was not executed in view of the amendment to section 4251 of this title by Pub. L. 96-499, Pub. L. 97-34, Pub. L. 97-248, and Pub. L. 98-369, extending the tax imposed to amounts paid pursuant to bills first rendered before Jan. 1, 1988.

Subchapter C—Transportation by Air

PART I—PERSONS

§ 4261. Imposition of tax

[*See main edition for text of* (a) *to* (d)]

(e) Exemption for certain helicopter uses

No tax shall be imposed under subsection (a) or (b) on air transportation by helicopter for the purpose of—

(1) transporting individuals, equipment, or supplies in—

(A) the exploration for, or the development or removal of, hard minerals, or

(B) the exploration for oil or gas, or

(2) the planting, cultivation, cutting, or transportation of, or caring for, trees (including logging operations),

but only if the helicopter does not take off from, or land at, a facility eligible for assistance under the Airport and Airway Development Act of 1970, or otherwise use services provided pursuant to the Airport and Airway Improvement Act of 1982 during such use.

[*See main edition for text of* (*f*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1018(b), 98 Stat. 1021.)

AMENDMENTS

1984—Subsec. (e)(1). Pub. L. 98-369 amended par. (1) generally, designating existing provisions as subpar. (A) and adding subpar. (B).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1018(c)(2) of Pub. L. 98-369 provided that: "The amendment made by subsection (b) [amending this section] shall apply to transportation beginning after March 31, 1984, but shall not apply to any amount paid on or before such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4041, 4263, 4281, 4282, 6415, 7275, 9502 of this title.

PART II—PROPERTY

§ 4271. Imposition of tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4041, 4281, 4282, 6415, 9502 of this title.

CHAPTER 34—POLICIES ISSUED BY FOREIGN INSURERS

§ 4371. Imposition of tax

There is hereby imposed, on each policy of insurance, indemnity bond, annuity contract, or policy of reinsurance issued by any foreign insurer or reinsurer, a tax at the following rates:

[*See main edition for text of* (*1*)]

(2) Life insurance, sickness, and accident policies, and annuity contracts

1 cent on each dollar, or fractional part thereof, of the premium paid on the policy of life, sickness, or accident insurance, or annuity contract, unless the insurer is subject to tax under section 813; and

[*See main edition for text of* (*3*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title II, § 211(b)(23), 98 Stat. 757.)

AMENDMENTS

1984—Par. (2). Pub. L. 98-369 substituted "section 813" for "section 819".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

CHAPTER 35—TAXES ON WAGERING

Subchapter C—Miscellaneous Provisions

§ 4423. Inspection of books

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4405, 4414, 7612 of this title.

CHAPTER 36—CERTAIN OTHER EXCISE TAXES

Subchapter D—Tax on Use of Certain Vehicles

§ 4481. Imposition of tax

(a) Imposition of tax

A tax is hereby imposed on the use of any highway motor vehicle which (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds at the rate specified in the following table:

Taxable gross weight:	Rate of tax:
At least 55,000 pounds, but not over 75,000 pounds.	$100 per year plus $22 for each 1,000 pounds (or fraction thereof) in excess of 55,000 pounds.
Over 75,000 pounds	$550.

[*See main edition for text of* (*b*)]

(c) Proration of tax

(1) Where first use occurs after first month

If in any taxable period the first use of the highway motor vehicle is after the first month in such period, the tax shall be reckoned proportionately from the first day of the month in which such use occurs to and including the last day in such taxable period.

(2) Where vehicle destroyed or stolen

(A) In general

If in any taxable period a highway motor vehicle is destroyed or stolen before the first day of the last month in such period and not subsequently used during such taxable period, the tax shall be reckoned proportionately from the first day of the month in such period in which the first use of such highway motor vehicle occurs to and including the last day of the month in which such highway motor vehicle was destroyed or stolen.

(B) Destroyed

For purposes of subparagraph (A), a highway motor vehicle is destroyed if such vehicle is damaged by reason of an accident or other casualty to such an extent that it is not economic to rebuild.

[*See main edition for text of* (*d*) *and* (*e*)]

(Added June 29, 1956, ch. 462, title II, § 206(a), 70 Stat. 390, and amended June 29, 1961, Pub. L. 87-61, title II, § 203(a), (b)(1), (2)(A), (B), 75 Stat. 124; Dec. 31, 1970, Pub. L. 91-605, title III, § 303(a)(7), (8), 84 Stat. 1744; May 5, 1976, Pub. L. 94-280, title III, § 303(a)(7), (8), 90 Stat. 456; Nov. 6, 1978, Pub. L. 95-599, title V, § 502(a)(6), (7), 92 Stat. 2756; Jan. 6, 1983, Pub. L. 97-424, title V, §§ 513(a), (d), 516(a)(4), 96 Stat. 2177, 2179, 2182; July 18, 1984, Pub. L. 98-369, div. A, title VII, § 734(f), title IX, § 901(a), 98 Stat. 980, 1003.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 901(a), in amending subsec. (a) generally, substituted "55,000" for "33,000" in provisions preceding table, struck out heading "(1) In general", substituted table provisions for former table which provided:

Taxable gross weight		Rate of tax
At least	But less than	
33,000 pounds	55,000	$50 a year, plus $25 for each 1,000 pounds or fraction thereof in excess of 33,000 pounds.
55,000 pounds	80,000	$600 a year, plus the applicable rate for each 1,000 pounds or fraction thereof in excess of 55,000 pounds
80,000 pounds or more	....	The maximum tax a year.

and struck out par. (2) which had provided applicable rates and maximum taxes for taxable periods beginning July 1, 1984 through 1988 or thereafter.

Pub. L. 98-369, § 734(f), struck out the following sentence from subsec. (a), as subsec. (a) was in effect before the amendments made by section 513(a) of Pub. L. 97-424: "In case of the taxable period beginning on July 1, 1984, and ending on September 30, 1984, the tax shall be at the rate of 75 cents for such period for each 1,000 pounds of taxable gross weight or fraction thereof." See 1983 Amendment note below.

1983—Subsec. (a). Pub. L. 97-424, § 513(a), substituted "at least 33,000 pounds at the rate specified in the following table:" for "more than 26,000 pounds, at the rate of $3.00 a year for each 1,000 pounds of taxable gross weight or fraction thereof.", added pars. (1) and (2).

Subsec. (c). Pub. L. 97-424, § 513(d), designated existing provisions as par. (1) and added par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 734 of Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

Section 901(c) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (a) of this section] (and the provisions of subsection (b) [set out as a note below]) shall take effect on July 1, 1984."

SPECIAL RULES IN THE CASE OF CERTAIN OWNER-OPERATORS

Section 901(b) of Pub. L. 98-369 provided that:

"(1) SPECIAL RULE FOR TAXABLE PERIOD BEGINNING ON JULY 1, 1984.—In the case of a small owner-operator, the amount of the tax imposed by section 4481 of the Internal Revenue Code of 1954 on the use of any highway motor vehicle subject to tax under section 4481(a) of such Code (as amended by subsection (a)) for the taxable period which begins on July 1, 1984, shall be the lesser of—

"(A) $3 for each 1,000 pounds of taxable gross weight (or fraction thereof), or

"(B) the amount of the tax which would be imposed under such section 4481(a) without regard to this paragraph.

"(2) EXEMPTION FOR VEHICLES USED FOR LESS THAN 5,000 MILES (AND CERTAIN OTHER AMENDMENTS) TO TAKE EFFECT ON JULY 1, 1984.—In the case of a small owner-operator, notwithstanding subsection (f)(2) of section 513 of the Highway Revenue Act of 1982 [section 513(f)(2) of Pub. L. 97-424, set out as an Effective Date of 1983 Amendment note below], the amendments made by subsections (b), (c), and (d) of such section [amending sections 4481 to 4483 of this title] shall take effect on July 1, 1984.

"(3) SMALL OWNER-OPERATOR DEFINED.—For purposes of this subsection, the term 'small owner-operator' has the meaning given such term by section 513(f)(2) of the Highway Revenue Act of 1982.

"(4) TAXABLE GROSS WEIGHT.—For purposes of this subsection, the term 'taxable gross weight' has the same meaning as when used in section 4481 of the Internal Revenue Code of 1954."

STUDIES RELATING TO HEAVY VEHICLE USE TAX

Part I [§§ 931 to 934] of subtitle D of title IX of div. A of Pub. L. 98-369 provided that:

"Sec. 931. Whether heavy vehicles bear fair share of highway costs.

"The Secretary of Transportation shall conduct a study of whether highway motor vehicles with taxable gross weights of 80,000 pounds or more bear their fair share of the costs of the highway system.

"Sec. 932. Trans-border trucking.

"The Secretary of Transportation shall conduct a study to determine the significance of the tax imposed by section 4481 of the Internal Revenue Code of 1954 (relating to tax on use of certain vehicles) on trans-border trucking operations.

"Sec. 933. Weight-distance taxes.

"The Secretary of Transportation shall conduct a study to evaluate the feasibility and ability of weight-distance truck taxes to provide the greatest degree of equity among highway users, to ease the costs of compliance of such taxes, and to improve the efficiency by which such taxes might be administered. Such study shall also include an evaluation of the evasion potential for weight-distance taxes and an assessment of the benefits to interstate commerce of replacing all Federal truck taxes (other than fuel taxes) with a weight-distance tax.

"Sec. 934. Reports, etc.

"(a) CONSULTATION WITH TREASURY.—Studies conducted under this part shall be conducted in consultation with the Secretary of the Treasury.

"(b) REPORT.—Not later than October 1, 1987, the Secretary of Transportation shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on each study conducted under this part together with such recommendations as the Secretary may deem advisable."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4482, 4483, 6156, 6302, 9503 of this title; title 23 section 141; title 49 section 10530.

§ 4482. Definitions

SPECIAL RULES IN THE CASE OF SMALL OWNER-OPERATORS

Amendment by section 513(c) of Pub. L. 97-424 effective July 1, 1984, in the case of a small owner-operator, notwithstanding section 513(f)(2) of Pub. L. 97-424, see section 901(b)(2) of Pub. L. 98-369, set out as a note under section 4481 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 49 section 10530.

§ 4483. Exemptions

[See main edition for text of (a) to (c)]

(d) Exemption for trucks used for less than 5,000 miles on public highways

[See main edition for text of (1) to (4)]

(5) 7,500-miles exemption for agricultural vehicles

(A) In general

In the case of an agricultural vehicle, paragraphs (1) and (2) shall be applied by substituting "7,500" for "5,000" each place it appears.

(B) Definitions

For purposes of this paragraph—

(i) Agricultural vehicle

The term "agricultural vehicle" means any highway motor vehicle—

(I) used primarily for farming purposes, and

(II) registered (under the laws of the State in which such vehicle is required to be registered) as a highway motor vehicle used for farming purposes.

(ii) Farming purposes

The term "farming purposes" means the transporting of any farm commodity to or from a farm or the use directly in agricultural production.

(iii) Farm commodity

The term "farm commodity" means any agricultural or horticultural commodity, feed, seed, fertilizer, livestock, bees, poultry, fur-bearing animals, or wildlife.

(6) Owner defined

For purposes of this subsection, the term "owner" means, with respect to any highway motor vehicle, the person described in section 4481(b).

(e) Reduction in tax for trucks used in logging

The tax imposed by section 4481 shall be reduced by 25 percent with respect to any highway motor vehicle if—

(1) the exclusive use of such vehicle during any taxable period is the transportation, to and from a point located on a forested site, of products harvested from such forested site, and

(2) such vehicle is registered (under the laws of the State in which such vehicle is required to be registered) as a highway motor vehicle used in the transportation of harvested forest products.

(f) Termination of exemptions

Subsections (a) and (c) shall not apply on and after October 1, 1988.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IX, §§ 902(a), 903(a), 98 Stat. 1004.)

AMENDMENTS

1984—Subsec. (d)(5), (6). Pub. L. 98-369, § 903(a), added par. (5) and redesignated former par. (5) as (6).

Subsecs. (e), (f). Pub. L. 98-369, § 902(a), added subsec. (e) and redesignated former subsec. (e) as (f).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 902(b) of Pub. L. 98-369 provided that: "The amendment made by this section [amending this section] shall take effect on July 1, 1984."

Section 903(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the amendments made by section 513 of the Highway Revenue Act of 1982 [Pub. L. 97-424, see section 513(f) of Pub. L. 97-424, set out as an Effective Date of 1983 Amendment note under section 4481 of this title]."

SPECIAL RULES IN THE CASE OF SMALL OWNER-OPERATORS

Amendment by section 513(b) of Pub. L. 97-424 effective July 1, 1984, in the case of a small owner-operator, notwithstanding section 513(f)(2) of Pub. L. 97-424, see section 901(b)(2) of Pub. L. 98-369, set out as a note under section 4481 of this title.

§ 4484. Cross references

EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(5) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

CHAPTER 38—ENVIRONMENTAL TAXES

Subchapter B—Tax on Certain Chemicals

§ 4662. Definitions and special rules

[See main edition for text of (a)]

(b) Exceptions; other special rules

For purposes of this subchapter—

(1) Methane or butane used as a fuel

Under regulations prescribed by the Secretary, methane or butane shall be treated as a taxable chemical only if it is used otherwise than as a fuel or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel (and, for purposes of section 4661(a), the person so using it shall be treated as the manufacturer thereof).

(2) Substances used in the production of fertilizer

(A) In general

In the case of nitric acid, sulfuric acid, ammonia, or methane used to produce ammonia which is a qualified fertilizer substance, no tax shall be imposed under section 4661(a).

(B) Qualified fertilizer substance

For purposes of this section, the term "qualified fertilizer substance" means any substance—

(i) used in a qualified fertilizer use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fertilizer use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fertilizer use.

(C) Qualified fertilizer use

The term "qualified fertilizer use" means any use in the manufacture or production of fertilizer or for direct application as a fertilizer.

(D) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

[See main edition for text of (3) and (4)]

(5) Substances used in the production of motor fuel, etc.

(A) In general

In the case of any chemical described in subparagraph (D) which is a qualified fuel substance, no tax shall be imposed under section 4661(a).

(B) Qualified fuel substance

For purposes of this section, the term "qualified fuel substance" means any substance—

(i) used in a qualified fuel use by the manufacturer, producer, or importer,

(ii) sold for use by any purchaser in a qualified fuel use, or

(iii) sold for resale by any purchaser for use, or resale for ultimate use, in a qualified fuel use.

(C) Qualified fuel use

For purposes of this subsection, the term "qualified fuel use" means—

(i) any use in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel, or

(ii) any use as such a fuel.

(D) Chemicals to which paragraph applies

For purposes of this subsection, the chemicals described in this subparagraph are acetylene, benzene, butylene, butadiene, ethylene, naphthalene, propylene, toluene, and xylene.

(E) Taxation of nonqualified sale or use

For purposes of section 4661(a), if no tax was imposed by such section on the sale or use of any chemical by reason of subparagraph (A), the first person who sells or uses such chemical other than in a sale or use described in subparagraph (A) shall be treated as the manufacturer of such chemical.

(6) Substance having transitory presence during refining process, etc.

(A) In general

No tax shall be imposed under section 4661(a) on any taxable chemical described in subparagraph (B) by reason of the transitory presence of such chemical during any process of smelting, refining, or otherwise extracting any substance not subject to tax under section 4661(a).

(B) Chemicals to which subparagraph (A) applies

The chemicals described in this subparagraph are—

(i) barium sulfide, cupric sulfate, cupric oxide, cuprous oxide, lead oxide, zinc chloride, and zinc sulfate, and

(ii) any solution or mixture containing any chemical described in clause (i).

(C) Removal treated as use

Nothing in subparagraph (A) shall be construed to apply to any chemical which is removed from or ceases to be part of any smelting, refining, or other extraction process.

(c) Use by manufacturer, etc., considered sale

Except as provided in subsection (b), if any person manufactures, produces, or imports a taxable chemical and uses such chemical, then such person shall be liable for tax under section 4661 in the same manner as if such chemical were sold by such person.

(d) Refund or credit for certain uses

[*See main edition for text of* (*1*)]

(2) Use as fertilizer

Under regulations prescribed by the Secretary, if—

[*See main edition for text of* (*A*)]

(B) any person uses such substance as a qualified fertilizer substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(2) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(3) Use as qualified fuel

Under regulations prescribed by the Secretary, if—

(A) a tax under section 4661 was paid with respect to any chemical described in subparagraph (D) of subsection (b)(5) without regard to subsection (b)(5), and

(B) any person uses such chemical as a qualified fuel substance,

then an amount equal to the excess of the tax so paid over the tax determined with regard to subsection (b)(5) shall be allowed as a credit or refund (without interest) to such person in the same manner as if it were an overpayment of tax imposed by this section.

(As amended Pub. L. 98-369, div. A, title X, § 1019(a)-(c), July 18, 1984, 98 Stat. 1022-1024.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-369, § 1019(a)(3), added "or in the manufacture or production of any motor fuel, diesel fuel, aviation fuel, or jet fuel".

Subsec. (b)(2)(A). Pub. L. 98-369, § 1019(b)(2)(A), substituted "qualified fertilizer substance" for "qualified substance".

Subsec. (b)(2)(B) to (D). Pub. L. 98-369, § 1019(b)(1), added "fertilizer" after "qualified" wherever appearing in subpar. (B), added "fertilizer" after "Qualified" in subpar. (C) heading and in text substituted "The term 'qualified fertilizer use' means any use in the manufacture or production of fertilizer or for direct application as a fertilizer" for "For purposes of this subsection, the term 'qualified use' means any use in the manufacture or production of a fertilizer", and added subpar. (D).

Subsec. (b)(5), (6). Pub. L. 98-369, § 1019(a)(1), added pars. (5) and (6).

Subsec. (c). Pub. L. 98-369, § 1019(c), substituted "Except as provided in subsection (b), if" for "If".

Subsec. (d)(2)(B). Pub. L. 98-369, § 1019(b)(2)(B), added "fertilizer" after "qualified" and deleted ", or sells such substance for use," after "such substance".

Subsec. (d)(3). Pub. L. 98-369, § 1019(a)(2), added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1019(d) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendments made by this section [amending this section] shall take effect as if included in the amendments made by section 211(a) of the Hazardous Substance Response Revenue Act of 1980 [Pub. L. 96-510 which enacted this section].

"(2) WAIVER OF LIMITATION.—If refund or credit of any overpayment of tax resulting from the application of the amendments made by this section is prevented at any time before the date which for one year after the date of the enactment of this Act [July 18, 1984] by the operation of any law or rule of law (including res judicata), refund or credit of such overpayment (to the extent attributable to the application of such amendments) may, nevertheless, be made or allowed if claim therefor is filed on or before the date which for one year after the date of the enactment of this Act."

CHAPTER 39—REGISTRATION-REQUIRED OBLIGATIONS

§ 4701. Tax on issuer of registration-required obligation not in registered form

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 165, 1287 of this title.

CHAPTER 42—PRIVATE FOUNDATIONS; BLACK LUNG BENEFIT TRUSTS

Subchapter		Sec.[1]
C.	Abatement of first and second tier taxes in certain cases	4961

AMENDMENTS

1984—Pub. L. 98-369, div. A, title III, § 305(b)(3), July 18, 1984, 98 Stat. 784, substituted in subchapter C heading "Abatement of first and second tier taxes in certain cases" for "Abatement of second tier taxes where there is correction during correction period".

Subchapter A—Private Foundations

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4962, 7871 of this title.

§ 4940. Excise tax based on investment income

[See main edition for text of (a) to (c)]

(d) Exemption for certain operating foundations

(1) In general

No tax shall be imposed by this section on any private foundation which is an exempt operating foundation for the taxable year.

(2) Exempt operating foundation

For purposes of this subsection, the term "exempt operating foundation" means, with respect to any taxable year, any private foundation if—

(A) such foundation is an operating foundation (as defined in section 4942(j)(3)),

(B) such foundation has been publicly supported for at least 10 taxable years,

(C) at all times during the taxable year, the governing body of such foundation—

(i) consists of individuals at least 75 percent of whom are not disqualified individuals, and

(ii) is broadly representative of the general public, and

(D) at no time during the taxable year does such foundation have an officer who is a disqualified individual.

(3) Definitions

For purposes of this subsection—

(A) Publicly supported

A private foundation is publicly supported for a taxable year if it meets the requirements of section 170(b)(1)(A)(vi) or 509(a)(2) for such taxable year.

(B) Disqualified individual

The term "disqualified individual" means, with respect to any private foundation, an individual who is—

(i) a substantial contributor to the foundation,

(ii) an owner of more than 20 percent of—

(I) the total combined voting power of a corporation,

(II) the profits interest of a partnership, or

(III) the beneficial interest of a trust or unincorporated enterprise,

which is a substantial contributor to the foundation, or

(iii) a member of the family of any individual described in clause (i) or (ii).

(C) Substantial contributor

The term "substantial contributor" means a person who is described in section 507(d)(2).

(D) Family

The term "family" has the meaning given to such term by section 4946(d).

(E) Constructive ownership

The rules of paragraphs (3) and (4) of section 4946(a) shall apply for purposes of subparagraph (B)(ii).

(e) Reduction in tax where private foundation meets certain distribution requirements

(1) In general

In the case of any private foundation which meets the requirements of paragraph (2) for any taxable year, subsection (a) shall be applied with respect to such taxable year by substituting "1 percent" for "2 percent".

(2) Requirements

A private foundation meets the requirements of this paragraph for any taxable year if—

(A) the amount of the qualifying distributions made by the private foundation during such taxable year equals or exceeds the sum of—

(i) an amount equal to the assets of such foundation for such taxable year multiplied by the average percentage payout for the base period, plus

(ii) 1 percent of the net investment income of such foundation for such taxable year, and

(B) the average percentage payout for the base period equals or exceeds 5 percent.

In the case of an operating foundation (as defined in section 4942(j)(3)), subparagraph (B) shall be applied by substituting "3⅓ percent" for "5 percent".

(3) Average percentage payout for base period

For purposes of this subsection—

(A) In general

The average percentage payout for the base period is the average of the percentage payouts for taxable years in the base period.

(B) Percentage payout

The term "percentage payout" means, with respect to any taxable year, the percentage determined by dividing—

(i) the amount of the qualifying distributions made by the private foundation during the taxable year, by

(ii) the assets of the private foundation for the taxable year.

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[1] Section numbers editorially supplied.

(C) Special rule where tax reduced under this subsection

For purposes of this paragraph, if the amount of the tax imposed by this section for any taxable year in the base period is reduced by reason of this subsection, the amount of the qualifying distributions made by the private foundation during such year shall be reduced by the amount of such reduction in tax.

(4) Base period

For purposes of this subsection—

(A) In general

The term "base period" means, with respect to any taxable year, the 5 taxable years preceding such taxable year.

(B) New private foundations, etc.

If an organization has not been a private foundation throughout the base period referred to in subparagraph (A), the base period shall consist of the taxable years during which such foundation has been in existence.

(5) Other definitions

For purposes of this subsection—

(A) Qualifying distribution

The term "qualifying distribution" has the meaning given such term by section 4942(g).

(B) Assets

The assets of a private foundation for any taxable year shall be treated as equal to the excess determined under section 4942(e)(1).

(6) Treatment of successor organizations, etc.

In the case of—

(A) a private foundation which is a successor to another private foundation, this subsection shall be applied with respect to such successor by taking into account the experience of such other foundation, and

(B) a merger, reorganization, or division of a private foundation, this subsection shall be applied under regulations prescribed by the Secretary.

(As amended Pub. L. 98-369, div. A, title III, §§ 302(a), 303(a), July 18, 1984, 98 Stat. 779, 781.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369, § 302(a), added subsec. (d).

Subsec. (e). Pub. L. 98-369, § 303(a), added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 302(c)(1) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (d) of this section] shall apply to taxable years beginning after December 31, 1984."

Section 303(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [enacting subsec. (e) of this section] shall apply to taxable years beginning after December 31, 1984."

SAVINGS PROVISION

Section 101(*l*) of Pub. L. 91-172 as amended by Pub. L. 93-490, § 4(a), Oct. 26, 1974, 88 Stat. 1467; Pub. L. 94-455, title XIII, §§ 1301(a), 1309(a), Oct. 4, 1976, 90 Stat. 1713, 1729; Pub. L. 95-600, title VII, § 703(f), Nov. 6, 1978, 92 Stat. 2940; Pub. L. 98-369, div. A, title III, § 314(b)(1), July 18, 1984, 98 Stat. 787, provided that:

[*See main edition for text of (1) to (3)*]

"(4) SECTION 4943.—

"(A) In the case of a private foundation—

"(i) which was incorporated before January 1, 1951;

"(ii) substantially all of the assets of which on May 26, 1969, consist of more than 90 percent of the stock of an incorporated business enterprise which is licensed and regulated, the sales or contracts of which are regulated, and the professional representatives of which are licensed, by State regulatory agencies in at least 10 States; and

"(iii) which acquired such stock solely by gift, devise, or bequest, section 4943(c)(4)(A)(i) shall be applied with respect to the holdings of such foundation in such incorporated business enterprise as if it did not contain the phrase ', but in no event shall the percentage so substituted be more than 50 percent', and section 4943(c)(4)(D) shall not apply with respect to such holdings. For purposes of the preceding sentence, stock of such enterprise in a trust created before May 27, 1969, of which the foundation is the remainder beneficiary shall be deemed to be held by such foundation on May 26, 1969, if such foundation held (without regard to such trust) more than 20 percent of the stock of such enterprise on May 26, 1969.

[*See main edition for text of (B) and (C), (5) to (8)*]

Section 314(b)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [amending par. (4)(A)(iii) of this note] shall apply as if included in section 101(*l*)(4) of the Tax Reform Act of 1969 [Pub. L. 91-172]."

PUBLIC SUPPORT REQUIREMENT NOT APPLICABLE TO CERTAIN EXISTING FOUNDATIONS

Section 302(c)(3) of Pub. L. 98-369 provided that: "A foundation which was an operating foundation (as defined in section 4942(j)(3) of the Internal Revenue Code of 1954) as of January 1, 1983, shall be treated as meeting the requirements of section 4940(d)(2)(B) of such Code (as added by subsection (a))."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30, 4942, 4945, 4948, 6212, 6501, 7802 of this title.

§ 4941. Taxes on self-dealing

TAX ON SELF-DEALING NOT TO APPLY TO CERTAIN STOCK PURCHASES

Pub. L. 98-369, div. A, title III, § 312, July 18, 1984, 98 Stat. 786, provided that:

"(a) GENERAL RULE.—Section 4941 of the Internal Revenue Code of 1954 (relating to taxes on self-dealing) shall not apply to the purchase during 1978 of stock from a private foundation (and to any note issued in connection with such purchase) if—

"(1) consideration for such purchase equaled or exceeded the fair market value of such stock,

"(2) the purchaser of such stock did not make any contribution to such foundation at any time during the 5-year period ending on the date of such purchase,

"(3) the aggregate contributions to such foundation by the purchaser before such date were less than $10,000 and less than 2 percent of the total contributions received by the foundation as of such date, and

"(4) such purchase was pursuant to the settlement of litigation involving the purchaser.

"(b) STATUTE OF LIMITATIONS.—If credit or refund of any overpayment of tax resulting from subsection (a) is prevented at any time before the close of the 1-year period beginning on the date of the enactment of this Act [July 18, 1984] by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed if claim therefor is filed before the close of such 1-year period."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 4946, 4947, 4962, 4963, 6213, 7422, 7454 of this title.

§ 4942. Taxes on failure to distribute income

(a) Initial tax

There is hereby imposed on the undistributed income of a private foundation for any taxable year, which has not been distributed before the first day of the second (or any succeeding) taxable year following such taxable year (if such first day falls within the taxable period), a tax equal to 15 percent of the amount of such income remaining undistributed at the beginning of such second (or succeeding) taxable year. The tax imposed by this subsection shall not apply to the undistributed income of a private foundation—

(1) for any taxable year for which it is an operating foundation (as defined in subsection (j)(3)), or

(2) to the extent that the foundation failed to distribute any amount solely because of an incorrect valuation of assets under subsection (e), if—

(A) the failure to value the assets properly was not willful and was due to reasonable cause,

(B) such amount is distributed as qualifying distributions (within the meaning of subsection (g)) by the foundation during the allowable distribution period (as defined in subsection (j)(2)),

[*See main edition for text of* (*C*) *and* (*D*); (*b*) *and* (*c*)]

(d) Distributable amount

For purposes of this section, the term "distributable amount" means, with respect to any foundation for any taxable year, an amount equal to—

(1) the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by

[*See main edition for text of* (*2*); (*e*)]

(f) Adjusted net income

(1) Defined

For purposes of subsection (j), the term "adjusted net income" means the excess (if any) of—

[*See main edition for text of* (*A*) *and* (*B*), (*2*) *to* (*4*)]

(g) Qualifying distributions defined

(1) In general

For purposes of this section, the term "qualifying distribution" means—

(A) any amount (including that portion of reasonable and necessary administrative expenses) paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled (directly or indirectly) by the foundation or one or more disqualified persons (as defined in section 4946) with respect to the foundation, except as provided in paragraph (3), or (ii) a private foundation which is not an operating foundation (as defined in subsection (j)(3)), except as provided in paragraph (3), or

[*See main edition for text of* (*B*)]

(2) Certain set-asides

[*See main edition for text of* (*A*) *and* (*B*)]

(C) Certain failures to distribute

If, for any taxable year to which clause (ii)(II) of subparagraph (B) applies, the private foundation fails to distribute in cash or its equivalent amounts not less than those required by such clause and—

(i) the failure to distribute such amounts was not willful and was due to reasonable cause, and

(ii) the foundation distributes an amount in cash or its equivalent which is not less than the difference between the amounts required to be distributed under clause (ii)(II) of subparagraph (B) and the amounts actually distributed in cash or its equivalent during that taxable year within the correction period (as defined in section 4963(e)),

such distribution in cash or its equivalent shall be treated for the purposes of this subparagraph as made during such year.

[*See main edition for text of* (*D*) *and* (*E*)]

In the case of a set-aside which satisfies the requirements of clause (i) of subparagraph (B), for good cause shown, the period for paying the amount set aside may be extended by the Secretary.

[*See main edition for text of* (*3*)]

(4) Limitation on administrative expenses allocable to making of contributions, gifts, and grants

(A) In general

The amount of the grant administrative expenses paid during any taxable year which may be taken into account as qualifying distributions shall not exceed the excess (if any) of—

(i) .65 percent of the sum of the net assets of the private foundation for such taxable year and the immediately preceding 2 taxable years, over

(ii) the aggregate amount of grant administrative expenses paid during the 2 preceding taxable years which were taken into account as qualifying distributions.

(B) Grant administrative expenses

For purposes of this paragraph, the term "grant administrative expenses" means any administrative expenses which are allocable to the making of qualified grants.

(C) Qualified grants

For purposes of this paragraph, the term "qualified grant" means any contribution, gift, or grant which is a qualifying distribution.

(D) Net asset

For purposes of this paragraph, the term "net assets" means, with respect to any taxable year, the excess determined under subsection (e)(1) for such taxable year.

(E) Transitional rule

In the case of any preceding taxable year which begins before January 1, 1985, the amount of the grant administrative expenses taken into account under subparagraph (A)(ii) shall not exceed .65 percent of the net assets of the private foundation for such taxable year.

(F) Termination

This paragraph shall not apply to taxable years beginning after December 31, 1990.

[*See main edition for text of (h) to (j)*]

(As amended Pub. L. 98-369, div. A, title III, §§ 304(a), (b), 305(b)(4), 314(a)(1), (2), July 18, 1984, 98 Stat. 782-784, 787.)

AMENDMENTS

1984—Subsec. (a)(2)(B). Pub. L. 98-369, § 314(a)(1), substituted "subsection (j)(2)" for "subsection (j)(4)".

Subsec. (d)(1). Pub. L. 98-369, § 304(b), substituted "the sum of the minimum investment return plus the amounts described in subsection (f)(2)(C), reduced by" for "the minimum investment return reduced by".

Subsec. (f)(1). Pub. L. 98-369, § 314(a)(2), substituted "subsection (j)" for "subsection (d)".

Subsec. (g)(1)(A). Pub. L. 98-369, § 304(a)(2), substituted "including that portion of reasonable and necessary administrative expenses" for "including administrative expenses".

Subsec. (g)(2)(C)(ii). Pub. L. 98-369, § 305(b)(4), substituted "section 4963(e)" for "section 4962(e)".

Subsec. (g)(4). Pub. L. 98-369, § 304(a)(1), added par. (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 304(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending subsecs. (d)(1) and (g)(1)(A) and enacting subsec. (g)(4) of this section] shall apply to taxable years beginning after December 31, 1984."

Amendment by section 305(b)(4) of Pub. L. 98-369 applicable to taxable events occurring after Dec. 31, 1984, see section 305(c) of Pub. L. 98-369, set out as an Effective Date note under section 4962 of this title.

Section 314(a)(4) of Pub. L. 98-369 provided that: "The amendments made by this subsection [amending sections 4942 and 6501 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984].".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 170, 508, 2055, 4940, 4943, 4948, 4963, 6110, 6213, 6501, 7422, 7428 of this title.

§ 4943. Taxes on excess business holdings

[*See main edition for text of (a) and (b)*]

(c) Excess business holdings

For purposes of this section—

[*See main edition for text of (1) to (3)*]

(4) Present holdings

(A) [*See main edition for text of (i)*]

(ii) If the percentage of the holdings of any private foundation and all disqualified persons together in a business enterprise (or if the percentage of the holdings of the private foundation in such enterprise) decreases for any reason, clause (i) and subparagraph (D) shall, except as provided in the next sentence, be applied for all periods after such decrease by substituting such decreased percentage for the percentage held on May 26, 1969, but in no event shall the percentage substituted be less than 20 percent. For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as—

(I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and

(II) the number of shares held by the foundation is not affected by any such issuance or redemption.

[*See main edition for text of (iii) and (iv)*]

(B) Any interest in a business enterprise which a private foundation holds on May 26, 1969, if the private foundation on such date has excess business holdings, shall (while held by the foundation) be treated as held by a disqualified person (rather than by the private foundation)—

(i) during the 20-year period beginning on such date, if the private foundation and all disqualified persons have more than a 95 percent voting stock interest on such date,

[*See main edition for text of (ii) and (iii), (C) to (E), (5)*]

(6) 5-year period to dispose of gifts, bequests, etc.

Except as provided in paragraph (5), if, after May 26, 1969, there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have—

[*See main edition for text of (A) and (B)*]

In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase "or by a disqualified person" in the material preceding subparagraph (A).

(7) 5-year extension of period to dispose of certain large gifts and bequests

The Secretary may extend for an additional 5-year period the period under paragraph (6) for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if—

(A) the foundation establishes that—

(i) diligent efforts to dispose of such holdings have been made within the initial 5-year period, and

(ii) disposition within the initial 5-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of such holdings,

(B) before the close of the initial 5-year period—

(i) the private foundation submits to the Secretary a plan for disposing of all of the excess business holdings involved in the extension, and

(ii) the private foundation submits the plan described in clause (i) to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Secretary any response received by the private foundation from the Attorney General (or other appropriate State official) to such plan during such 5-year period, and

(C) the Secretary determines that such plan can reasonably be expected to be carried out before the close of the extension period.

(d) Definitions; special rules

For purposes of this section—

[*See main edition for text of (1) to (3)*]

(4) Disqualified person

The term "disqualified person" (as defined in section 4946(a)) does not include a plan described in section 4975(e)(7) with respect to the holdings of a private foundation described in paragraphs (4) and (5) of subsection (c).

(As amended Pub. L. 98-369, div. A, title III, §§ 307(a), 308(a), 309(a), 310(a), 314(c)(1), July 18, 1984, 98 Stat. 784, 785, 787.)

AMENDMENTS

1984—Subsec. (c)(4)(A)(ii). Pub. L. 98-369, § 308(a), substituted "For purposes of the preceding sentence, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be disregarded so long as (I) the net percentage decrease disregarded under this sentence does not exceed 2 percent, and (II) the number of shares held by the foundation is not affected by any such issuance or redemption" for "For purposes of this clause, any decrease in percentage holdings attributable to issuances of stock (or to issuances of stock coupled with redemptions of stock) shall be determined only as of the close of each taxable year of the private foundation unless the aggregate of the percentage decreases attributable to the issuances of stock (or such issuances and redemptions) during such taxable year equals or exceeds 1 percent".

Subsec. (c)(4)(B)(i). Pub. L. 98-369, § 309(a), substituted "the private foundation and all disqualified persons have" for "the private foundation has".

Subsec. (c)(6). Pub. L. 98-369, § 310(a), added following subpar. (B) "In any case where an acquisition by a disqualified person would result in a substitution under clause (i) or (ii) of subparagraph (D) of paragraph (4), the preceding sentence shall be applied with respect to such acquisition as if it did not contain the phrase 'or by a disqualified person' in the material preceding subparagraph (A)."

Subsec. (c)(7). Pub. L. 98-369, § 307(a), added par. (7).

Subsec. (d)(4). Pub. L. 98-369, § 314(c)(1), added par. (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 307(b) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [enacting subsec. (c)(7) of this section] shall apply to business holdings with respect to which the 5-year period described in section 4943(c)(6) of the Internal Revenue Code of 1954 ends on or after November 1, 1983.

"(2) TRANSITIONAL RULE.—Any plan submitted to the Secretary of the Treasury or his delegate on or before the 60th day after the date of the enactment of this Act [July 18, 1984] shall be treated as submitted before the close of the initial 5-year period referred to in section 4943(c)(7)(B) of the Internal Revenue Code of 1954 (as added by subsection (a))."

Section 308(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (c)(4)(A)(ii) of the section] shall apply to increases and decreases occurring after the date of the enactment of this Act [July 18, 1984]."

Section 309(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (c)(4)(B)(i) of this section] shall take effect as if included in the amendment made by section 101(b) of the Tax Reform Act of 1969 [section 101(b) of Pub. L. 91-172 which enacted this section]."

Section 310(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (c)(6) of this section] shall apply to acquisitions after the date of the enactment of this Act [July 18, 1984]."

Section 314(c)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [enacting subsec. (d)(4) of this section] shall apply with respect to taxable years beginning after the date of the enactment of this Act [July 18, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 537, 4946, 4947, 4963, 6213, 7422 of this title.

§ 4944. Taxes on investments which jeopardize charitable purpose

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 508, 4947, 4963, 6213, 7422, 7454 of this title.

§ 4945. Taxes on taxable expenditures

[*See main edition for text of (a) to (c)*]

(d) Taxable expenditure

For purposes of this section, the term "taxable expenditure" means any amount paid or incurred by a private foundation—

[*See main edition for text of (1) to (3)*]

(4) as a grant to an organization unless—

(A) such organization is described in paragraph (1), (2), or (3) of section 509(a) or is an exempt operating foundation (as defined in section 4940(d)(2)), or

(B) the private foundation exercises expenditure responsibility with respect to such grant in accordance with subsection (h), or

[*See main edition for text of (5); (e) to (i)*]

(As amended Pub. L. 98-369, div. A, title III, § 302(b), July 18, 1984, 98 Stat. 780.)

Amendments

1984—Subsec. (d)(4). Pub. L. 98-369, in amending par. (4) generally, divided existing provisions into subpars. (A) and (B) and inserted reference in subpar. (A) to exempt foundations (as defined in section 4940(d)(2)).

Effective Date of 1984 Amendment

Section 302(c)(2) of Pub. L. 98-369 provided that: "The amendment made by subsection (b) [amending this section] shall apply to grants made after December 31, 1984, in taxable years ending after such date."

Section Referred to in Other Sections

This section is referred to in sections 508, 4947, 4963, 6213, 7422, 7454 of this title.

§ 4946. Definitions and special rules

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Members of family

For purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

(As amended Pub. L. 98-369, div. A, title III, § 306(a), July 18, 1984, 98 Stat. 784.)

Amendments

1984—Subsec. (d). Pub. L. 98-369 amended subsec. (d) generally, substituting references to children, grandchildren, and great grandchildren for references to lineal descendants in two places.

Effective Date of 1984 Amendment

Section 306(c) of Pub. L. 98-369 provided that: "The amendments made by this subsection [probably should be "section" which amended sections 4946 and 6104 of this title] shall take effect on January 1, 1985."

Section Referred to in Other Sections

This section is referred to in sections 507, 509, 4940, 4941, 4942, 4943, 4945, 4948, 6033, 7454 of this title.

§ 4947. Application of taxes to certain nonexempt trusts

Section Referred to in Other Sections

This section is referred to in sections 508, 2055, 4943, 6033, 6034, 6049 of this title.

Subchapter B—Black Lung Benefit Trusts

§ 4951. Taxes on self-dealing

Section Referred to in Other Sections

This section is referred to in sections 468A, 4953, 4963, 6213, 6503, 7422, 7454 of this title.

§ 4952. Taxes on taxable expenditures

Section Referred to in Other Sections

This section is referred to in sections 4953, 4963, 6213, 6503, 7422, 7454 of this title.

Subchapter C—Abatement of First and Second Tier Taxes in Certain Cases

Sec.	
4962.	Abatement of private foundation first tier taxes in certain cases.
4963.	Definitions.

Amendments

1984—Pub. L. 98-369, div. A, title III, § 305(b)(1), (2), July 18, 1984, 98 Stat. 783, substituted "Abatement of First and Second Tier Taxes in Certain Cases" for "Abatement of Second Tier Taxes Where There Is Correction During Correction Period" in the subchapter heading, added item 4962 and renumbered former item 4962 as 4963 "Definitions".

§ 4961. Abatement of second tier taxes where there is correction

References in Text

The Court of Claims, referred to in the heading of subsec. (c)(1), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97-164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

Section Referred to in Other Sections

This section is referred to in section 4963 of this title.

§ 4962. Abatement of private foundation first tier taxes in certain cases

(a) General rule

If it is established to the satisfaction of the Secretary that—

(1) a taxable event was due to reasonable cause and not to willful neglect, and

(2) such event was corrected within the correction period for such event,

then any private foundation first tier tax imposed with respect to such event (including interest) shall not be assessed and, if assessed, the assessment shall be abated and, if collected, shall be credited or refunded as an overpayment.

(b) Private foundation first tier tax

For purposes of this section, the term "private foundation first tier tax" means any first tier tax imposed by subchapter A of chapter 42, except that such term shall not include the tax imposed by section 4941(a) (relating to initial tax on self-dealing).

(Added Pub. L. 98-369, div. A, title III, § 305(a), July 18, 1984, 98 Stat. 783.)

Prior Provisions

A prior section 4962 was renumbered section 4963 of this title.

Effective Date

Section 305(c) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting section 4962, redesignating former section 4962 as 4963, and amending sections 4942, 6213, and 6503 of this title] shall apply to taxable events occurring after December 31, 1984."

§ 4963. Definitions

(a) First tier tax

For purposes of this subchapter, the term "first tier tax" means any tax imposed by subsection (a) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975.

(b) Second tier tax

For purposes of this subchapter, the term "second tier tax" means any tax imposed by subsection (b) of section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975.

(c) Taxable event

For purposes of this subchapter, the term "taxable event" means any act (or failure to act) giving rise to liability for tax under section 4941, 4942, 4943, 4944, 4945, 4951, 4952, 4971, or 4975.

(d) Correct

For purposes of this subchapter—

(1) In general

Except as provided in paragraph (2), the term "correct" has the same meaning as when used in the section which imposes the second tier tax.

(2) Special rules

The term "correct" means—

(A) in the case of the second tier tax imposed by section 4942(b), reducing the amount of the undistributed income to zero,

(B) in the case of the second tier tax imposed by section 4943(b), reducing the amount of the excess business holdings to zero, and

(C) in the case of the second tier tax imposed by section 4944, removing the investment from jeopardy.

(e) Correction period

For purposes of this subchapter—

(1) In general

The term "correction period" means, with respect to any taxable event, the period beginning on the date on which such event occurs and ending 90 days after the date of mailing under section 6212 of a notice of deficiency with respect to the second tier tax imposed on such taxable event, extended by—

(A) any period in which a deficiency cannot be assessed under section 6213(a) (determined without regard to the last sentence of section 4961(b)), and

(B) any other period which the Secretary determines is reasonable and necessary to bring about correction of the taxable event.

(2) Special rules for when taxable event occurs

For purposes of paragraph (1), the taxable event shall be treated as occurring—

(A) in the case of section 4942, on the first day of the taxable year for which there was a failure to distribute income,

(B) in the case of section 4943, on the first day on which there are excess business holdings,

(C) in the case of section 4971, on the last day of the plan year in which there is an accumulated funding deficiency, and

(D) in any other case, the date on which such event occurred.

(Added Pub. L. 96-596, § 2(c)(1), Dec. 24, 1980, 94 Stat. 3473, § 4962, and renumbered § 4963, Pub. L. 98-369, div. A, title III, § 305(a), July 18, 1984, 98 Stat. 783.)

EFFECTIVE DATE

For effective date of section with respect to any first tier tax and to any second tier tax, see section 2(d) of Pub. L. 96-596, set out as a note under section 4961 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4942, 6213, 6214, 6503, 7422 of this title.

CHAPTER 43—QUALIFIED PENSION, ETC., PLANS

Sec.
[4972. Repealed.]
4973. Tax on excess contributions to individual retirement accounts, certain 403(b) contracts, and certain individual retirement annuities.[1]
4976. Taxes with respect to funded welfare benefit plans.
4977. Tax on certain fringe benefits provided by an employer.
4978. Tax on certain dispositions and allocations by employee stock ownership plans and certain cooperatives.[1]

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 491(d)(56), title V, §§ 511(c)(2), 531(e)(2), 545(b), July 18, 1984, 98 Stat. 852, 862, 886, 896, substituted "and certain individual retirement annuities" for "certain individual retirement annuities, and certain retirement bonds" in item 4973, and added items 4976 to 4978.

1982—Pub. L. 97-248, title II, § 237(c)(2), Sept. 3, 1982, 96 Stat. 511, struck out item 4972 relating to tax on excess contributions for self-employed individuals.

§ 4971. Taxes on failure to meet minimum funding standards

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 413, 4963, 6503 of this title.

[§ 4972. Repealed. Pub. L. 97-248, title II, § 237(c)(1), Sept. 3, 1982, 96 Stat. 511]

Section, added Pub. L. 93-406, title II, § 2001(f)(1), Sept. 2, 1974, 88 Stat. 955, and amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834; Pub. L. 97-34, title III, § 312(e)(3), Aug. 13, 1981, 95 Stat. 285; Pub. L. 97-448, title I, § 103(c)(10)(B), Jan. 12, 1983, 96 Stat. 2377; Pub. L. 98-369, div. A, title IV, § 491(d)(40), July 18, 1984, 98 Stat. 851, related to tax on excess contributions for self-employed individuals.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to years beginning after Dec. 31, 1983, see section 241 of Pub. L. 97-248, set out as an Effective Date note under section 416 of this title.

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[1] So in original. Does not conform to section catchline.

§ 4973. Tax on excess contributions to individual retirement accounts, certain section 403(b) contracts, and certain individual retirement annuities

(a) Tax imposed

In the case of—

(1) an individual retirement account (within the meaning of section 408(a)), or

(2) an individual retirement annuity (within the meaning of section 408(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A) (relating to custodial accounts for regulated investment company stock),

there is imposed for each taxable year a tax in an amount equal to 6 percent of the amount of the excess contributions to such individual's accounts or annuities (determined as of the close of the taxable year). The amount of such tax for any taxable year shall not exceed 6 percent of the value of the account or annuity (determined as of the close of the taxable year). In the case of an endowment contract described in section 408(b), the tax imposed by this section does not apply to any amount allocable to life, health, accident, or other insurance under such contract. The tax imposed by this subsection shall be paid by such individual.

(b) Excess contributions

For purposes of this section, in the case of individual retirement accounts, individual retirement annuities, or bonds, the term "excess contributions" means the sum of—

(1) the excess (if any) of—

(A) the amount contributed for the taxable year to the accounts or for the annuities or bonds (other than a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 405(d)(3), or 408(d)(3)),[2] over

[*See main edition for text of* (*B*), (*2*)]

For purposes of this subsection, any contribution which is distributed from the individual retirement account or the individual retirement annuity in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.

(c) Section 403(b) contracts

For purposes of this section, in the case of a custodial account referred to in subsection (a)(2), the term "excess contributions" means the sum of—

(1) the excess (if any) of the amount contributed for the taxable year to such account (other than a rollover contribution described in section 403(b)(8) or 408(d)(3)(A)(iii)), over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

[*See main edition for text of* (*2*)]

(As amended Pub. L. 98-369, div. A, title IV, § 491(d)(41)-(44), (55), July 18, 1984, 98 Stat. 851, 852.)

AMENDMENTS

1984—Pub. L. 98-369, § 491(d)(55), substituted "and certain individual retirement annuities" for "certain individual retirement annuities, and certain retirement bonds" in section catchline.

Subsec. (a). Pub. L. 98-369, § 491(d)(41), inserted "or" at the end of par. (1), struck out "or" at the end of par. (2), struck out par. (3) which imposed a tax in the case of a retirement bond, within the meaning of section 409, established for the benefit of any individual, and in the concluding provision substituted "or annuity" for ", annuity, or bond" and "or annuities" for ", annuities, or bonds".

Subsec. (b). Pub. L. 98-369, § 491(d)(43), substituted in provision following par. (2)(C) "or the individual retirement annuity" for ", individual retirement annuity, or bond".

Subsec. (b)(1)(A). Pub. L. 98-369, § 491(d)(42), which directed the amendment of subpar. (A) by substituting "and 408(d)(3)" for "408(d)(3), and 409(b)(3)(C)" was executed, as the probable intent of Congress, by substituting "or 4108(d)(3))" for "408(d)(3)), or 409(b)(3)(C)".

Subsec. (c)(1). Pub. L. 98-369, § 491(d)(44), substituted "or 408(d)(3)(A)(iii)" for ", 408(d)(3)(A)(iii), or 409(b)(3)(C)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

§ 4975. Tax on prohibited transactions

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Exemptions

The prohibitions provided in subsection (c) shall not apply to—

[*See main edition for text of* (*1*) *to* (*15*)]

The exemptions provided by this subsection (other than paragraphs (9) and (12) [4] shall not apply to any transaction with respect to a trust described in section 401(a) which is part of a plan providing contributions or benefits for employees some or all of whom are owner-employees (as defined in section 401(c)(3)) in which a plan directly or indirectly lends any part of the corpus or income of the plan to, pays any compensation for personal services rendered to the plan to, or acquires for the plan any property from or sells any property to, any such owner-employee, a member of the family (as defined in section 267(c)(4)) of any such owner-employee, or a corporation controlled by any such owner-employee through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote or 50 percent or more of the total value of shares of all classes of stock of the corporation. For purposes of the preceding sentence, a shareholder-employee (as defined in section 1379, as in effect on the day before the date of the enactment of the Subchapter S Revision Act of 1982), a participant or beneficiary of an individual retirement account or an individual retirement annuity (as defined in section 408), and an employer or association of employees which establishes such an account or annuity under section 408(c) shall be deemed to be an owner-employee.

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[2] See 1984 Amendment note below.

[4] So in original. Probably should be followed by a closing parenthesis.

(e) Definitions

(1) Plan

For purposes of this section, the term "plan" means a trust described in section 401(a) which forms a part of a plan, or a plan described in section 403(a), which trust or plan is exempt from tax under section 501(a), an individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) (or a trust, plan, account, or annuity which, at any time, has been determined by the Secretary to be such a trust, plan, or account).

[*See main edition for text of* (*2*) *to* (*6*)]

(7) Employee stock ownership plan

The term "employee stock ownership plan" means a defined contribution plan—

[*See main edition for text of* (*A*) *and* (*B*)]

A plan shall not be treated as an employee stock ownership plan unless it meets the requirements of section 409(h) and, if the employer has a registration-type class of securities (as defined in section 409(e)(4)), it meets the requirements of section 409(e).

(8) Qualifying employer security

The term "qualifying employer security" means any employer security within the meaning of section 409(*l*). If any moneys or other property of a plan are invested in shares of an investment company registered under the Investment Company Act of 1940, the investment shall not cause that investment company or that investment company's investment adviser or principal underwriter to be treated as a fiduciary or a disqualified person for purposes of this section, except when an investment company or its investment adviser or principal underwriter acts in connection with a plan covering employees of the investment company, its investment adviser, or its principal underwriter.

[*See main edition for text of* (*9*); (*f*) *to* (*i*)]

(As amended Pub. L. 98-369, div. A, title IV, § 491(d)(45), (46), (e)(7), (8), July 18, 1984, 98 Stat. 851-853.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369, § 491(d)(45), substituted in provision following par. (15) "or an individual retirement annuity (as defined in section 408)" for ", individual retirement annuity, or an individual retirement bond (as defined in section 408 or 409)".

Subsec. (e)(1). Pub. L. 98-369, § 491(d)(46), struck out "or 405(a)" after "section 403(a)" and "or a retirement bond described in section 409" after "section 408(b)", and substituted "or annuity" for "annuity, or bond" and "or account" for "account, or bond".

Subsec. (e)(7). Pub. L. 98-369, § 491(e)(7), substituted "section 409(h)" for "section 409A(h)", "section 409(e)(4)" for "section 409A(e)(4)", and "section 409(e)" for "section 409A(e)".

Subsec. (e)(8). Pub. L. 98-369, § 491(e)(8), substituted "section 409(*l*)" for "section 409A(*l*)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 491(d)(45), (46) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Amendment by section 491(e)(7), (8) of Pub. L. 98-369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98-369, set out as a note under section 41 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 133, 401, 404, 408, 409, 414, 415, 503, 514, 1042, 2210, 4943, 4963, 4978, 6213, 6501, 6503, 6511, 7422 of this title; title 15 sections 632, 1866; title 19 sections 2345, 2373; title 29 sections 1055, 1056, 1132, 1203, 1342, 1403; title 45 section 726.

§ 4976. Taxes with respect to funded welfare benefit plans

(a) General rule

If—

(1) an employer maintains a welfare benefit fund, and

(2) there is a disqualified benefit provided during any taxable year,

there is hereby imposed on such employer a tax equal to 100 percent of such disqualified benefit.

(b) Disqualified benefit

For purposes of subsection (a), the term "disqualified benefit" means—

(1) any medical benefit or life insurance benefit provided with respect to a key employee other than from a separate account established for such owner under section 419A(d), and

(2) any post-retirement medical or life insurance benefit unless the plan meets the requirements of section 505(b)(1) with respect to such benefit, and

(3) any portion of such fund reverting to the benefit of the employer.

(c) Definitions

For purposes of this section, the terms used in this section shall have the same respective meanings as when used in subpart D of part I of subchapter D of chapter 1.

(Added Pub. L. 98-369, div. A, title V, § 511(c)(1), July 18, 1984, 98 Stat. 861.)

EFFECTIVE DATE

Section applicable to contributions paid or accrued after Dec. 31, 1985, in taxable years ending after such date, subject to certain exceptions, see section 511(e) of Pub. L. 98-369, set out as a note under section 419 of this title.

§ 4977. Tax on certain fringe benefits provided by an employer

(a) Imposition of tax

In the case of an employer to whom an election under this section applies for any calendar year, there is hereby imposed a tax for such calendar year equal to 30 percent of the excess fringe benefits.

(b) Excess fringe benefits

For purposes of subsection (a), the term "excess fringe benefits" means, with respect to any calendar year—

(1) the aggregate value of the fringe benefits provided by the employer during the calendar year which were not includible in gross income under paragraphs (1) and (2) of section 132(a), over

(2) 1 percent of the aggregate amount of compensation—

(A) which was paid by the employer during such calendar year to employees, and

(B) was includible in gross income for purposes of chapter 1.

(c) Effect of election on section 132(a)

If—

(1) an election under this section is in effect with respect to an employer for any calendar year, and

(2) as of January 1, 1984, substantially all of the employees of the employer were entitled to employee discounts or services provided by the employer in 1 line of business,

for purposes of paragraphs (1) and (2) of section 132(a) (but not for purposes of section 132(g)(2)), all employees of any line of business of the employer which was in existence on January 1, 1984, shall be treated as employees of the line of business referred to in paragraph (2).

(d) Period of election

An election under this section shall apply to the calendar year for which made and all subsequent calendar years unless revoked by the employer.

(e) Treatment of controlled groups

All employees treated as employed by a single employer under subsection (b), (c), or (m) of section 414 shall be treated as employed by a single employer for purposes of this section.

(Added Pub. L. 98-369, div. A, title V, § 531(e)(1), July 18, 1984, 98 Stat. 885.)

EFFECTIVE DATE

Section effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as a note under section 132 of this title.

§ 4978. Tax on certain dispositions by employee stock ownership plans and certain cooperatives

(a) Tax on dispositions of securities to which section 1042 applies before close of minimum holding period

If, during the 3-year period after the date on which the employee stock ownership plan or eligible worker-owned cooperative acquired any qualified securities in a sale to which section 1042 applied, such plan or cooperative disposes of any qualified securities and—

(1) the total number of shares held by such plan or cooperative after such disposition is less then the total number of employer securities held immediately after such sale, or

(2) except to the extent provided in regulations, the value of qualified securities held by such plan or cooperative after such disposition is less than 30 percent of the total value of all employer securities as of such disposition,

there is hereby imposed a tax on the disposition equal to the amount determined under subsection (b).

(b) Amount of tax

(1) In general

The amount of the tax imposed by paragraph (1) shall be equal to 10 percent of the amount realized on the disposition.

(2) Limitation

The amount realized taken into account under paragraph (1) shall not exceed that portion allocable to qualified securities acquired in the sale to which section 1042 applied (determined as if such securities were disposed of before any other securities).

(3) Distributions to employees

The amount realized on any distribution to an employee for less than fair market value shall be determined as if the qualified security had been sold to the employee at fair market value.

(c) Liability for payment of taxes

The tax imposed by this subsection shall be paid by—

(1) the employer, or

(2) the eligible worker-owned cooperative,

that made the written statement described in section 1042(a)(2)(B).

(d) Section not to apply to certain dispositions

(1) Certain distributions to employees

This section shall not apply with respect to any distribution of qualified securities (or sale of such securities) which is made by reason of—

(A) the death of the employee,

(B) the retirement of the employee after the employee has attained 59½ years of age,

(C) the disability of the employee (within the meaning of section 72(m)(5)), or

(D) the separation of the employee from service for any period which results in a 1-year break in service (within the meaning of section 411(a)(6)(A)).

(2) Certain reorganizations

In the case of any exchange of qualified securities in any reorganization described in section 368(a)(1) for stock of another corporation, such exchange shall not be treated as a disposition for purposes of this section.

(e) Definitions and special rules

For purposes of this section—

(1) Employee stock ownership plan

The term "employee stock ownership plan" has the meaning given to such term by section 4975(e)(7).

(2) Qualified securities

The term "qualified securities" has the meaning given to such term by section 1042(b)(1).

(3) Eligible worker-owned cooperative

The term "eligible worker-owned cooperative" has the meaning given to such term by section 1042(b)(1).

(4) Disposition

The term "disposition" includes any distribution.

(5) Employer securities

The term "employer securities" has the meaning given to such term by section 409(*l*).

(Added Pub. L. 98-369, div. A, title V, § 545(a), July 18, 1984, 98 Stat. 894.)

EFFECTIVE DATE

Section 545(c) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting this section] shall apply to taxable years beginning after the date of enactment of this Act [July 18, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1042 of this title.

CHAPTER 45—WINDFALL PROFIT TAX ON DOMESTIC CRUDE OIL

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 280D, 6103, 6161, 6211, 6212, 6213, 6214, 6232, 6344, 6429, 6501, 6511, 6512, 6653, 6862, 6871, 7422 of this title.

Subchapter A—Imposition and Amount of Tax

§ 4986. Imposition of tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 164, 280D, 4987, 4988, 4990, 4994, 4995, 4997, 6050C, 6076, 6154, 6302, 6429, 6430, 6501, 6511, 6611, 6654, 6655, 7512 of this title.

§ 4987. Amount of tax

[*See main edition for text of* (*a*)]

(b) Applicable percentage

For purposes of subsection (a)—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Tier 3 oil

[*See main edition for text of* (*A*)]

(B) Newly discovered oil

The applicable percentage for newly discovered oil shall be determined in accordance with the following table:

For taxable periods beginning in:	The applicable percentage is:
1984, 1985, 1986, or 1987	22½
1988	20
1989 and thereafter	15.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-369, div. A, title I, § 25(a), July 18, 1984, 98 Stat. 506.)

AMENDMENTS

1984—Subsec. (b)(3)(B). Pub. L. 98-369 amended the table by striking out items setting the applicable percentage at 27½ for taxable periods beginning in 1982 and 25 for taxable periods beginning in 1983, substituted an item setting the applicable percentage at 22½ for taxable periods beginning in 1984, 1985, 1986, or 1987 for items which set the percentage at 22½ for periods beginning in 1984, 20 for periods beginning in 1985, and 15 for periods beginning in 1986 and thereafter, and added items setting the applicable percentage at 20 for taxable periods beginning in 1988, 15 for taxable periods beginning in 1989 and thereafter.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 25(c)(1) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall apply to taxable periods beginning after December 31, 1983."

Subchapter C—Miscellaneous Provisions

§ 4996. Other definitions and special rules

REFUND OF OVERPAYMENT BY PARTNERSHIPS

Pub. L. 98-369, div. A, title VII, § 722(a)(7), July 18, 1984, 98 Stat. 973, provided that:

"(A) If—

"(i) there is an overpayment of tax imposed by section 4986 of the Internal Revenue Code of 1954 for any period before January 1, 1983, by reason of section 201(h)(1)(E) of the Technical Corrections Act of 1982 [section 201(h)(1)(E) of Pub. L. 97-448, set out as a note below],

"(ii) refund of such overpayment is payable to the partners of a partnership, and

"(iii) such partners are obligated to pay over any such refund to 1 or more organizations referred to in such section 201(h)(1)(E),

such partnership shall be treated as authorized to act for each person who was a partner at any time in such partnership in claiming and paying over such refund.

"(B) Notwithstanding section 6511 of the Internal Revenue Code of 1954, the time for filing a claim for credit or refund of the overpayment referred to in subparagraph (A)(i) shall not expire before the date 1 year after the date of the enactment of this Act [July 18, 1984]."

CHAPTER 46—GOLDEN PARACHUTE PAYMENTS

Sec.	
4999.	Golden parachute payments.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 275 of this title.

§ 4999. Golden parachute payments

(a) Imposition of tax

There is hereby imposed on any person who receives an excess parachute payment a tax equal to 20 percent of the amount of such payment.

(b) Excess parachute payment defined

For purposes of this section, the term "excess parachute payment" has the meaning given to such term by section 280G(b).

(c) Administrative provisions

(1) Withholding

In the case of any excess parachute payment which is wages (within the meaning of section 3401) the amount deducted and withheld under section 3402 shall be increased by the amount of the tax imposed by this section on such payment.

(2) Other administrative provisions

For purposes of subtitle F, any tax imposed by this section shall be treated as a tax imposed by subtitle A.

(Added Pub. L. 98-369, div. A, title I, § 67(b)(1), July 18, 1984, 98 Stat. 587.)

Effective Date

Section applicable to payments under agreements entered into or renewed after June 14, 1984, in taxable years ending after such date, with contracts entered into before June 15, 1984, which are amended after June 14, 1984, in any significant relevant aspect to be treated as a contract entered into after June 14, 1984, see section 67(e) of Pub. L. 98-369, set out as a note under section 280G of this title.

Subtitle E—Alcohol, Tobacco, and Certain Other Excise Taxes

Subtitle Referred to in Other Sections

This subtitle is referred to in sections 6103, 6422, 6652, 6806, 7103, 7272, 7606, 7612, 7851 of this title.

CHAPTER 51—DISTILLED SPIRITS, WINES, AND BEER

Subchapter A—Gallonage and Occupational Taxes

PART I—GALLONAGE TAXES

Subpart A—Distilled Spirits

§ 5001. Imposition, rate, and attachment of tax

Amendment of Subsection (a)(1) and (3)

Pub. L. 98-369, div. A, title I, § 27(a)(1), (d)(1), July 18, 1984, 98 Stat. 507, 509, provided that, effective Oct. 1, 1985, paragraphs (1) and (3) of subsection (a) of this section are amended by substituting "$12.50" for "$10.50".

Effective Date of 1984 Amendment

Section 27(d) of Pub. L. 98-369 provided that:

"(1) In general.—Except as provided in paragraph (2), the amendments made by this section [amending sections 5001 and 5010 of this title and enacting provisions set out as a note under this section] shall take effect on October 1, 1985.

"(2) Electronic transfer provisions.—The amendments made by subsection (c) [amending sections 5061 and 5703 of this title] shall apply to taxes required to be paid on or after September 30, 1984."

Floor Stocks Taxes on Distilled Spirits

Section 27(b) of Pub. L. 98-369 provided that:

"(1) Imposition of tax.—On distilled spirits on which tax was imposed under section 5001 or 7652 of the Internal Revenue Code of 1954 before October 1, 1985, and which were held on such date for sale by any person, there shall be imposed a tax at the rate of $2.00 for each proof gallon and a proportionate tax at the like rate on all fractional parts of a proof gallon.

"(2) Exception for certain small wholesale or retail dealers.—No tax shall be imposed by paragraph (1) on distilled spirits held on October 1, 1985, by any dealer if—

"(A) the aggregate liquid volume of distilled spirits held by such dealer on such date does not exceed 500 wine gallons, and

"(B) such dealer submits to the Secretary (at the time and in the manner required by the Secretary) such information as the Secretary shall require for purposes of this paragraph.

"(3) Credit against tax.—Each dealer shall be allowed as a credit against the taxes imposed by paragraph (1) an amount equal to $800. Such credit shall not exceed the amount of taxes imposed by paragraph (1) for which the dealer is liable.

"(4) Liability for tax and method of payment.—

"(A) Liability for tax.—A person holding distilled spirits on October 1, 1985, to which the tax imposed by paragraph (1) applies shall be liable for such tax.

"(B) Method of payment.—The tax imposed by paragraph (1) shall be paid in such manner as the Secretary shall by regulations prescribe.

"(C) Time for payment.—

"(i) In general.—Except as provided in clause (ii), the tax imposed by paragraph (1) shall be paid on or before April 1, 1986.

"(ii) Installment payment of tax in case of small or middle-sized dealers.—In the case of any small or middle-sized dealer, the tax imposed by paragraph (1) may be paid in 3 equal installments due as follows:

"(I) The first installment shall be paid on or before April 1, 1986.

"(II) The second installment shall be paid on or before July 1, 1986.

"(III) The third installment shall be paid on or before October 1, 1986.

If the taxpayer does not pay any installment under this clause on or before the date prescribed for its payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary.

"(iii) Small or middle-sized dealer.—For purposes of clause (ii), the term 'small or middle-sized dealer' means any dealer if the aggregate gross sales receipts of such dealer for its most recent taxable year ending before October 1, 1985, does not exceed $500,000.

"(5) Controlled groups.—

"(A) Controlled groups of corporations.—In the case of a controlled group—

"(i) the 500 wine gallon amount specified in paragraph (2),

"(ii) the $800 amount specified in paragraph (3), and

"(iii) the $500,000 amount specified in paragraph (4)(C)(iii),

shall be apportioned among the dealers who are component members of such group in such manner as the Secretary shall by regulations prescribe. For purposes of the preceding sentence, the term 'controlled group' has the meaning given to such term by subsection (a) of section 1563 of the Internal Revenue Code of 1954; except that for such purposes the phrase 'more than 50 percent' shall be substituted for the phrase 'at least 80 percent' each place it appears in such subsection.

"(B) Nonincorporated dealers under common control.—Under regulations prescribed by the Secretary, principles similar to the principles of subparagraph (A) shall apply to a group of dealers under common control where 1 or more of such dealers is not a corporation.

"(6) Other laws applicable.—All provisions of law, including penalties, applicable with respect to the taxes imposed by section 5001 of the Internal Revenue Code of 1954 shall, insofar as applicable and not inconsistent with the provisions of this subsection, apply in respect of the taxes imposed by paragraph (1) to the same extent as if such taxes were imposed by such section 5001.

"(7) Definitions and special rules.—For purposes of this subsection—

"(A) Dealer.—The term 'dealer' means—

"(i) any wholesale dealer in liquors (as defined in section 5112(b) of the Internal Revenue Code of 1954), and

"(ii) any retail dealer in liquors (as defined in section 5122(a) of such Code).

"(B) Distilled spirits.—The term 'distilled spirits' has the meaning given such term by section 5002(a)(8) of the Internal Revenue Code of 1954.

"(C) Person.—The term 'person' includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

"(D) Secretary.—The term 'Secretary' means the Secretary of the Treasury or his delegate.

"(E) Treatment of imported perfumes containing distilled spirits.—Any article described in section 5001(a)(3) of such Code shall be treated as distilled spirits; except that the tax imposed by paragraph (1) shall be imposed on a wine gallon basis in lieu of a proof gallon basis. To the extent provided in regulations prescribed by the Secretary, the preceding sentence shall not apply to any article held on October 1, 1985, on the premises of a retail establishment."

Section Referred to in Other Sections

This section is referred to in sections 5004, 5005, 5007, 5008, 5010, 5061, 5066, 5215, 5273, 5314, 5391, 5512, 7652 of this title.

§ 5002. Definitions

Section Referred to in Other Sections

This section is referred to in sections 5214, 5273, 5291, 5301 of this title; title 23 section 158.

§ 5005. Persons liable for tax

[See main edition for text of (a) to (d)]

(e) Withdrawals without payment of tax

(1) Liability for tax

Any person who withdraws distilled spirits from the bonded premises of a distilled spirits plant without payment of tax, as provided in section 5214(a)(4), (5), (6), (7), (8), (9), (10), or (13), shall be liable for the internal revenue tax on such distilled spirits, from the time of such withdrawal; and all persons liable for the tax on such distilled spirits under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall, at the time of such withdrawal, be relieved of any such liability on the distilled spirits so withdrawn if the person withdrawing such spirits and the person, or persons, liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, are independent of each other and neither has a proprietary interest, directly or indirectly, in the business of the other, and all persons liable for the tax under subsection (a) or (b), or under any similar prior provisions of internal revenue law, have divested themselves of all interest in the spirits so withdrawn.

(2) Relief from liability

All persons liable for the tax on distilled spirits under paragraph (1) of this subsection, or under subsection (a) or (b), or under any similar prior provisions of internal revenue law, shall be relieved of any such liability at the time, as the case may be, the distilled spirits are exported, deposited in a foreign-trade zone, used in the production of wine, used in the production of nonbeverage wine or wine products, deposited in customs bonded warehouses, laden as supplies upon, or used in the maintenance or repair of, certain vessels or aircraft, or used in certain research, development, or testing, as provided by law.

[See main edition for text of (f)]

(As amended Pub. L. 98-369, div. A, title IV, § 455(b), July 18, 1984, 98 Stat. 823.)

Amendments

1984—Subsec. (e)(1). Pub. L. 98-369, § 455(b)(1), substituted "(10), or (13)" for "or (10)".

Subsec. (e)(2). Pub. L. 98-369, § 455(b)(2), inserted "used in the production of nonbeverage wine or wine products,".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective July 18, 1984, see section 456(c) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

§ 5010. Credit for wine content and for flavors content

Amendment of Subsection (a)(1) and (2)

Pub. L. 98-369, div. A, title I, § 27(a)(2), (d)(1), July 18, 1984, 98 Stat. 507, 509, provided that, effective Oct. 1, 1985, paragraphs (1) and (2) of subsection (a) of this section are amended by substituting "$12.50" for "$10.50".

Subpart D—Beer

§ 5051. Imposition and rate of tax

Section Referred to in Other Sections

This section is referred to in sections 5054, 5061, 5671 of this title.

§ 5052. Definitions

Section Referred to in Other Sections

This section is referred to in title 23 section 158.

Subpart E—General Provisions

§ 5061. Method of collecting tax

[See main edition for text of (a) to (d)]

(e) Payment by electronic fund transfer

(1) In general

Any person who in any 12-month period ending December 31, was liable for a gross amount equal to or exceeding $5,000,000 in taxes imposed on distilled spirits, wines, or beer by sections 5001, 5041, and 5051 (or 7652), respectively, shall pay such taxes during the succeeding calendar year by electronic fund transfer to a Federal Reserve Bank.

(2) Electronic fund transfer

The term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(As amended Pub. L. 98-369, div. A, title I, § 27(c)(1), July 18, 1984, 98 Stat. 509.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-369 added subsec. (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxes required to be paid on or after Sept. 30, 1984, see section 27(d)(2) of Pub. L. 98-369, set out as a note under section 5001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5026, 5043, 5054, 5703 of this title.

§ 5062. Refund and drawback in case of exportation

AMENDMENT OF SUBSECTION (b)

Pub. L. 98-369, div. A, title IV, §§ 454(c)(1), 456(b), July 18, 1984, 98 Stat. 820, 823, provided that, effective July 1, 1985, subsection (b) of this section is amended by striking out "stamped or restamped, and".

§ 5066. Distilled spirits for use of foreign embassies, legations, etc.

AMENDMENT OF SUBSECTION (a)(2)

Pub. L. 98-369, div. A, title IV, §§ 454(c)(2), 456(b), July 18, 1984, 98 Stat. 820, 823, provided that, effective July 1, 1985, subsection (a)(2) of this section is amended by substituting "marked" for "stamped or restamped, and marked,".

PART II—OCCUPATIONAL TAX

SUBPART C—MANUFACTURERS OF STILLS

Sec.	
5101.	Notice of manufacture of still; notice of set up of still.
5102.	Definition of manufacturer of stills.
[5103.	Omitted.]
[5104.	Repealed.]
[5105, 5106.	Omitted.]

PRIOR PROVISIONS

A prior subpart C, consisting of sections 5101 to 5106, related to manufacturers of stills, prior to the general revision of this subpart by Pub. L. 98-369, div. A, title IV, § 451(a), July 18, 1984, 98 Stat. 818.

Another prior subpart C, consisting of sections 5101 to 5106, related to manufacturers of stills, prior to the general revision of this chapter by Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1313.

§ 5101. Notice of manufacture of still; notice of set up of still

(a) Notice requirements

(1) Notice of manufacture of still

The Secretary may, pursuant to regulations, require any person who manufactures any still, boiler, or other vessel to be used for the purpose of distilling, to give written notice, before the still, boiler, or other vessel is removed from the place of manufacture, setting forth by whom it is to be used, its capacity, and the time of removal from the place of manufacture.

(2) Notice of set up of still

The Secretary may, pursuant to regulations, require that no still, boiler, or other vessel be set up without the manufacturer of the still, boiler, or other vessel first giving written notice to the Secretary of that purpose.

(b) Penalties, etc.

(1) For penalty and forfeiture for failure to give notice of manufacture, or for setting up a still without first giving notice, when required by the Secretary, see sections 5615(2) and 5687.

(2) For penalty and forfeiture for failure to register still or distilling apparatus when set up, see section 5601(a)(1) and 5615(1).

(Added Pub. L. 98-369, div. A, title IV, § 451(a), July 18, 1984, 98 Stat. 818.)

PRIOR PROVISIONS

A prior section 5101, added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339, contained provisions relating to imposition and rate of tax, prior to the general revision of this subpart by Pub. L. 98-369.

Another prior section 5101, act Aug. 16, 1954, ch. 736, 68A Stat. 617, consisted of provisions similar to those comprising this section, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section 456 of part II (§§ 451-456) of subtitle D of title IV of division A of Pub. L. 98-369 provided that:

"(a) IN GENERAL.—Except as otherwise provided in this section the amendments made by this part [enacting sections 5101 and 5102 of this title, amending sections 5005, 5062, 5066, 5116, 5134, 5179, 5204, 5206, 5207, 5214, 5215, 5235, 5301, 5354, 5555, 5604, 5613, 5615, 5691, 6103, 6801, and 7213 of this title, repealing section 5205 of this title, and omitting sections 5103, 5105, and 5106 of this title] shall take effect on the first day of the first calendar month which begins more than 90 days after the date of the enactment of this Act [July 18, 1984].

"(b) REPEAL OF STAMP REQUIREMENT.—The amendments made by section 454 [amending sections 5062, 5066, 5116, 5204, 5206, 5207, 5215, 5235, 5301, 5555, 5604, 5613, and 6801 of this title and repealing section 5205 of this title] shall take effect on July 1, 1985.

"(c) FORTIFICATION OF COOKING WINE.—The amendments made by section 455 [amending sections 5005, 5214, and 5354 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5179, 5615 of this title.

§ 5102. Definition of manufacturer of stills

Any person who manufactures any still or condenser to be used in distilling shall be deemed a manufacturer of stills.

(Added Pub. L. 98-369, div. A, title IV, § 451(a), July 18, 1984, 98 Stat. 819.)

PRIOR PROVISIONS

A prior section 5102, added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339, consisted of provisions similar to those comprising this section, prior to the general revision of this subpart by Pub. L. 98-369.

Another prior section 5102, act Aug. 16, 1954, ch. 736, 68A Stat. 617, defined manufacturer of stills, prior to the general revision of this chapter by Pub. L. 85-859.

A prior section 5103, added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339, related to exemptions from the taxes imposed by section 5101 of this title, prior to the general revision of this subpart by Pub. L. 98-369.

Another prior section 5103, act Aug. 16, 1954, ch. 736, 68A Stat. 617, related to exemptions, prior to the general revision of this chapter by Pub. L. 85-859.

A prior section 5104, added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339, which provided that the tax imposed on stills or condensers by section 5101 be paid by stamp, denoting the tax, under regulations prescribed by the Secretary or his delegate, was repealed by Pub. L. 94-455, title XIX, § 1905(b)(3)(A)(i), Oct. 4, 1976, 90 Stat. 1822, effective on the first day of the first month which began more than 90 days after Oct. 4, 1976.

Another prior section 5104, act Aug. 16, 1954, ch. 736, 68A Stat. 617, required taxes to be paid by stamps, prior to the general revision of this chapter by Pub. L. 85-859.

A prior section 5105, added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1339, and amended Pub. L. 94-455, title XIX, §§ 1905(b)(6)(A), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1823, 1834, related to notice of manufacturer of and permit to set up still, prior to the general revision of this subpart by Pub. L. 98-369. See section 5101 of this title.

Another prior section 5105, act Aug. 16, 1954, ch. 736, 68A Stat. 617, related to notice of manufacture of and permit to set up still, prior to the general revision of this chapter by Pub. L. 85-859.

A prior section 5106, added Pub. L. 85-859, title II, § 201, Sept. 2, 1958, 72 Stat. 1340, and amended Pub. L. 94-455, title XIX, § 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to export without payment of tax and export with the privilege of drawback, prior to the general revision of this subpart by Pub. L. 98-369.

Another prior section 5106, act Aug. 16, 1954, ch. 736, 68A Stat. 618, related to payment of tax and drawback on exports, prior to the general revision of this chapter by Pub. L. 85-859.

EFFECTIVE DATE

Section effective on the first day of the first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98-369, set out as a note under section 5101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5002 of this title.

[§ 5103. Omitted]

CODIFICATION

See Prior Provisions note set out under section 5102 of this title.

[§ 5104. Repealed]

CODIFICATION

See Prior Provisions note set out under section 5102 of this title.

[§§ 5105, 5106. Omitted]

CODIFICATION

See Prior Provisions note set out under section 5102 of this title.

SUBPART D—WHOLESALE DEALERS

§ 5116. Packaging distilled spirits for industrial uses

AMENDMENT OF SUBSECTION (b)

Pub. L. 98-369, div. A, title IV, §§ 454(c)(3), 456(b), July 18, 1984, 98 Stat. 821, 823, provided that, effective July 1, 1985, subsection (b) of this section is amended to read as follows:

(b) Cross reference

For provisions relating to containers of distilled spirits, see section 5206.

SUBPART F—NONBEVERAGE DOMESTIC DRAWBACK CLAIMANTS

§ 5134. Drawback

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Allowance of drawback even where certain requirements not met

(1) In general

No claim for drawback under this section shall be denied in the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder upon the claimant's establishing to the satisfaction of the Secretary that distilled spirits on which the tax has been paid or determined were in fact used in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which were unfit for beverage purposes.

(2) Penalty

(A) In general

In the case of a failure to comply with any requirement imposed under this subpart or any rule or regulation issued thereunder, the claimant shall be liable for a penalty of $1,000 for each failure to comply unless it is shown that the failure to comply was due to reasonable cause.

(B) Penalty may not exceed amount of claim

The aggregate amount of the penalties imposed under subparagraph (A) for failures described in paragraph (1) in respect of any claim shall not exceed the amount of such claim (determined without regard to subparagraph (A)).

(3) Penalty treated as tax

The penalty imposed by paragraph (2) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6662(a).

(As amended Pub. L. 98-369, div. A, title IV, § 452, July 18, 1984, 98 Stat. 819.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective on the first day of the first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

Subchapter B—Qualification Requirements for Distilled Spirits Plants

§ 5179. Registration of stills

[*See main edition for text of* (*a*)]

(b) Cross references

(1) For penalty and forfeiture provisions relating to unregistered stills, see sections 5601(a)(1) and 5615(1).

(2) For provisions requiring notification to set up a still, boiler, or other vessel for distilling, see section 5101(a)(2).

(As amended Pub. L. 98-369, div. A, title IV, § 451(b)(1), July 18, 1984, 98 Stat. 819.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-369 substituted "notification to set up a still, boiler, or other vessel for distilling, see section 5101(a)(2)" for "permit to set up a still, boiler or other vessel for distilling, see section 5105".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective on the first day of the first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

§ 5181. Distilled spirits for fuel use

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5214, 5601, 6103 of this title.

Subchapter C—Operation of Distilled Spirits Plants

PART I—GENERAL PROVISIONS

AMENDMENT OF ANALYSIS

Pub. L. 98-369, div. A, title IV, §§ 454(c)(14), 456(b), July 18, 1984, 98 Stat. 823, provided that, effective July 1, 1985, the item relating to section 5205 is struck out.

§ 5203. Entry and examination of premises

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5505, 5511, 5604 of this title.

§ 5204. Gauging

AMENDMENT OF SUBSECTION (c)

Pub. L. 98-369, div. A, title IV, §§ 454(c)(4), 456(b), July 18, 1984, 98 Stat. 821, 823, provided that, effective July 1, 1985, subsection (c) of this section is amended by striking out "stamping," in heading and text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5205, 5206 of this title.

§ 5205. Stamps

REPEAL OF SECTION

Pub. L. 98-369, div. A, title IV, §§ 454(a), 456(b), July 18, 1984, 98 Stat. 820, 823, provided that, effective July 1, 1985, this section is repealed.

§ 5206. Containers

AMENDMENT OF SUBSECTIONS (d) TO (f)

Pub. L. 98-369, div. A, title IV, §§ 454(c)(5), 456(b), July 18, 1984, 98 Stat. 821, 823, provided that, effective July 1, 1985, this section is amended as follows:

(1) By redesignating subsections (d) and (e) as (e) and (f), respectively, and by inserting after subsection (c) the following new subsection:

(d) Effacement of marks and brands on emptied containers

Every person who empties, or causes to be emptied, any container of distilled spirits bearing any mark or brand required by law (or regulations pursuant thereto) shall at the time of emptying such container efface and obliterate such mark or brand; except that the Secretary may, by regulations, waive any requirement of this subsection where he determines that no jeopardy to the revenue will be involved.

(2) By adding at the end of subsection (f), as so redesignated, the following new paragraphs:

(3) For provisions relating to the marking and branding of containers of distilled spirits by proprietors, see section 5204(c).

(4) For penalties and forfeitures relating to marks and brands, see sections 5604 and 5613.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5116, 5604 of this title.

§ 5207. Records and reports

AMENDMENT OF SUBSECTION (a)(4)

Pub. L. 98-369, div. A, title IV, §§ 454(c)(6), 456(b), July 18, 1984, 98 Stat. 821, 823, provided that, effective July 1, 1985, subsection (a)(4) of this section is amended by striking out subparagraph (D), by adding "and" at the end of subparagraph (B), and by striking out ", and" at the end of subparagraph (C) and inserting in lieu thereof a period.

PART II—OPERATIONS ON BONDED PREMISES

SUBPART A—GENERAL

§ 5214. Withdrawal of distilled spirits from bonded premises free of tax or without payment of tax

(a) Purposes

Distilled spirits on which the internal revenue tax has not been paid or determined may, subject to such regulations as the Secretary shall prescribe, be withdrawn from the bonded premises of any distilled spirits plant in approved containers—

[*See main edition for text of (1) to (11)*]

(12) free of tax in the case of distilled spirits produced under section 5181; or

(13) without payment of tax for use on bonded wine cellar premises in the production of wine or wine products which will be rendered unfit for beverage use and removed pursuant to section 5362(d).

[*See main edition for text of (b)*]

(As amended Pub. L. 98-369, div. A, title IV, § 455(a), July 18, 1984, 98 Stat. 823.)

AMENDMENTS

1984—Subsec. (a)(13). Pub. L. 98-369 added par. (13).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, see section 456(c) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

§ 5215. Return of tax determined distilled spirits to bonded premises

AMENDMENT OF SUBSECTION (c)

Pub. L. 98-369, div. A, title IV, §§ 454(c)(7), 456(b), July 18, 1984, 98 Stat. 821, 823, provided that, effective July 1, 1985, subsection (c) of this section is amended by substituting "reclosing" for "restamping" in the heading and text.

SUBPART C—STORAGE

§ 5235. Bottling of alcohol for industrial purposes

AMENDMENT OF SECTION

Pub. L. 98-369, div. A, title IV, §§ 454(c)(8), 456(b), July 18, 1984, 98 Stat. 821, 823, provided that, effective July 1, 1985, this section is amended by striking out "stamped," in the first sentence and by striking out the second sentence.

Subchapter E—General Provisions Relating to Distilled Spirits

PART II—REGULATION OF TRAFFIC IN CONTAINERS OF DISTILLED SPIRITS

§ 5301. General

AMENDMENT OF SUBSECTIONS (c) TO (e)

Pub. L. 98-369, div. A, title IV, §§ 454(b), (c)(9), 456(b), July 18, 1984, 98 Stat. 820-823, provided that effective July 1, 1985, this section is amended as follows:

(1) In subsection (c), by substituting "tax determination" for "stamping" in paragraphs (1) and (3) and by striking out ", if the liquor bottles are to be again stamped under the provisions of this chapter" in the provisions following paragraph (4).

(2) By redesignating subsection (d) as (e) and inserting after subsection (c) the following new subsection:

(d) Closures

The immediate container of distilled spirits withdrawn from bonded premises, or from customs custody, on determination of tax shall bear a closure or other device which is designed so as to require breaking in order to gain access to the contents of such container. The preceding sentence shall not apply to containers of bulk distilled spirits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5206, 5604, 5606 of this title.

Subchapter F—Bonded and Taxpaid Wine Premises

PART I—ESTABLISHMENT

§ 5354. Bond

The bond for a bonded wine cellar shall be in such form, on such conditions, and with such adequate surety, as regulations issued by the Secretary shall prescribe, and shall be in a penal sum not less than the tax on any wine or distilled spirits possessed or in transit at any one time, but not less than $1,000 nor more than $50,000; except that where the tax on such wine and on such distilled spirits exceeds $250,000, the penal sum of the bond shall be not more than $100,000. Where additional liability arises as a result of deferral of payment of tax payable on any return, the Secretary may require the proprietor to file a supplemental bond in such amount as may be necessary to protect the revenue. The liability of any person on any such bond shall apply whether the transaction or operation on which the liability of the proprietor is based occurred on or off the proprietor's premises.

(As amended Pub. L. 98-369, div. A, title IV, § 455(c), July 18, 1984, 98 Stat. 823.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "distilled spirits" for "wine spirits" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, see section 456(c) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

PART II—OPERATIONS

§ 5362. Removals of wine from bonded wine cellars

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5042, 5043, 5214, 5222 of this title.

Subchapter I—Miscellaneous General Provisions

§ 5555. Records, statements, and returns

AMENDMENT OF SUBSECTION (a)

Pub. L. 98-369, div. A, title IV, §§ 454(c)(10), 456(b), July 18, 1984, 98 Stat. 821, 823, provided that, effective July 1, 1985, subsection (a) of this section is amended by striking out "or for the affixing of any stamp required to be affixed by this chapter,".

§ 5557. Officers and agents authorized to investigate, issue search warrants, and prosecute for violations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5604, 7612 of this title.

Subchapter J—Penalties, Seizures, and Forfeitures Relating to Liquors

PART I—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS APPLICABLE TO DISTILLING, RECTIFYING, AND DISTILLED AND RECTIFIED PRODUCTS

AMENDMENT OF ANALYSIS

Pub. L. 98-369, div. A, title IV, §§ 454(c)(11)(B), (12)(C), 456(b), July 18, 1984, 98 Stat. 822, 823, provided that, effective July 1, 1985, the item relating to section 5604 is amended by striking out "stamps,".

and the item relating to section 5613 is amended by substituting "closed" for "stamped".

§ 5601. Criminal penalties

Section Referred to in Other Sections

This section is referred to in sections 5101, 5171, 5177, 5178, 5179, 5221, 5222, 5505 of this title.

§ 5604. Penalties relating to stamps, marks, brands, and containers

Amendment of Section

Pub. L. 98-369, div. A, title IV, §§ 454(c)(11)(A), 456(b), July 18, 1984, 98 Stat. 821, 823, provided that, effective July 1, 1985, this section is amended to read as follows:

§ 5604. Penalties relating to marks, brands, and containers

(a) In general

Any person who shall—

(1) transport, possess, buy, sell, or transfer any distilled spirits unless the immediate container bears the type of closure or other device required by section 5301(d),

(2) with intent to defraud the United States, empty a container bearing the closure or other device required by section 5301(d) without breaking such closure or other device,

(3) empty, or cause to be emptied, any distilled spirits from an immediate container bearing any mark or brand required by law without effacing and obliterating such mark or brand as required by section 5206(d),

(4) place any distilled spirits in any bottle, or reuse any bottle for the purpose of containing distilled spirits, which has once been filled and fitted with a closure or other device under the provisions of this chapter, without removing and destroying such closure or other device,

(5) willfully and unlawfully remove, change, or deface any mark, brand, label, or seal affixed to any case of distilled spirits, or to any bottle contained therein,

(6) with intent to defraud the United States, purchase, sell, receive with intent to transport, or transport any empty cask or package having thereon any mark or brand required by law to be affixed to any cask or package containing distilled spirits, or

(7) change or alter any mark or brand on any cask or package containing distilled spirits, or put into any cask or package spirits of greater strength than is indicated by the inspection mark thereon, or fraudulently use any cask or package having any inspection mark thereon, for the purpose of selling other spirits, or spirits of quantity or quality different from the spirits previously inspected,

shall be fined not more than $10,000 or imprisoned not more than 5 years, or both, for each such offense.

(b) Cross references

For provisions relating to the authority of internal revenue officers to enforce provisions of this section, see sections 5203, 5557, and 7608.

Section Referred to in Other Sections

This section is referred to in sections 5205, 5206 of this title.

§ 5613. Forfeiture of distilled spirits not stamped, marked, or branded as required by law

Amendment of Section

Pub. L. 98-369, div. A, title IV, §§ 454(c)(12)(A), (B), 456(b), July 18, 1984, 98 Stat. 822, 823, provided that, effective July 1, 1985, the section heading of this section is amended by substituting "closed" for "stamped", and subsection (b) is amended to read as follows:

(b) Containers without closures

All distilled spirits found in any container which is required by this chapter to bear a closure or other device and which does not bear a closure or other device in compliance with this chapter shall be forfeited to the United States.

Section Referred to in Other Sections

This section is referred to in sections 5205, 5206 of this title.

§ 5615. Property subject to forfeiture

The following property shall be forfeited to the United States:

[See main edition for text of (1)]

(2) Distilling apparatus removed without notice or set up without notice

Any still, boiler, or other vessel to be used for the purpose of distilling—

(A) which is removed without notice having been given when required by section 5101(a)(1), or

(B) which is set up without notice having been given when required by section 5101(a)(2); and

[See main edition for text of (3) to (7)]

(As amended Pub. L. 98-369, div. A, title IV, § 451(b)(2), July 18, 1984, 98 Stat. 819.)

Amendments

1984—Par. (2). Pub. L. 98-369 amended text of par. (2) generally. Prior to amendment text of par. (2) read "Any still, boiler, or other vessel to be used for the purpose of distilling which is removed without notice having been given as required by section 5105(a) or which is set up without permit first having been obtained as required by such section; and".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective on the first day of the first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

Section Referred to in Other Sections

This section is referred to in sections 5101, 5177, 5179, 5207, 5221, 5222, 5305, 5505 of this title.

PART IV—PENALTY, SEIZURE, AND FORFEITURE PROVISIONS COMMON TO LIQUORS

§ 5684. Penalties relating to the payment and collection of liquor taxes

[*See main edition for text of* (*a*)]

(b) Applicability of section 6662

The penalties imposed by subsection (a) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6662(a).

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-369, div. A, title VII, §§ 714(h)(1), 722(a)(5), July 18, 1984, 98 Stat. 962, 973.)

Amendments

1984—Subsec. (b). Pub. L. 98-369, § 714(h)(1), substituted in heading "6662" for "6660" and in text "6662(a)" for "6660(a)".

Pub. L. 98-369, § 722(a)(5), substituted "subsection (a)" for "subsections (a) and (b)".

Effective Date of 1984 Amendment

Amendment by section 714(h)(1) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 722(a)(5) of Pub. L. 98-369 effective as if included in the provisions of the Technical Corrections Act of 1984, Pub. L. 97-448, to which such amendment relates, see section 722(a)(6) of Pub. L. 98-369, set out as a note under section 57 of this title.

§ 5687. Penalty for offenses not specifically covered

Section Referred to in Other Sections

This section is referred to in sections 5101, 5117, 5203, 5505 of this title.

PART V—PENALTIES APPLICABLE TO OCCUPATIONAL TAXES

§ 5691. Penalties for nonpayment of special taxes relating to liquors

(a) General

Any person who shall carry on the business of a brewer, wholesale dealer in liquors, retail dealer in liquors, wholesale dealer in beer, retail dealer in beer, or limited retail dealer, and willfully fail to pay the special tax as required by law, shall be fined not more than $5,000, or imprisoned not more than 2 years, or both, for each such offense.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-369, div. A, title IV, § 451(b)(3), July 18, 1984, 98 Stat. 819.)

Amendments

1984—Subsec. (a). Pub. L. 98-369 substituted "or limited retail dealer" for "limited retail dealer, or manufacturer of stills".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective on the first day of the first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

CHAPTER 52—CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

Subchapter A—Definitions; Rate and Payment of Tax; Exemption From Tax; and Refund and Drawback of Tax

§ 5703. Liability for tax and method of payment

[*See main edition for text of* (*a*)]

(b) Method of payment of tax

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Payment by electronic fund transfer

Any person who in any 12-month period, ending December 31, was liable for a gross amount equal to or exceeding $5,000,000 in taxes imposed on tobacco products and cigarette papers and tubes by section 5701 (or 7652) shall pay such taxes during the succeeding calendar year by electronic fund transfer (as defined in section 5061(e)(2)) to a Federal Reserve Bank.

[*See main edition for text of* (*c*) *and* (*d*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 27(c)(2), 98 Stat. 509.)

Amendments

1984—Subsec. (b)(3). Pub. L. 98-369 added par. (3).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxes required to be paid on or after Sept. 30, 1984, see section 27(d)(2) of Pub. L. 98-369, set out as a note under section 5001 of this title.

Subchapter F—Penalties and Forfeitures

§ 5761. Civil penalties

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Applicability of section 6662

The penalty imposed by subsection (b) shall be assessed, collected, and paid in the same manner as taxes, as provided in section 6662(a).

[*See main edition for text of* (*d*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 714(h)(2), 98 Stat. 962.)

Amendments

1984—Subsec. (c). Pub. L. 98-369 substituted "section 6662" for "section 6660" in heading and "section 6662(a)" for "section 6660(a)" in text.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

CHAPTER 53—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS

Subchapter D—Penalties and Forfeitures

§ 5871. Penalties

Any person who violates or fails to comply with any provisions of this chapter shall, upon conviction, be fined not more than $10,000, or be imprisoned not more than ten years, or both.

(As amended Pub. L. 98-473, title II, § 227, Oct. 12, 1984, 98 Stat. 2030.)

AMENDMENTS

1984—Pub. L. 98-473 struck out ", and shall become eligible for parole as the Board of Parole shall determine" after "or both".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-473 effective Oct. 12, 1984, see section 235(a)(1)(B)(ii)(IV) of Pub. L. 98-473, set out as an Effective Date note under section 3551 of Title 18, Crimes and Criminal Procedure.

Subtitle F—Procedure and Administration

SUBTITLE REFERRED TO IN OTHER SECTIONS

This subtitle is referred to in sections 408, 810, 852, 874, 882, 911, 2621, 3402, 3405, 3406, 4405, 4414, 4484, 4995, 4999, 5067, 5148, 5560, 7851 of this title; title 42 sections 401, 408, 418, 1307, 1395i; title 48 section 1421i.

CHAPTER 61—INFORMATION AND RETURNS

Subchapter A—Returns and Records

PART I—RECORDS, STATEMENTS, AND SPECIAL RETURNS

§ 6001. Notice or regulations requiring records, statements, and special returns

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 874, 911, 922, 4403, 6033 of this title.

PART II—TAX RETURNS OR STATEMENTS

SUBPART A—GENERAL REQUIREMENT

§ 6011. General requirement of return, statement, or list

[*See main edition for text of (a) and (b)*]

(c) Returns, etc., of DISCS and former DISCS and FSC's and former FSC's

(1) Records and information

A DISC or former DISC or a FSC or former FSC shall for the taxable year—

[*See main edition for text of (A) and (B), (2); (d)*]

(e) Regulations requiring returns on magnetic tape, etc.

(1) In general

The Secretary shall prescribe regulations providing standards for determining which returns must be filed on magnetic media or in other machine-readable form. The Secretary may not require returns of any tax imposed by subtitle A on individuals, estates, and trusts to be other than on paper forms supplied by the Secretary. In prescribing such regulations, the Secretary shall take into account (among other relevant factors) the ability of the taxpayer to comply at reasonable cost with such a filing requirement.

(2) Certain returns must be filed on magnetic media

(A) In general

In the case of any person who is required to file returns under sections 6042(a), 6044(a), and 6049(a) with respect to more than 50 payees for any calendar year, all returns under such sections shall be on magnetic media.

(B) Hardship exception

Subparagraph (A) shall not apply to any person for any period if such person establishes to the satisfaction of the Secretary that its application to such person for such period would result in undue hardship.

[*See main edition for text of (f)*]

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 109(a), 97 Stat. 383; July 18, 1984, Pub. L. 98-369, div. A, title VIII, § 801(d)(12), 98 Stat. 997.)

REFERENCES IN TEXT

Section 6015, included in the reference to sections 6012 to 6019 in subsec. (f), was repealed by Pub. L. 98-369, div. A, title IV, § 412(a)(1), July 18, 1984, 98 Stat. 792.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 inserted "and FSC's and former FSC's" in heading and "or a FSC or former FSC" in par. (1).

1983—Subsec. (e). Pub. L. 98-67 amended subsec. (e) generally, designating existing provisions as par. (1) and adding par. (2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 801(d)(12) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

STUDY OF WAGE RETURNS ON MAGNETIC TAPE; REPORT TO CONGRESS NOT LATER THAN JULY 1, 1984

Section 109(b) of Pub. L. 98-67 provided that:

"(1) STUDY.—The Secretary of the Treasury, in consultation with the Secretary of Health and Human Services, shall conduct a study of the feasibility of requiring persons to file, on magnetic media, returns under section 6011 of the Internal Revenue Code of 1954 containing information described in section 6051(a) of such Code (relating to W-2s).

"(2) REPORT TO CONGRESS.—Not later than July 1, 1984, the Secretary of the Treasury shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the

Senate the results of the study conducted under paragraph (1)."

SUBPART B—INCOME TAX RETURNS

Sec.
[6015. Repealed.]

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 412(c)(1), July 18, 1984, 98 Stat. 792, struck out item 6015 "Declaration of estimated income tax by individuals."

§ 6012. Persons required to make returns of income

(a) General rule

Returns with respect to income taxes under subtitle A shall be made by the following:

(1)(A) Every individual having for the taxable year a gross income of the exemption amount or more, except that a return shall not be required of an individual (other than an individual described in subparagraph (C))—

(i) who is not married (determined by applying section 143), is not a surviving spouse (as defined in section 2(a)), and for the taxable year has a gross income of less than the sum of the exemption amount plus the zero bracket amount applicable to such an individual,

(ii) who is a surviving spouse (as so defined) and for the taxable year has a gross income of less than the sum of the exemption amount plus the zero bracket amount applicable to such an individual, or

(iii) who is entitled to make a joint return under section 6013 and whose gross income, when combined with the gross income of his spouse, is, for the taxable year, less than the sum of twice the exemption amount plus the zero bracket amount applicable to a joint return, but only if such individual and his spouse, at the close of the taxable year, had the same household as their home.

Clause (iii) shall not apply if for the taxable year such spouse makes a separate return or any other taxpayer is entitled to an exemption for such spouse under section 151(e).

(B) The amount specified in clause (i) or (ii) of subparagraph (A) shall be increased by the exemption amount in the case of an individual entitled to an additional personal exemption under section 151(c)(1), and the amount specified in clause (iii) of subparagraph (A) shall be increased by the exemption amount for each additional personal exemption to which the individual or his spouse is entitled under section 151(c).

(C) The exception under subparagraph (A) shall not apply to—

(i) a nonresident alien individual;

(ii) a citizen of the United States entitled to the benefits of section 931;

(iii) an individual making a return under section 443(a)(1) for a period of less than 12 months on account of a change in his annual accounting period;

(iv) an individual who has income (other than earned income) of the exemption amount or more and who is described in section 63(e)(1)(D); or

(v) an estate or trust.

(D) For purposes of this paragraph—

(i) The term "zero bracket amount" has the meaning given to such term by section 63(d).

(ii) The term "exemption amount" has the meaning given to such term by section 151(f).

[*See main edition for text of* (2) *to* (9)]

except that subject to such conditions, limitations, and exceptions and under such regulations as may be prescribed by the Secretary, nonresident alien individuals subject to the tax imposed by section 871 and foreign corporations subject to the tax imposed by section 881 may be exempted from the requirement of making returns under this section.

(b) Returns made by fiduciaries and receivers

[*See main edition for text of* (1)]

(2) Persons under a disability

If an individual is unable to make a return required under subsection (a), the return of such individual shall be made by a duly authorized agent, his committee, guardian, fiduciary or other person charged with the care of the person or property of such individual. The preceding sentence shall not apply in the case of a receiver appointed by authority of law in possession of only a part of the property of an individual.

[*See main edition for text of* (3) *to* (5); (*c*) *and* (*d*)]

(Aug. 16, 1954, ch. 736, 68A Stat. 732; Sept. 2, 1958, Pub. L. 85-866, title I, § 72(a), 72 Stat. 1660; Feb. 26, 1964, Pub. L. 88-272, title II, § 206(b)(1), 78 Stat. 40; Dec. 30, 1969, Pub. L. 91-172, title IX, § 941(a), (d), 83 Stat. 726; Dec. 10, 1971, Pub. L. 92-178, title II, § 204(a), 85 Stat. 511; Oct. 15, 1974, Pub. L. 93-443, title IV, § 407, 88 Stat. 1297; Jan. 3, 1975, Pub. L. 93-625, § 10(b), 88 Stat. 2119; Mar. 29, 1975, Pub. L. 94-12, title II, § 201(b), 89 Stat. 29; Dec. 23, 1975, Pub. L. 94-164, § 2(a)(2), 89 Stat. 970; Oct. 4, 1976, Pub. L. 94-455, title IV, § 401(b)(3), title XIX, § 1906(b)(13)(A), title XXI, § 2101(c), 90 Stat. 1556, 1834, 1899; May 23, 1977, Pub. L. 95-30, title I, § 104, 91 Stat. 139; Nov. 6, 1978, Pub. L. 95-600, title I, §§ 101(c), 102(b)(1), 105(d), title IV, § 404(c)(8), 92 Stat. 2770, 2771, 2776, 2870; Nov. 8, 1978, Pub. L. 95-615, § 202(g)(5), formerly § 202(f)(5), 92 Stat. 3100, renumbered Apr. 1, 1980, Pub. L. 96-222, title I, § 108(a)(1)(A), 94 Stat. 223; Dec. 24, 1980, Pub. L. 96-589, §§ 3(b), 6(i)(5), 94 Stat. 3400, 3410; Aug. 13, 1981, Pub. L. 97-34, title I, §§ 104(d)(1), 111(b)(3), 95 Stat. 189, 194; July 18, 1984, Pub. L. 98-369, div. A, title IV, § 412(b)(3), 98 Stat. 792.)

SUBSECTION (a)(1)(A) AND (D) AMOUNTS FOR TAXABLE YEAR BEGINNING IN 1985

For adjustment of amounts, see section 4.04 of Revenue Procedure 84-79, set out as a note under section 1 of this title.

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-369 struck out "or section 6015(a)" after "subsection (a)".

1981—Subsec. (a)(1). Pub. L. 97-34, § 104(d)(1)(D), substituted "the exemption amount" for "$1,000", wherever appearing, substituted "the sum of the exemption amount plus the zero bracket amount applicable to such an individual" for "$3,300" in subpar. (A)(i) and for "$4,400" in subpar. (A)(ii), substituted "the sum of twice the exemption amount plus the zero bracket amount applicable to a joint return" for "$5,400" in subpar. (A)(iii), and added subpar. (D).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a) of Pub. L. 98-369, set out as a note under section 6654 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by section 104(d)(1) of Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97-34, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 882, 911, 6011, 6032, 6034A, 6037, 6039B, 6062, 6072, 6513 of this title; title 38 section 503.

§ 6013. Joint returns of income tax by husband and wife

[See main edition for text of (a)]

(b) Joint return after filing separate return

[See main edition for text of (1) and (2)]

(3) When return deemed filed

(A) Assessment and collection

For purposes of section 6501 (relating to periods of limitations on assessment and collection), and for purposes of section 6651 (relating to delinquent returns), a joint return made under this subsection shall be deemed to have been filed—

(i) Where both spouses filed separate returns prior to making the joint return—on the date the last separate return was filed (but not earlier than the last date prescribed by law for filing the return of either spouse);

(ii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had less than the exemption amount of gross income (twice the exemption amount in case such spouse was 65 or over) for such taxable year—on the date of the filing of such separate return (but not earlier than the last date prescribed by law for the filing of such separate return); or

(iii) Where only one spouse filed a separate return prior to the making of the joint return, and the other spouse had gross income of the exemption amount or more (twice the exemption amount in case such spouse was 65 or over) for such taxable year—on the date of the filing of such joint return.

For purposes of this subparagraph, the term "exemption amount" has the meaning given to such term by section 115(f).

[See main edition for text of (B), (4) and (5)]

(c) Treatment of joint return after death of either spouse

For purposes of sections 15, 443, and 7851(a)(1)(A), where the husband and wife have different taxable years because of the death of either spouse, the joint return shall be treated as if the taxable years of both spouses ended on the date of the closing of the surviving spouse's taxable year.

[See main edition for text of (d)]

(e) Spouse relieved of liability in certain cases

(1) In general

Under regulations prescribed by the Secretary, if—

(A) a joint return has been made under this section for a taxable year,

(B) on such return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse,

(C) the other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was such substantial understatement, and

(D) taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such substantial understatement,

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent such liability is attributable to such substantial understatement.

(2) Grossly erroneous items

For purposes of this subsection, the term "grossly erroneous items" means, with respect to any spouse—

(A) any item of gross income attributable to such spouse which is omitted from gross income, and

(B) any claim of a deduction, credit, or basis by such spouse in an amount for which there is no basis in fact or law.

(3) Substantial understatement

For purposes of this subsection, the term "substantial understatement" means any understatement (as defined in section 6661(b)(2)(A)) which exceeds $500.

(4) Understatement must exceed specified percentage of spouse's income

(A) Adjusted gross income of $20,000 or less

If the spouse's adjusted gross income for the preadjustment year is $20,000 or less, this subsection shall apply only if the liability described in paragraph (1) is greater than 10 percent of such adjusted gross income.

(B) Adjusted gross income of more than $20,000

If the spouse's adjusted gross income for the preadjustment year is more than $20,000, subparagraph (A) shall be applied by substituting "25 percent" for "10 percent".

(C) Preadjustment year

For purposes of this paragraph, the term "preadjustment year" means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

(D) Computation of spouse's adjusted gross income

If the spouse is married to another spouse at the close of the preadjustment year, the spouse's adjusted gross income shall include the income of the new spouse (whether or not they file a joint return).

(E) Exception for omissions from gross income

This paragraph shall not apply to any liability attributable to the omission of an item from gross income.

(5) Special rule for community property income

For purposes of this subsection, the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws.

[*See main edition for text of (f) to (h)*]

(Aug. 16, 1954, ch. 736, 68A Stat. 733; Sept. 2, 1958, Pub. L. 85-866, title I, § 73, 72 Stat. 1660; Dec. 30, 1969, Pub. L. 91-172, title VIII, § 801(a)(2), (b)(2), (c)(2), (d)(2), 83 Stat. 675; Jan. 12, 1971, Pub. L. 91-679, § 1, 84 Stat. 2063; Dec. 10, 1971, Pub. L. 92-178, title II, § 201(a)(2), (b)(2), (c), 85 Stat. 510; Jan. 2, 1975, Pub. L. 93-597, § 3(a), 88 Stat. 1950; Oct. 4, 1976, Pub. L. 94-455, title X, § 1012(a)(1), title XIX, § 1906(a)(1), (b)(13)(A), 90 Stat. 1612, 1824, 1834; Oct. 20, 1976, Pub. L. 94-569, § 3(d), 90 Stat. 2699; Nov. 6, 1978, Pub. L. 95-600, title I, § 102(b)(2), title VII, § 701(u)(15)(A)-(C), (16)(A), 92 Stat. 2771, 2919, 2920; Aug. 13, 1981, Pub. L. 97-34, title I, § 104(d)(2), 95 Stat. 189; Sept. 3, 1982, Pub. L. 97-248, title III, §§ 307(a)(4), (5), 308(a), 96 Stat. 589, 591; Jan. 12, 1983, Pub. L. 97-448, title III, § 307(c), 96 Stat. 2407; Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369; July 18, 1984, Pub. L. 98-369, div. A, title IV, §§ 424(a), 474(b)(2), 98 Stat. 801, 830.)

SUBSECTION (b)(3) EXEMPTION AMOUNT FOR TAXABLE YEAR BEGINNING IN 1985

For adjustment of exemption amount, see section 4.05 of Revenue Procedure 84-79, set out as a note under section 1 of this title.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 474(b)(2), substituted "15" for "21".

Subsec. (e). Pub. L. 98-369, § 424(a), in amending subsec. (e) generally, reenacted as par. (1)(A) part of former par. (1)(A); incorporated in par. (1)(B) part of former par. (1)(A), substituting "there is a substantial understatement of tax attributable to grossly erroneous items of one spouse" for "there was omitted from gross income an amount properly includable therein which is attributable to one spouse and which is in excess of 25 percent of the amount of gross income stated in the return"; redesignated as par. (1)(C) former par. (1)(B), substituting "had no reason to know, that there was such substantial understatement" for "had no reason to know of, such omission"; reenacted as par. (1)(D) former par. (1)(C), substituting preceding ", it is inequitable" the words "all the facts and circumstances" for "whether or not the other spouse significantly benefited directly or indirectly from the items omitted from gross income and taking into account all other facts and circumstances" and "attributable to such substantial understatement" for "attributable to such omission"; substituted in conclusional text "attributable to such substantial understatement" for "attributable to such omission from gross income"; added pars. (2) to (4); and incorporated in provisions designated par. (5) similar provisions of former par. (2)(A), substituting as par. heading "Special rule for community property income" for "Special rules" and deleting former par. (2)(B) respecting determination as provided in section 6501(e)(1)(A) of amount omitted from gross income.

1983—Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

1981—Subsec. (b)(3)(A). Pub. L. 97-34 substituted "the exemption amount" for "$1,000" and "twice the exemption amount" for "$2,000" in cls. (ii) and (iii) and added the provision following cl. (iii) defining the term "exemption amount".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 424(c) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a) and (b) [amending sections 66 and 6013 of this title] shall apply to all taxable years to which the Internal Revenue Code of 1954 applies. Corresponding provisions shall be deemed to be included in the Internal Revenue Code of 1939 and shall apply to all taxable years to which such Code applies.

"(2) AUTHORITY TO DISREGARD COMMUNITY PROPERTY LAWS.—Subsection (b) of section 66 of the Internal Revenue Code of 1954, as added by subsection (b), shall apply to taxable years beginning after December 31, 1984."

Amendment by section 474(b)(2) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to taxable years beginning after Dec. 31, 1984, see section 104(e) of Pub. L. 97-34, set out as a note under section 1 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1, 2, 24, 32, 66, 85, 116, 121, 128, 151, 213, 219, 221, 692, 879, 1244, 1302, 6011, 6012, 6017, 6072, 6401, 6501, 6511, 6653, 7508, 7701 of this title.

[§ 6015. Repealed. Pub. L. 98-369, div. A, title IV, § 412(a)(1), July 18, 1984, 98 Stat. 792]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 737; Sept. 2, 1958, Pub. L. 85-866, title I, § 74, 72 Stat. 1660; Sept. 14, 1960, Pub. L. 86-779, § 5(a), 74 Stat. 1000; Sept. 25, 1962, Pub. L. 87-682, § 1(a)(1), 76 Stat. 575; Mar. 15, 1966, Pub. L. 89-368, title I, § 102(a), 80 Stat. 62; Nov. 13, 1966, Pub. L. 89-809, title I, § 103(j), 80 Stat. 1554; Dec. 30, 1969, Pub. L. 91-172, title III, § 301(b)(12), title VIII, § 803(d)(7), title IX, § 944(a), 83 Stat. 586, 684, 729; Dec. 10, 1971, Pub. L. 92-178, title II, § 209(a), 85 Stat. 517; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(a)(2), (b)(13)(A), 90 Stat. 1824, 1834; Nov. 6, 1978, Pub. L. 95-600, title IV, § 421(e)(7), 92 Stat. 2876; Aug. 13, 1981, Pub. L. 97-34, title VII, § 725(a), (c)(2), 95 Stat. 345, 346; Sept. 3, 1982, Pub. L. 97-248, title II, § 201(d)(7), formerly § 201(c)(7), title III, §§ 307(a)(6), 308(a), 328(b)(1), 96 Stat. 420, 589, 591, 618, redesignated and amended Jan. 12, 1983, Pub.

L. 97-448, title I, § 107(c)(2), title II, § 201(j)(1), title III, § 306(a)(1)(A)(i), 96 Stat. 2391, 2395, 2400; Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369, related to declaration of estimated income tax by individuals.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 6654 of this title.

SUBPART C—ESTATE AND GIFT TAX RETURNS

§ 6018. Estate tax returns

[*See main edition for text of (a) and (b)*]

(c) Election under section 2210

In all cases in which subsection (a) requires the filing of a return, if an executor elects the applications of section 2210—

(1) Return by executor

The return which the executor is required to file under the provisions of subsection (a) shall be made with respect to that portion of estate tax imposed by subtitle B which the executor is required to pay.

(2) Return by plan administrator

The plan administrator of an employee stock ownership plan or the eligible worker-owned cooperative, as the case may be, shall make a return with respect to that portion of the tax imposed by section 2001 which such plan or cooperative is required to pay under section 2210(b).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title V, § 544(b)(3), 98 Stat. 894.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 added subsec. (c).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to estates of decedents which are required to file returns on a date (including any extensions) after July 18, 1984, see section 544(d) of Pub. L. 98-369, set out as an Effective Date note under section 2210 of this title.

SUBPART D—MISCELLANEOUS PROVISIONS

§ 6020. Returns prepared for or executed by Secretary

[*See main edition for text of (a)*]

(b) Execution of return by Secretary

(1) Authority of Secretary to execute return

If any person fails to make any return required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

[*See main edition for text of (2)*]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 412(b)(4), 98 Stat. 792.)

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-369 struck out "(other than a declaration of estimated tax required under section 6015)" after "make any return".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

PART III—INFORMATION RETURNS

SUBPART A—INFORMATION CONCERNING PERSONS SUBJECT TO SPECIAL PROVISIONS

Sec.	
6034A.	Information to beneficiaries of estates and trusts.
6038B.	Notice of certain transfers to foreign persons.
6039C.	Returns with respect to foreign persons holding direct investments in United States real property interests.
6039D.	Returns and records with respect to certain fringe benefit plans.[1]
6039D.	Returns and records with respect to certain fringe benefit plans.[1]

AMENDMENTS

1984—Pub. L. 98-612, § 1(b)(4), Oct. 31, 1984, 98 Stat. 3181, added item 6039D "Returns and records with respect to certain fringe benefit plans".

Pub. L. 98-611, § 1(d)(4), Oct. 31, 1984, 98 Stat. 3178, added item 6039D "Returns and records with respect to certain fringe benefit plans".

Pub. L. 98-369, div. A, title I, §§ 129(b)(2), 131(d)(3), title VII, § 714(q)(4), July 18, 1984, 98 Stat. 660, 664, 966, added items 6034A and 6038B, and inserted "foreign persons holding direct investments in" in item 6039C.

§ 6031. Return of partnership income

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6063, 6072, 6231, 6678, 6698 of this title.

§ 6034A. Information to beneficiaries of estates and trusts

The fiduciary of any estate or trust making the return required to be filed under section 6012(a) for any taxable year shall, on or before the date on which such return was filed, furnish to each beneficiary—

(1) who receives a distribution from such estate or trust with respect to such taxable year, or

(2) to whom any item with respect to such taxable year is allocated,

a statement containing such information shown on such return as the Secretary may prescribe.

(Added Pub. L. 98-369, div. A, title VII, § 714(q)(1), July 18, 1984, 98 Stat. 965.)

EFFECTIVE DATE

Section 714(q)(5) of Pub. L. 98-369 provided that: "The amendments made by this subsection [enacting this section and amending sections 6037 and 6678 of this title] shall apply to taxable years beginning after December 31, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6678 of this title.

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[1] So in original. Pub. L. 98-611 and Pub. L. 98-612 enacted identical items designated "6039D".

§ 6037. Return of S corporation

(a) In general

Every S corporation shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, the names and addresses of all persons owning stock in the corporation at any time during the taxable year, the number of shares of stock owned by each shareholder at all times during the taxable year, the amount of money and other property distributed by the corporation during the taxable year to each shareholder, the date of each such distribution, each shareholder's pro rata share of each item of the corporation for the taxable year, and such other information, for the purpose of carrying out the provisions of subchapter S of chapter 1, as the Secretary may by forms and regulations prescribe. Any return filed pursuant to this section shall, for purposes of chapter 66 (relating to limitations), be treated as a return filed by the corporation under section 6012.

(b) Copies to shareholders

Each S corporation required to file a return under subsection (a) for any taxable year shall (on or before the day on which the return for such taxable year was filed) furnish to each person who is a shareholder at any time during such taxable year a copy of such information shown on such return as may be required by regulations.

(As amended Pub. L. 98-369, div. A, title VII, § 714(q)(2), July 18, 1984, 98 Stat. 965.)

AMENDMENTS

1984—Pub. L. 98-369 designated existing provisions as subsec. (a) and added subsec. (a) heading and subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 714(q)(5) of Pub. L. 98-369, set out as an Effective Date note under section 6034A of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6678 of this title.

§ 6038A. Information with respect to certain foreign-owned corporations

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Definitions

For purposes of this section—

(1) Control

The term "control" has the meaning given to such term by section 6038(e)(1); except that "at least 50 percent" shall be substituted for "more than 50 percent" each place it appears in such section.

[*See main edition for text of* (*2*) *and* (*3*); (*d*) *and* (*e*)]

(As amended Pub. L. 98-369, div. A, title VII, § 714(*l*), July 18, 1984, 98 Stat. 963.)

AMENDMENTS

1984—Subsec. (c)(1). Pub. L. 98-369 substituted section "6038(e)(1)" for "6038(d)(1)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

§ 6038B. Notice of certain transfers to foreign persons

(a) In general

Each United States person who—

(1) transfers property to a foreign corporation in an exchange described in section 332, 351, 354, 355, 356, or 361, or

(2) makes a distribution described in section 336 to a person who is not a United States person,

shall furnish to the Secretary, at such time and in such manner as the Secretary shall by regulations prescribe, such information with respect to such exchange or distribution as the Secretary may require in such regulations.

(b) Penalty for failure to furnish information

(1) In general

If any United States person fails to furnish the information described in subsection (a) at the time and in the manner required by regulations, such person shall pay a penalty equal to 25 percent of the amount of the gain realized on the exchange.

(2) Reasonable cause exception

Paragraph (1) shall not apply to any failure if the United States person shows such failure is due to reasonable cause and not to willful neglect.

(Added Pub. L. 98-369, div. A, title I, § 131(d)(1), July 18, 1984, 98 Stat. 664.)

EFFECTIVE DATE

Section applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 367 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6501 of this title.

§ 6039C. Returns with respect to foreign persons holding direct investments in United States real property interests

(a) General rule

To the extent provided in regulations, any foreign person holding direct investments in United States real property interests for the calendar year shall make a return setting forth—

(1) the name and address of such person,

(2) a description of all United States real property interests held by such person at any time during the calendar year, and

(3) such other information as the Secretary may by regulations prescribe.

(b) Definition of foreign persons holding direct investments in United States real property interests

For purposes of this section, a foreign person shall be treated as holding direct investments in United States real property interests during any calendar year if—

(1) such person did not engage in a trade or business in the United States at any time during such calendar year, and

(2) the fair market value of the United States real property interests held directly by such person at any time during such year equals or exceeds $50,000.

(c) Definitions and special rules

For purposes of this section—

(1) United States real property interest

The term "United States real property interest" has the meaning given to such term by section 897(c).

(2) Foreign person

The term "foreign person" means any person who is not a United States person.

(3) Attribution of ownership

For purposes of subsection (b)(2)—

(A) Interests held by partnerships, etc.

United States real property interests held by a partnership, trust, or estate shall be treated as owned proportionately by its partners or beneficiaries.

(B) Interests held by family members

United States real property interests held by the spouse or any minor child of an individual shall be treated as owned by such individual.

(4) Time and manner of filing return

All returns required to be made under this section shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(d) Special rule for United States interest and Virgin Islands interest

A nonresident alien individual or foreign corporation subject to tax under section 897(a) shall pay any tax and file any return required by this title—

(1) to the United States, in the case of any interest in real property located in the United States and an interest (other than an interest solely as a creditor) in a domestic corporation (with respect to the United States) described in section 897(c)(1)(A)(ii), and

(2) to the Virgin Islands, in the case of any interest in real property located in the Virgin Islands and an interest (other than an interest solely as a creditor) in a domestic corporation (with respect to the Virgin Islands) described in section 897(c)(1)(A)(ii).

(As amended Pub. L. 98-369, div. A, title I, § 129(b)(1), July 18, 1984, 98 Stat. 659.)

AMENDMENTS

1984—Pub. L. 98-369 amended section generally, inserting in heading "foreign persons holding direct investments in" by substituting in text provisions concerning returns with respect to foreign persons holding direct investments in United States real property for provisions concerning returns with respect to United States real property interests.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 129(c)(2) of Pub. L. 98-369 provided that: "The amendments made by subsection (b) [amending this section] shall apply to calendar year 1980 and subsequent calendar years."

§ 6039D.[6] Returns and records with respect to certain fringe benefit plans

(a) In general

Every employer maintaining a specified fringe benefit plan during any year beginning after December 31, 1984, for any portion of which the applicable exclusion applies, shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) with respect to such plan showing for such year—

(1) the number of employees of the employer,

(2) the number of employees of the employer eligible to participate under the plan,

(3) the number of employees participating under the plan,

(4) the total cost of the plan during the year, and

(5) the name, address, and taxpayer identification number of the employer and the type of business in which the employer is engaged.

(b) Recordkeeping requirement

Each employer maintaining a specified fringe benefit plan during any year shall keep such records as may be necessary for purposes of determining whether the requirements of the applicable exclusion are met.

(c) Additional information when required by the Secretary

Any employer—

(1) who maintains a specified fringe benefit plan during any year for which a return is required under subsection (a), and

(2) who is required by the Secretary to file an additional return for such year,

shall file such additional return. Such additional return shall be filed at such time and in such manner as the Secretary shall prescribe and shall contain such information as the Secretary shall prescribe.

(d) Definitions

For purposes of this section—

(1) Specified fringe benefit plan

The term "specified fringe benefit plan" means—

(A) any cafeteria plan (as defined in section 125), and

(B) any educational assistance program (as defined in section 127).

(2) Applicable exclusion

The term "applicable exclusion" means—

(A) section 125, in the case of a cafeteria plan, and

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[6] So in original. There are two sections designated "6039D".

(B) section 127, in the case of an educational assistance program.

(Added Pub. L. 98-611, § 1(d)(1), Oct. 31, 1984, 98 Stat. 3176.)

CODIFICATION

Another section 6039D, set out second, was added by Pub. L. 98-612.

EFFECTIVE DATE

Section effective Jan. 1, 1985, see section 1(g)(2) of Pub. L. 98-611, set out as an Effective Date of 1984 Amendment note under section 127 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 120, 125, 127, 6652 of this title.

§ 6039D.[6] Returns and records with respect to certain fringe benefit plans

(a) In general

Every employer maintaining a specified fringe benefit plan during any year beginning after December 31, 1984, for any portion of which the applicable exclusion applies, shall file a return (at such time and in such manner as the Secretary shall by regulations prescribe) with respect to such plan showing for such year—

(1) the number of employees of the employer,

(2) the number of employees of the employer eligible to participate under the plan,

(3) the number of employees participating under the plan,

(4) the total cost of the plan during the year, and

(5) the name, address, and taxpayer identification number of the employer and the type of business in which the employer is engaged.

(b) Recordkeeping requirement

Each employer maintaining a specified fringe benefit plan during any year shall keep such records as may be necessary for purposes of determining whether the requirements of the applicable exclusion are met.

(c) Additional information when required by the Secretary

Any employer—

(1) who maintains a specified fringe benefit plan during any year for which a return is required under subsection (a), and

(2) who is required by the Secretary to file an additional return for such year,

shall file such additional return. Such additional return shall be filed at such time and in such manner as the Secretary shall prescribe and shall contain such information as the Secretary shall prescribe.

(d) Definitions

For purposes of this section—

(1) Specified fringe benefit plan

The term "specified fringe benefit plan" means—

(A) any qualified group legal services plan (as defined in section 120), and

(B) any cafeteria plan (as defined in section 125).

(2) Applicable exclusion

The term "applicable exclusion" means—

(A) section 120, in the case of a qualified group legal services plan, and

(B) section 125, in the case of a cafeteria plan.

(Added Pub. L. 98-612, § 1(b)(1), Oct. 31, 1984, 98 Stat. 3180.)

CODIFICATION

Another section 6039D, set out first, was added by Pub. L. 98-611.

EFFECTIVE DATE

Section 1(d)(2) of Pub. L. 98-612 provided that: "The amendments made by subsection (b) [enacting this section and amending sections 120, 125, and 6652 of this title] shall take effect on January 1, 1985."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 120, 125, 127, 6652 of this title.

SUBPART B—INFORMATION CONCERNING TRANSACTIONS WITH OTHER PERSONS

Sec.	
6047.	Information relating to certain trusts and annuity plans.
6050F.	Returns relating to social security benefits.
6050G.	Returns relating to certain railroad retirement benefits.
6050H.	Returns relating to mortgage interest received in trade or business from individuals.
6050I.	Returns relating to cash received in trade or business.
6050J.	Returns relating to foreclosures and abandonments of security.
6050K.	Returns relating to exchanges of certain partnership interests.
6050L.	Returns relating to certain dispositions of donated property.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, §§ 145(c), 146(c), 148(c), 149(c), 155(b)(3), title IV, § 491(d)(58), July 18, 1984, 98 Stat. 685, 687, 689, 690, 693, 852, struck out "and bond purchase" after "trust and annuity" in item 6047, and added items 6050H to 6050L.

1983—Pub. L. 98-76, title II, § 224(b)(2), Aug. 12, 1983, 97 Stat. 423, added item 6050G.

Pub. L. 98-21, title I, § 121(f)(4), Apr. 20, 1983, 97 Stat. 84, added item 6050F.

§ 6041. Information at source

(a) Payments of $600 or more

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments to which section 6042(a)(1), 6044(a)(1), 6047(e), or 6049(a) applies, and other than payments with respect to which a statement is required under the authority of section 6042(a)(2), 6044(a)(2), or 6045), of $600 or more in any taxable year, or, in the case of such payments made by the United States, the officers or employees of the United States having information as to such payments and required to make returns in regard thereto by the regulations hereinafter provided for, shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

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[6] So in original. There are two sections designated "6039D".

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 722(h)(4)(B), 98 Stat. 976.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 inserted "6047(e),".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to payments or distributions after Dec. 31, 1984, unless the payor elects to have such amendment apply to payments or distributions before Jan. 1, 1985, see section 722(h)(5)(B) of Pub. L. 98-369, set out as a note under section 643 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3406, 3509, 6051, 6652, 6678 of this title.

§ 6041A. Returns regarding payments of remuneration for services and direct sales

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3406, 3509, 6652, 6678 of this title.

§ 6042. Returns regarding payments of dividends and corporate earnings and profits

[*See main edition for text of* (*a*)]

(b) Dividend defined

[*See main edition for text of* (*1*)]

(2) Exceptions

For purposes of this section, the term "dividend" does not include any distribution or payment—

(A) to the extent provided in regulations prescribed by the Secretary—

(i) by a foreign corporation, or

(ii) to a foreign corporation, a nonresident alien, or a partnership not engaged in a trade or business in the United States and composed in whole or in part of nonresident aliens, or

(B) except to the extent otherwise provided in regulations prescribed by the Secretary, to any person described in section 6049(b)(4).

[*See main edition for text of* (*3*)]

(c) Statements to be furnished to persons with respect to whom information is furnished

Every person making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) the name and address of the person making such return, and

(2) the aggregate amount of payments to the person as shown on such return.

The written statement required under the preceding sentence shall be furnished (either in person or in a separate mailing by first-class mail) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made, and shall be in such form as the Secretary may prescribe by regulations. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to such person as shown on the return made under subsection (a)(1) is less than $10.

[*See main edition for text of* (*a*]

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, §§ 102(a), 108(b), 97 Stat. 369, 383; July 18, 1984, Pub. L. 98-369, div. A, title VII, § 714(d), 98 Stat. 961.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-369, in amending par. (2) generally, designated existing provision as subpar. (A), redesignated as cls. (i) and (ii) of subpar. (A) text formerly designated (A) and (B), and added subpar. (B).

1983—Pub. L. 98-67 substituted in subsec. (c) "The written statement required under the preceding sentence shall be furnished (either in person or in a separate mailing by first-class mail) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made, and shall be in such form as the Secretary may prescribe by regulations" for "The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made" and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsiblity Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 108 of Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3406, 6011, 6041, 6652, 6653, 6676, 6678 of this title.

§ 6044. Returns regarding payments of patronage dividends

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Statements to be furnished to persons with respect to whom information is furnished

Every cooperative making a return under subsection (a)(1) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) the name and address of the cooperative making such return, and

(2) the aggregate amount of payments to the person as shown on such return.

The written statement required under the preceding sentence shall be furnished (either in person or in a separate mailing by first-class mail) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made, and shall be in such form as the Secretary may prescribe by regulations. No statement shall be required to be furnished to any person under this subsection if the aggregate amount of payments to such person as shown on the return made under subsection (a)(1) is less than $10.

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, §§ 102(a), 108(c), 97 Stat. 369, 383.)

Amendments

1983—Pub. L. 98-67 substituted in subsec. (e) "The written statement required under the preceding sentence shall be furnished (either in person or in a separate mailing by first-class mail) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made, and shall be in such form as the Secretary may prescribe by regulations" for "The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a)(1) was made" and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

Effective Date of 1983 Amendment

Amendment by section 108 of Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

Section Referred to in Other Sections

This section is referred to in sections 3406, 6011, 6041, 6652, 6653, 6676, 6678 of this title.

§ 6045. Returns of brokers

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Definitions

For purposes of this section—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Person

The term "person" includes any governmental unit and any agency or instrumentality thereof.

(d) Statements required in case of certain substitute payments

If any broker—

(1) transfers securities of a customer for use in a short sale or similar transaction, and

(2) receives (on behalf of the customer) a payment in lieu of—

(A) a dividend,

(B) tax-exempt interest, or

(C) such other items as the Secretary may prescribe by regulations,

during the period such short sale or similar transaction is open, the broker shall furnish such customer a written statement (at such time and in the manner as the Secretary shall prescribe by regulations) identifying such payment as being in lieu of the dividend, tax-exempt interest, or such other item. The Secretary may prescribe regulations which require the broker to make a return which includes the information contained in such written statement.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 150(a), title VII, § 714(e)(1), 98 Stat. 690, 961.)

Amendments

1984—Subsec. (c)(4). Pub. L. 98-369, § 714(e)(1), added par. (4).

Subsec. (d). Pub. L. 98-369, § 150(a), added subsec. (d).

Effective Date of 1984 Amendment

Section 150(b) of Pub. L. 98-369 provided that: "The amendment made by this section [enacting subsec. (d) of this section] shall apply to payments received after December 31, 1984."

Amendment by section 714(e)(1) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsiblity Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

No Penalty for Payments Before January 1, 1985

Section 714(e)(2) of Pub. L. 98-369 provided that: "No penalty shall be imposed under the Internal Revenue Code of 1954 with respect to any person required (by reason of the amendment made by paragraph (1) [enacting subsec. (c)(4) of this section]) to file a return under section 6045 of such Code with respect to any payment before January 1, 1985."

Section Referred to in Other Sections

This section is referred to in sections 3406, 6041, 6049, 6652, 6678, 7609 of this title.

§ 6047. Information relating to certain trusts and annuity plans

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Other programs

To the extent provided by regulations prescribed by the Secretary, the provisions of this section apply with respect to any payment described in section 219 and to transactions of any trust described in section 408(a) or under an individual retirement annuity described in section 408(b).

(d) Reports by employers, plan administrators, etc.

(1) In general

The Secretary shall by forms or regulations require that—

(A) the employer maintaining, or the plan administrator (within the meaning of section 414(g)) of, a plan from which designated distributions (as defined in section 3405(d)(1)) may be made, and

(B) any person issuing any contract under which designated distributions (as so defined) may be made,

make returns and reports regarding such plan (or contract) to the Secretary, to the participants and beneficiaries of such plan (or contract), and to such other persons as the Secretary may by regulations prescribe.

(2) Form, etc., of reports

Such reports shall be in such form, made at such time, and contain such information as the Secretary may prescribe by forms or regulations.

(e) Cross references

(1) For provisions relating to penalties for failure to file a return required by this section, see section 6652(f).

(2) For criminal penalty for furnishing fraudulent information, see section 7207.

[(f) Redesignated (e)]

(As amended Pub. L. 98-369, div. A, title IV, § 491(d)(47), (57), July 18, 1984, 98 Stat. 852.)

AMENDMENTS

1984—Pub. L. 98-369, § 491(d)(57), struck out "and bond purchase" after "trusts and annuity" in section catchline.

Subsecs. (c) to (f). Pub. L. 98-369, § 491(d)(47), redesignated former subsecs. (d) to (f) as (c) to (e), respectively, and struck out former subsec. (c) which related to information to be supplied by employees under qualified bond purchase plans.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6041, 6652, 6704, 7207 of this title.

§ 6049. Returns regarding payments of interest

(a) Requirement of reporting

Every person—

(1) who makes payments of interest (as defined in subsection (b)) aggregating $10 or more to any other person during any calendar year, or

(2) who receives payments of interest (as so defined) as a nominee and who makes payments aggregating $10 or more during any calendar year to any other person with respect to the interest so received,

shall make a return according to the forms or regulations prescribed by the Secretary, setting forth the aggregate amount of such payments and the name and address of the person to whom paid.

(b) Interest defined

[See main edition for text of (1)]

(2) Exceptions

For purposes of subsection (a), the term "interest" does not include—

[See main edition for text of (A) and (B)]

(C) except to the extent otherwise provided in regulations—

(i) any amount paid to any person described in paragraph (4), or

(ii) any amount described in paragraph (5), and

(D) except to the extent otherwise provided in regulations, any amount not described in subparagraph (C) of this paragraph which is income from sources outside the United States or which is paid by—

[See main edition for text of (i) to (iv)]

(v) a partnership not engaged in a trade or business in the United States and composed in whole of nonresident alien individuals and person described in clause (i), (ii), or (iii).

[(E) Repealed. Pub. L. 98-369, div. A, title IV, § 474(r)(29)(J)(iii), July 18, 1984, 98 Stat. 845.]

[See main edition for text of (3)]

(4) Persons described in this paragraph

A person is described in this paragraph if such person is—

(A) a corporation,

(B) an organization exempt from taxation under section 501(a) or an individual retirement plan,

(C) the United States or any wholly owned agency or instrumentality thereof,

(D) a State, the District of Columbia, a possession of the United States, any political subdivision of any of the foregoing, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(E) a foreign government, a political subdivision of a foreign government, or any wholly owned agency or instrumentality of any one or more of the foregoing,

(F) an international organization or any wholly owned agency or instrumentality thereof,

(G) a foreign central bank of issue,

(H) a dealer in securities or commodities required to register as such under the laws of the United States or a State, the District of Columbia, or a possession of the United States,

(I) a real estate investment trust (as defined in section 856),

(J) an entity registered at all times during the taxable year under the Investment Company Act of 1940,

(K) a common trust fund (as defined in section 584(a)), or

(L) any trust which—

(i) is exempt from tax under section 664(c), or

(ii) is described in section 4947(a)(1).

(5) Amounts described in this paragraph

An amount is described in this paragraph if such amount—

(A) is subject to withholding under subchapter A of chapter 3 (relating to withholding of tax on nonresident aliens and foreign corporations) by the person paying such amount, or

(B) would be subject to withholding under subchapter A of chapter 3 by the person paying such amount but for the fact that—

(i) such amount is income from sources outside the United States,

(ii) the payor thereof is exempt from the application of section 1441(a) by reason of section 1441(c) or a tax treaty, or

(iii) such amount is original issue discount (within the meaning of section 1232(b)(1)).[3]

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[3] See References in Text note below.

(c) Statements to be furnished to persons with respect to whom information is furnished

(1) In general

Every person making a return under subsection (a) shall furnish to each person whose name is set forth in such return a written statement showing—

(A) the name and address of the person making such return, and

(B) the aggregate amount of payments to, or the aggregate amount includible in the gross income of, the person as shown on such return.

(2) Time and form of statement

The written statement under paragraph (1)—

(A) shall be furnished (either in person or in a separate mailing by first-class mail) to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made, and

(B) shall be in such form as the Secretary may prescribe by regulations.

[*See main edition for text of* (3)]

(d) Definitions and special rules

For purposes of this section—

[*See main edition for text of* (1) *to* (5)]

(6) Treatment of original issue discount

(A) In general

Original issue discount on any obligation shall be reported—

(i) as if paid at the time it is includible in gross income under section 1272 (except that for such purpose the amount reportable with respect to any subsequent holder shall be determined as if he were the original holder), and

(ii) if section 1272 does not apply to the obligation, at maturity (or, if earlier, on redemption).

In the case of any obligation not in registered form issued before January 1, 1983, clause (ii) and not clause (i) shall apply.

(B) Original issue discount

For purposes of this paragraph, the term "original issue discount" has the meaning given to such term by section 1273(a).

(As amended Pub. L. 98-67, title I, §§ 102(a), (e), 108(a), Aug. 5, 1983, 97 Stat. 369, 370, 383; Pub. L. 98-369, div. A, title I, § 42(a)(14), title IV, § 474(r)(29)(J), July 18, 1984, 98 Stat. 557, 845.)

REFERENCES IN TEXT

The Investment Company Act of 1940, referred to in subsec. (b)(4)(J), is title I of act Aug. 22, 1940, ch. 686, 54 Stat. 789, as amended, which is classified generally to subchapter I (§ 80a-1 et seq.) of chapter 2D of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 80a-51 of Title 15 and Tables.

Section 1232(b)(1), referred to in subsec. (b)(5)(B)(iii), was repealed by Pub. L. 98-369, div. A, title I, § 42(a)(1), July 18, 1984, 98 Stat. 556. See section 1273(a) of this title.

AMENDMENTS

1984—Subsec. (b)(2)(E). Pub. L. 98-369, § 474(r)(29)(J), struck out subpar. (E) which had related to amounts on which the person making payments was required to deduct and withhold a tax under section 1451 (relating to tax-free covenant bonds), or would have been so required but for section 1451(d) (relating to benefit of personal exemptions).

Subsec. (d)(6)(A). Pub. L. 98-369, § 42(a)(14)(A), substituted "section 1272" for "section 1232A" in two places.

Subsec. (d)(6)(B). Pub. L. 98-369, § 42(a)(14)(B), substituted "section 1273(a)" for "section 1232(b)(1)".

1983—Subsec. (a). Pub. L. 98-67, § 102(e)(1), struck out par. (3) which related to persons required under subchapter B of chapter 24 to withhold tax on the payment of interest and, in the provisions following par. (2), substituted "and the name and address of the person to whom paid" for ", tax deducted and withheld, and the name and address of the person to whom paid or from whom withheld".

Subsec. (b)(2)(B). Pub. L. 97-424 substituted "this title" for "law".

Subsec. (b)(2)(C). Pub. L. 98-67, § 102(e)(2), amended subpar. (C) generally, substituting in cl. (i) "person described in paragraph (4), or" for "person referred to in paragraph (2) of section 3452(c) (other than subparagraphs (J) and (K) thereof), or" and in cl. (ii) "described in paragraph (5)," for "described in section 3454(a)(2)(D) or (E),".

Subsec. (b)(4), (5). Pub. L. 98-67, § 102(e)(2)(B), added pars. (4) and (5).

Subsec. (c)(1)(C). Pub. L. 98-67, § 102(e)(3), struck out subpar. (C) which related to the aggregate amount of tax deducted and withheld with respect to the person under subchapter B of chapter 24.

Subsec. (c)(2). Pub. L. 98-67, § 108(a), amended par. (2) generally, adding provision allowing the written statement to be furnished either in person or in a separate mailing by first-class mail and authorizing the Secretary to prescribe by regulation the form that the written statement must take.

Subsec. (e). Pub. L. 98-67, § 102(a), repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 42(a)(14) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Amendment by section 472(r)(29)(J) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 102(e) of Pub. L. 98-67 effective as of the close of June 30, 1983, see section 110(b) of Pub. L. 98-67, set out as a note under section 31 of this title.

Amendment by section 108 of Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1276, 1278, 3406, 6011, 6041, 6042, 6652, 6653, 6676, 6678 of this title.

§ 6050A. Reporting requirements of certain fishing boat operators

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3406, 6652, 6678 of this title.

§ 6050B. Returns relating to unemployment compensation

EFFECTIVE DATE

Section applicable to payments of unemployment compensation made after Dec. 31, 1978, in taxable years ending after such date, but not applicable to payments made for weeks of unemployment ending before Dec. 1, 1978, see section 112(d) of Pub. L. 95-600, as amended, set out as a note under section 85 of this title.

WAIVER OF STATUTE OF LIMITATIONS

For provisions relating to credit or refund of overpayment of tax resulting from 1984 amendment to section 112(d) of Pub. L. 95-600, see section 1075(b) of Pub. L. 98-369, set out as a note under section 85 of this title.

§ 6050E. State and local income tax refunds

[See main edition for text of (a)]

(b) Statements to be furnished to individuals with respect to whom information is furnished

Every person making a return under subsection (a) shall furnish to each individual whose name is set forth in such return a written statement showing—

[See main edition for text of (1) and (2)]

The written statement required under the preceding sentence shall be furnished to the individual during January of the calendar year following the calendar year for which the return under subsection (a) was made. No statement shall be required under this subsection with respect to any individual if it is determined (in the manner provided by regulations) that such individual did not claim itemized deductions under chapter 1 for the taxable year giving rise to the refund, credit, or offset.

[See main edition for text of (c)]

(As amended Pub. L. 98-369, div. A, title I, § 151(a), July 18, 1984, 98 Stat. 690.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 added provisions that no statement is required under this subsection with respect to any individual if it is determined (in the manner provided by regulations) that such individual did not claim itemized deductions under chapter 1 for the taxable year giving rise to the refund, credit, or offset.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 151(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (b) of this section] shall apply to payments of refunds, and credits and offsets made, after December 31, 1982."

§ 6050F. Returns relating to social security benefits

(a) Requirement of reporting

The appropriate Federal official shall make a return, according to the forms and regulations prescribed by the Secretary, setting forth—

(1) the—

(A) aggregate amount of social security benefits paid with respect to any individual during any calendar year,

(B) aggregate amount of social security benefits repaid by such individual during such calendar year, and

(C) aggregate reductions under section 224 of the Social Security Act (or under section 3(a)(1) of the Railroad Retirement Act of 1974) in benefits which would otherwise have been paid to such individual during the calendar year on account of amounts received under a workmen's compensation act, and

(2) the name and address of such individual.

(b) Statements to be furnished to individuals with respect to whom information is furnished

Every person making a return under subsection (a) shall furnish to each individual whose name is set forth in such return a written statement showing—

(1) the name of the agency making the payments, and

(2) the aggregate amount of payments, of repayments, and of reductions, with respect to the individual as shown on such return.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(c) Definitions

For purposes of this section

(1) Appropriate Federal official

The term "appropriate Federal official" means—

(A) the Secretary of Health and Human Services in the case of social security benefits described in section 86(d)(1)(A), and

(B) the Railroad Retirement Board in the case of social security benefits described in section 86(d)(1)(B).

(2) Social security benefit

The term "social security benefit" has the meaning given to such term by section 86(d)(1).

(Added Pub. L. 98-21, title I, § 121(b), Apr. 20, 1983, 97 Stat. 82.)

REFERENCES IN TEXT

Section 224 of the Social Security Act, referred to in subsec. (a)(1)(C), is classified to section 424a of Title 42, The Public Health and Welfare.

Section 3(a)(1) of the Railroad Retirement Act of 1974, referred to in subsec. (a)(1)(C), is classified to section 231b(a)(1) of Title 45, Railroads.

EFFECTIVE DATE

Section applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as a note under section 86 of this title.

§ 6050G. Returns relating to certain railroad retirement benefits

(a) In general

The Railroad Retirement Board shall make a return, according to the forms and regulations prescribed by the Secretary, setting forth—

(1) the aggregate amount of benefits paid under the Railroad Retirement Act of 1974 (other than tier 1 railroad retirement benefits, as defined in section 86(d)(4)) to any individual during any calendar year,

(2) the employee contributions (to the extent not previously taken into account under section 72(d)(1)) which are treated as having been paid for purposes of section 72(r),

(3) the name and address of such individual, and

(4) such other information as the Secretary may require.

(b) Statements to be furnished to individuals with respect to whom information is furnished

The Railroad Retirement Board shall furnish to each individual whose name is set forth in the return under subsection (a) a written statement showing—

(1) the aggregate amount of payments to such individual, and of employee contributions with respect thereto, as shown on such return, and

(2) such other information as the Secretary may require.

The written statement required under the preceding sentence shall be furnished to the individual on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(Added Pub. L. 98-76, title II, § 224(b)(1), Aug. 12, 1983, 97 Stat. 422.)

REFERENCES IN TEXT

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1), is title I of Pub. L. 93-444, Oct. 16, 1974, 88 Stat. 1305, as amended, which is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. For complete classification of this Act to the Code, see section 231t of Title 45 and Tables.

EFFECTIVE DATE

Enactment of section applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for portions of lump-sum payments received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 227(b) of Pub. L. 98-76, set out as an Effective Date of 1983 Amendment note under section 72 of this title.

§ 6050H. Returns relating to mortgage interest received in trade or business from individuals

(a) Mortgage interest of $600 or more

Any person—

(1) who is engaged in a trade or business, and

(2) who, in the course of such trade or business, receives from any individual interest aggregating $600 or more for any calendar year on any mortgage,

shall make the return described in subsection (b) with respect to each individual from whom such interest was received at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns

A return is described in this subsection if such return—

(1) is in such form as the Secretary may prescribe,

(2) contains—

(A) the name and address of the individual from whom the interest described in subsection (a)(2) was received,

(B) the amount of such interest received for the calendar year, and

(C) such other information as the Secretary may prescribe.

(c) Application to governmental units

For purposes of subsection (a)—

(1) Treated as persons

The term "person" includes any governmental unit (and any agency or instrumentality thereof).

(2) Special rules

In the case of a governmental unit or any agency or instrumentality thereof—

(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

(B) any return required under subsection (a) shall be made by the officer or employee appropriately designated for the purpose of making such return.

(d) Statements to be furnished to individuals with respect to whom information is furnished

Every person making a return under subsection (a) shall furnish to each individual whose name is set forth in such return a written statement showing—

(1) the name and address of the person making such return, and

(2) the aggregate amount of interest described in subsection (a)(2) received by the person making such return from the individual to whom the statement is furnished.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(e) Mortgage defined

For purposes of this section, except as provided in regulations prescribed by the Secretary, the term "mortgage" means any obligation secured by real property.

(f) Returns which would be required to be made by 2 or more persons

Except to the extent provided in regulations prescribed by the Secretary, in the case of interest received by any person on behalf of another person, only the person first receiving such interest shall be required to make the return under subsection (a).

(Added Pub. L. 98-369, div. A, title I, § 145(a), July 18, 1984, 98 Stat. 684.)

Effective Date

Section 145(d) of Pub. L. 98-369 provided that:

"(1) In general.—Except as provided in paragraph (2), the amendments made by this section [enacting this section and amending sections 6652 and 6678 of this title] shall apply to amounts received after December 31, 1984.

"(2) Special rule for obligations in existence on December 31, 1984.—In the case of any obligation in existence on December 31, 1984, no penalty shall be imposed under section 6652 of the Internal Revenue Code of 1954 by reason of the amendments made by this section on any failure to supply a taxpayer identification number with respect to amounts received before January 1, 1986."

Section Referred to in Other Sections

This section is referred to in sections 6652, 6678 of this title.

§ 6050I. Returns relating to cash received in trade or business

(a) Cash receipts of more than $10,000

Any person—

(1) who is engaged in a trade or business, and

(2) who, in the course of such trade or business, receives more than $10,000 in cash in 1 transaction (or 2 or more related transactions),

shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns

A return is described in this subsection if such return—

(1) is in such form as the Secretary may prescribe,

(2) contains—

(A) the name, address, and TIN of the person from whom the cash was received,

(B) the amount of cash received,

(C) the date and nature of the transaction, and

(D) such other information as the Secretary may prescribe.

(c) Exceptions

(1) Cash received by financial institutions

Subsection (a) shall not apply to—

(A) cash received in a transaction reported under title 31, United States Code, if the Secretary determines that reporting under this section would duplicate the reporting to the Treasury under title 31, United States Code, or

(B) cash received by any financial institution (as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312(a)(2) of title 31, United States Code).

(2) Transactions occurring outside the United States

Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) Cash includes foreign currency

For purposes of this section, the term "cash" includes foreign currency.

(e) Statements to be furnished to persons with respect to whom information is furnished

Every person making a return under subsection (a) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) the name and address of the person making such return, and

(2) the aggregate amount of cash described in subsection (a) received by the person making such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(Added Pub. L. 98-369, div. A, title I, § 146(a), July 18, 1984, 98 Stat. 685.)

Effective Date

Section 146(d) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting this section and amending sections 6652 and 6678 of this title] shall apply to amounts received after December 31, 1984."

Section Referred to in Other Sections

This section is referred to in sections 6652, 6678 of this title.

§ 6050J. Returns relating to foreclosures and abandonments of security

(a) In general

Any person who, in connection with a trade or business conducted by such person, lends money secured by property and who—

(1) in full or partial satisfaction of any indebtedness, acquires an interest in any property which is security for such indebtedness, or

(2) has reason to know that the property in which such person has a security interest has been abandoned,

shall make a return described in subsection (c) with respect to each of such acquisitions or abandonments, at such time as the Secretary may by regulations prescribe.

(b) Exception

Subsection (a) shall not apply to any loan to an individual secured by an interest in tangible personal property which is not held for investment and which is not used in a trade or business.

(c) Form and manner of return

The return required under subsection (a) with respect to any acquisition or abandonment of property—

(1) shall be in such form as the Secretary may prescribe,

(2) shall contain—

(A) the name and address of each person who is a borrower with respect to the indebtedness which is secured,

(B) a general description of the nature of such property and such indebtedness,

(C) in the case of a return required under subsection (a)(1)—

(i) the amount of such indebtedness at the time of such acquisition, and

(ii) the amount of indebtedness satisfied in such acquisition,

(D) in the case of a return required under subsection (a)(2), the amount of such indebtedness at the time of such abandonment, and

(E) such other information as the Secretary may prescribe.

(d) Applications to governmental units

For purposes of this section—

(1) Treated as persons

The term "person" includes any governmental unit (and any agency or instrumentality thereof).

(2) Special rules

In the case of a governmental unit or any agency or instrumentality thereof—

(A) subsection (a) shall be applied without regard to the trade or business requirement contained therein, and

(B) any return under this section shall be made by the officer or employee appropriately designated for the purpose of making such return.

(e) Statements to be furnished to persons with respect to whom information is required to be furnished

Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing the name and address of the person required to make such return. The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was made.

(f) Treatment of other dispositions

To the extent provided by regulations prescribed by the Secretary, any transfer of the property which secures the indebtedness to a person other than the lender shall be treated as an abandonment of such property.

(Added Pub. L. 98-369, div. A, title I, § 148(a), July 18, 1984, 98 Stat. 687.)

EFFECTIVE DATE

Section 148(d) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting this section and amending sections 6652 and 6678 of this title] shall apply with respect to acquisitions of property and abandonments of property after December 31, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6652, 6678 of this title.

§ 6050K. Returns relating to exchanges of certain partnership interests

(a) In general

Except as provided in regulations prescribed by the Secretary, if there is an exchange described in section 751(a) of any interest in a partnership during any calendar year, such partnership shall make a return for such calendar year stating—

(1) the name and address of the transferee and transferor in such exchange, and

(2) such other information as the Secretary may by regulations prescribe.

Such return shall be made at such time and in such manner as the Secretary may require by regulations.

(b) Statement to be furnished to transferor and transferee

Every partnership making a return under subsection (a) shall furnish to each person whose name is set forth in such return a written statement showing—

(1) the name and address of the partnership making the return, and

(2) the information shown on the return with respect to such person.

The statement required under the preceding sentence shall be furnished to the person on or before January 31 following the calendar year for which the return under subsection (a) was made.

(c) Requirement that transferor notify partnership

(1) In general

In the case of any exchange described in subsection (a), the transferor of the partnership interest shall promptly notify the partnership of such exchange.

(2) Partnership not required to make return until notice

A partnership shall not be required to make a return under this subsection with respect to any exchange until the partnership is notified of such exchange.

(Added Pub. L. 98-369, div. A, title I, § 149(a), July 18, 1984, 98 Stat. 689.)

EFFECTIVE DATE

Section 149(d) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting this section and amending sections 6652 and 6678 of this title] shall apply with respect to exchanges after December 31, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6652, 6678 of this title.

§ 6050L. Returns relating to certain dispositions of donated property

(a) General rule

If the donee of any charitable deduction property sells, exchanges, or otherwise disposes of such property within 2 years after its receipt, the donee shall make a return (in accordance with forms and regulations prescribed by the Secretary) showing—

(1) the name, address, and TIN of the donor,

(2) a description of the property,

(3) the date of the contribution,

(4) the amount received on the disposition, and

(5) the date of such disposition.

(b) Charitable deduction property

For purposes of this section, the term "charitable deduction property" means any property (other than publicly traded securities) contributed in a contribution for which a deduction was claimed under section 170 if the claimed value of such property (plus the claimed value of all similar items of property donated by the donor to 1 or more donees) exceeds $5,000.

(c) Statement to be furnished to donors

Every person making a return under subsection (a) shall furnish a copy of such return to the donor at such time and in such manner as the Secretary may by regulations prescribe.

(d) Definition of publicly traded securities

The term "publicly traded securities" means securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

(Added Pub. L. 98-369, div. A, title I, § 155(b)(1), July 18, 1984, 98 Stat. 693.)

EFFECTIVE DATE

Section 155(d)(1) of Pub. L. 98-369 provided that: "The amendments made by subsections (a) and (b) [enacting this section, amending sections 6652 and 6678 of this title, and enacting provisions set out as a note under section 170 of this title] shall apply to contributions made after December 31, 1984, in taxable years ending after such date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6652, 6678 of this title.

SUBPART C—INFORMATION REGARDING WAGES PAID EMPLOYEES

§ 6051. Receipts for employees

[*See main edition for text*]

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369.)

AMENDMENTS

1983—Subsec. (f)(1)(A). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3121, 3509, 6040, 6041A, 6053, 6314, 6652, 6674, 6678, 7204 of this title.

§ 6053. Reporting of tips

[*See main edition for text of* (a) *and* (b)]

(c) Reporting requirements relating to certain large food or beverage establishments

[*See main edition for text of* (1) *and* (2)]

(3) Employee allocation of 8 percent of gross receipts

[*See main edition for text of* (A) *and* (B)]

(C) The Secretary may lower the percentage required to be allocated

Upon the petition of the employer or the majority of employees of such employer, the Secretary may reduce (but not below 2 percent) the percentage of gross receipts required to be allocated under subparagraph (A) where he determines that the percentage of gross receipts constituting tips is less than 8 percent.

(4) Large food or beverage establishment

For purposes of this subsection, the term "large food or beverage establishment" means any trade or business (or portion thereof)—

[*See main edition for text of* (A) *to* (C)]

For purposes of subparagraph (C), rules similar to the rules of subsections (a) and (b) of section 52 shall apply under regulations prescribed by the Secretary, and an individual who owns 50 percent or more in value of the stock of the corporation operating the establishment shall not be treated as an employee.

[*See main edition for text of* (5) *to* (7)]

(As amended Pub. L. 98-369, div. A, title X, § 1072(a), (c)(1), July 18, 1984, 98 Stat. 1052.)

AMENDMENTS

1984—Subsec. (c)(3)(C). Pub. L. 98-369, § 1072(a), substituted "Upon the petition of the employer or the majority of employees of such employer, the Secretary" for "The Secretary" and "2 percent" for "5 percent".

Subsec. (c)(4). Pub. L. 98-369, § 1072(c)(1), added provision that an individual who owns 50 percent or more in value of the stock of the corporation operating the establishment shall not be treated as an employee.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1072(c)(2) of Pub. L. 98-369 provided that: "The amendment made by paragraph (1) [amending subsec. (c)(4) of this section] shall apply to calendar years beginning after December 31, 1982."

RECORDKEEPING BY TIPPED EMPLOYEES

Section 1072(b) of Pub. L. 98-369 provided that: "The Secretary of the Treasury shall prescribe by regulations within 1 year after the date of the enactment of this Act [July 18, 1984] the applicable recordkeeping requirements for tipped employees."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 451, 3306, 3102, 3121, 3202, 3231, 3401, 3402, 6001, 6041, 6041A, 6051, 6652, 6674, 6678 of this title; title 42 section 409; title 45 section 231.

SUBPART E—REGISTRATION OF AND INFORMATION CONCERNING PENSION, ETC., PLANS

§ 6057. Annual registration, etc.

[*See main edition for text of* (a) *to* (c)]

(d) Transmission of information to Secretary of Health and Human Services

The Secretary shall transmit copies of any statements, notifications, reports, or other information obtained by him under this section to the Secretary of Health and Human Services.

(e) Individual statement to participant

Each plan administrator required to file a registration statement under subsection (a) shall, before the expiration of the time prescribed for the filing of such registration statement, also furnish to each participant described in subsection (a)(2)(C) an individual statement setting forth the information with respect to such participant required to be contained in such registration statement. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

(f) Regulations

(1) In general

The Secretary, after consultation with the Secretary of Health and Human Services may prescribe such regulations as may be necessary to carry out the provisions of this section.

[*See main edition for text of* (2); (*g*)]

(As amended Pub. L. 98-369, div. B, title VI, § 2663(j)(5)(D), July 18, 1984, 98 Stat. 1171; Pub. L. 98-397, title II, § 206, Aug. 23, 1984, 98 Stat. 1449.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Subsec. (e). Pub. L. 98-397 added provision that such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

Subsec. (f). Pub. L. 98-369 substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-397 applicable to plan years beginning after Dec. 31, 1984, except as otherwise provided, see sections 302 and 303 of Pub. L. 98-397, set out as a note under section 1001 of Title 29, Labor.

Amendment by Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

§ 6058. Information required in connection with certain plans of deferred compensation

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Special IRP tax defined

For purposes of this section, the term "special IRP tax" means a tax imposed by—

(1) section 408(f),
(2) section 4973, or
(3) section 4974.

[*See main edition for text of* (*f*)]

(As amended Pub. L. 98-369, div. A, title IV, § 491(d)(48), July 18, 1984, 98 Stat. 852.)

AMENDMENTS

1984—Subsec. (e). Pub. L. 98-369 struck out par. (2) which included a tax imposed by section 409(c) within the term "special IRP tax", and redesignated pars. (3) and (4) as (2) and (3), respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

PART V—TIME FOR FILING RETURNS AND OTHER DOCUMENTS

Sec.
[6073. Repealed.]

AMENDMENTS

1984—Pub. L. 98-369, div. A, title IV, § 412(c)(2), July 18, 1984, 98 Stat. 793, struck out item 6073 "Time for filing declarations of estimated income tax by individuals".

§ 6072. Time for filing income tax returns

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Returns by certain nonresident alien individuals and foreign corporations

Returns made by nonresident alien individuals (other than those whose wages are subject to withholding under chapter 24) and foreign corporations (other than those having an office or place of business in the United States or a FSC or former FSC) under section 6012 on the basis of a calendar year shall be filed on or before the 15th day of June following the close of the calendar year and such returns made on the basis of a fiscal year shall be filed on or before the 15th day of the 6th month following the close of the fiscal year.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VIII, § 801(d)(13), 98 Stat. 997.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 inserted "or a FSC or former FSC" after "United States".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

[§ 6073. Repealed. Pub. L. 98-369, div. A, title IV, § 412(a)(2), July 18, 1984, 98 Stat. 792]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 750; Sept. 25, 1962, Pub. L. 87-682, § 1(a)(2), (b), (c), 76 Stat. 575; Oct. 4, 1976, Pub. L. 94-455, title X, § 1012(c), title XIX, § 1906(b)(13)(A), 90 Stat. 1614, 1834; Nov. 10, 1978, Pub. L. 95-628, § 7(a), 92 Stat. 3630; Sept. 3, 1982, Pub. L. 97-248, title III, § 328(b)(2), 96 Stat. 618, related to time for filing declarations of estimated income tax by individuals.

EFFECTIVE DATE OF REPEAL

Repeal applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 6654 of this title.

PART VIII—DESIGNATION OF INCOME TAX PAYMENTS TO PRESIDENTIAL ELECTION CAMPAIGN FUND

§ 6096. Designation by individuals

[*See main edition for text of* (*a*)]

(b) Income tax liability

For purposes of subsection (a), the income tax liability of an individual for any taxable year is the amount of the tax imposed by chapter 1 on such individual for such taxable year (as shown on his return), reduced by the sum of the credits (as shown in his return) allowable under part IV of subchapter A of chapter 1 (other than subpart C thereof).

[*See main edition for text of* (*c*)]

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(31), July 18, 1984, 98 Stat. 845.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted "allowable under part IV of subchapter A of chapter 1 (other than subpart C thereof" for "allowable under sections 33, 37, 38, 40, 41, 42, 44, 44A, 44B, 44C, 44D, 44E, 44F, 44G, and 44H".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Subchapter B—Miscellaneous Provisions

Sec.	
6111.	Registration of tax shelters.
6112.	Organizers and sellers of potentially abusive tax shelters must keep lists of investors.
6113.	Cross reference.

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, §§ 141(c)(1), 142(c)(1), July 18, 1984, 98 Stat. 680, 682, added items 6111 and 6112 and redesignated former item 6111 "Cross reference" as 6113.

§ 6103. Confidentiality and disclosure of returns and return information

(a) General rule

Returns and return information shall be confidential, and except as authorized by this title—

(1) no officer or employee of the United States,

(2) no officer or employee of any State, any local child support enforcement agency, or any local agency administering a program listed in subsection (*l*)(7)(D) who has or had access to returns or return information under this section, and

[*See main edition for text of* (*3*); (*b*) *and* (*c*)]

(d) Disclosure to State tax officials

(1) In general

Returns and return information with respect to taxes imposed by chapters 1, 2, 6, 11, 12, 21, 23, 24, 31, 32, 44, 45, 51, and 52 and subchapter D of chapter 36 shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws, including any procedures with respect to locating any person who may be entitled to a refund. Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the returns or return information on behalf of such agency, body, or commission. Such representatives shall not include any individual who is the chief executive officer of such State or who is neither an employee or legal representative of such agency, body, or commission nor a person described in subsection (n). However, such return information shall not be disclosed to the extent that the Secretary determines that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation.

[*See main edition for text of* (*2*); (*e*) *to* (*g*)]

(h) Disclosure to certain Federal officers and employees for purposes of tax administration, etc.

[*See main edition for text of* (*1*) *to* (*5*)]

(6) Withholding of tax from social security benefits

Upon written request of the payor agency, the Secretary may disclose available return information from the master files of the Internal Revenue Service with respect to the address and status of an individual as a nonresident alien or as a citizen or resident of the United States to the Social Security Administration or the Railroad Retirement Board (whichever is appropriate) for purposes of carrying out its responsibilities for withholding tax under section 1441 from social security benefits (as defined in section 86(d)).

[*See main edition for text of* (*i*) *to* (*k*)]

(*l*) Disclosure of returns and return information for purposes other than tax administration

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Department of Health and Human Services

Upon written request by the Secretary of Health and Human Services, the Secretary may disclose information returns filed pursuant to part III of subchapter A of chapter 61 of this subtitle for the purpose of carrying out, in accordance with an agreement entered into pursuant to section 232 of the Social Security Act, an effective return processing program.

(6) Disclosure of return information to Federal, State, and local child support enforcement agencies

(A) Return information from Internal Revenue Service

The Secretary may, upon written request, disclose to the appropriate Federal, State, or local child support enforcement agency—

(i) available return information from the master files of the Internal Revenue Service relating to the social security account number (or numbers, if the individual involved has more than one such number), address, filing status, amounts and nature of income, and the number of dependents reported on any return filed by, or with respect to, any individual with respect to whom child support obligations are sought to be established or enforced pursuant to the provisions of part D of title IV of the Social Security Act and with respect to any individual to whom such support obligations are owing, and

[*See main edition for text of* (*ii*), (*B*)]

(7) Disclosure of return information to Federal, State, and local agencies administering certain programs under the Social Security Act or the Food Stamp Act of 1977

(A) Return information from Social Security Administration

The Commissioner of Social Security shall, upon written request, disclose return information from returns with respect to net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income, which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection, to any Federal, State, or local agency administering a program listed in subparagraph (D).

(B) Return information from Internal Revenue Service

The Secretary shall, upon written request, disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed in subparagraph (D).

(C) Restriction on disclosure

The Commissioner of Social Security and the Secretary shall disclose return information under subparagraphs (A) and (B) only for purposes of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under a program listed in subparagraph (D).

(D) Programs to which rule applies

The programs to which this paragraph applies are:

(i) aid to families with dependent children provided under a State plan approved under part A of title IV of the Social Security Act;

(ii) medical assistance provided under a State plan approved under title XIX of the Social Security Act;

(iii) supplemental security income benefits provided under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66);

(iv) any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) unemployment compensation provided under a State law described in section 3304 of this Code;[3]

(vi) assistance provided under the Food Stamp Act of 1977; and

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66).

(8) Disclosure of certain return information by Social Security Administration to State and local child support enforcement agencies

(A) In general

Upon written request, the Commissioner of Social Security shall disclose directly to officers and employees of a State or local child support enforcement agency return information from returns with respect to social security account numbers, net earnings from self-employment (as defined in section 1402), wages (as defined in section 3121(a) or 3401(a)), and payments of retirement income which have been disclosed to the Social Security Administration as provided by paragraph (1) or (5) of this subsection.

[*See main edition for text of* (*B*) *and* (*C*)]

(9) Disclosure of alcohol fuel producers to administrators of State alcohol laws

Notwithstanding any other provision of this section, the Secretary may disclose—

(A) the name and address of any person who is qualified to produce alcohol for fuel use under section 5181, and

(B) the location of any premises to be used by such person in producing alcohol for fuel,

to any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for administration of State alcohol laws solely for use in the administration of such laws.

[*See main edition for text of* (*m*) *to* (*o*)]

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[3] See References in Text note below.

(p) Procedure and recordkeeping

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Records of inspection and disclosure

(A) System of recordkeeping

Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h)(1), (3)(A), or (4), (i)(4) or (7)(A)(ii), (k)(1), (2), or (6), (*l*)(1), (4)(B), (5), (7), (8), or (9), (m), or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

[*See main edition for text of* (*B*) *and* (*C*)]

(4) Safeguards

Any Federal agency described in subsection (h)(2), (h)(6), (i)(1), (2), (3), or (5), (j)(1) or (2), (*l*)(1), (2), (3), or (5), or (*o*)(1), the General Accounting Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (*l*)(6), (7), (8), or (9) shall, as a condition for receiving returns or return information—

[*See main edition for text of* (*A*) *to* (*E*)]

(F) upon completion of use of such returns or return information—

(i) in the case of an agency, body, or commission described in subsection (d), (i)(3)(B)(i), or (*l*)(6), (7), (8), or (9) return to the Secretary such returns or return information (along with any copies made therefrom) or make such returns or return information undisclosable in any manner and furnish a written report to the Secretary describing such manner; and

(ii) in the case of an agency described in subsections (h)(2), (h)(6), (i)(1), (2), (3), or (5), (j)(1) or (2), (*l*)(1), (2), (3), or (5), or (*o*)(1),,[1] or the General Accounting Office, either—

[*See main edition for text of* (*I*) *to* (*III*)]

except that the conditions of subparagraphs (A), (B), (C), (D), and (E) shall cease to apply with respect to any return or return information if, and to the extent that, such return or return information is disclosed in the course of any judicial or administrative proceeding and made a part of the public record thereof. If the Secretary determines that any such agency, body, or commission or the General Accounting Office has failed to, or does not, meet the requirements of this paragraph, he may, after any proceedings for review established under paragraph (7), take such actions as are necessary to ensure such requirements are met, including refusing to disclose returns or return information to such agency, body, or commission or the General Accounting Office until he determines that such requirements have been or will be met. In the case of any agency which receives any mailing address under subsection (m)(2) or (4) and which discloses any such mailing address to any agent, this paragraph shall apply to such agency and each such agent (except that, in the case of an agent, any report to the Secretary or other action with respect to the Secretary shall be made or taken through such agency).

[*See main edition for text of* (*5*) *to* (*8*); (*q*)]

(Aug. 16, 1954, ch. 736, 68A Stat. 753; Sept. 2, 1964, Pub. L. 88-563, § 3(c), 78 Stat. 844; June 21, 1965, Pub. L. 89-44, title VI, § 601(a), 79 Stat. 153; Nov. 2, 1966, Pub. L. 89-713, § 4(a), 80 Stat. 1109; Sept. 2, 1974, Pub. L. 93-406, title II, § 1022(h), 88 Stat. 941; Jan. 2, 1976, Pub. L. 94-202, § 8(g), 89 Stat. 1139; Oct. 4, 1976, Pub. L. 94-455, title XII, § 1202(a)(1), 90 Stat. 1667; Dec. 13, 1977, Pub. L. 95-210, § 5, 91 Stat. 1491; Nov. 6, 1978, Pub. L. 95-600, title V, § 503, title VII, § 701(bb)(1)(A), (B), (2)-(5), 92 Stat. 2879, 2921-2923; May 26, 1980, Pub. L. 96-249, title I, § 127(a)(1), (2)(A)-(C), 94 Stat. 365, 366, as amended Dec. 28, 1980, Pub. L. 96-611, § 11(a)(1), 94 Stat. 3573, and July 18, 1984, Pub. L. 98-369, div. A, title IV, § 453(b)(5), 98 Stat. 820; June 9, 1980, Pub. L. 96-265, title IV, § 408(a)(1), (2)(A)-(C), 94 Stat. 468, as amended Dec. 28, 1980, Pub. L. 96-611, § 11(a)(2)(A)-(B)(iii), 94 Stat. 3573; Dec. 5, 1980, Pub. L. 96-499, title III, § 302(a), 94 Stat. 2604; Dec. 24, 1980, Pub. L. 96-589, § 3(c), 94 Stat. 3401; Dec. 24, 1980, Pub. L. 96-598, § 3(a), 94 Stat. 3487; Aug. 13, 1981, Pub. L. 97-34, title VII, § 701(a), 95 Stat. 340; Sept. 3, 1982, Pub. L. 97-248, title III, §§ 356(a), (b)(1), 358(a), (b), 96 Stat. 641, 645, 646, 648; Sept. 13, 1982, Pub. L. 97-258, § 3(f)(4)-(6), 96 Stat. 1064; Oct. 25, 1982, Pub. L. 97-365, §§ 7(a), (b), 8(a)-(c)(1), 96 Stat. 1752-1754; Jan. 12, 1983, Pub. L. 97-452, § 2(c)(4), 96 Stat. 2478; Apr. 20, 1983, Pub. L. 98-21, title I, § 121(c)(3)(A), (B), 97 Stat. 83; July 18, 1984, Pub. L. 98-369, div. A, title IV, §§ 449(a), 453(a)-(b)(3), (6), div. B, title VI, §§ 2651(k), 2663(j)(5)(E), 98 Stat. 818, 820, 1150, 1171; Aug. 16, 1984, Pub. L. 98-378, § 19(b), 98 Stat. 1322.)

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[1] So in original. The second comma is unnecessary.

Amendment of Subsections (l) and (p)

Pub. L. 98-369, div. B, title VI, §2653(b)(3), (c), July 18, 1984, 98 Stat. 1155, 1156, provided that, applicable with respect to refunds payable under section 6402 of this title after Dec. 31, 1985, and before Jan. 1, 1988, this section is amended as follows:

(A) Subsection (l) amended by adding at the end thereof the following new paragraph:

(10) Disclosure of certain information to agencies requesting a reduction under section 6402(c) or 6402(d)

(A) Return information from Internal Revenue Service

The Secretary may, upon receiving a written request, disclose to officers and employees of an agency seeking a reduction under section 6402(c) or 6402(d)—

(i) the fact that a reduction has been made or has not been made under such subsection with respect to any person;

(ii) the amount of such reduction; and

(iii) taxpayer identifying information of the person against whom a reduction was made or not made.

(B) Restriction on use of disclosed information

Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records or in the defense of any litigation or administrative procedure ensuing from reduction made under section 6402(c) or section 6402(d).

(B)(i) Subsection (p)(3)(A) is amended by striking out "or (9)" and inserting in lieu thereof "(9), or (10)";

(ii) Subsection (p)(4) is amended by striking out "(l)(1), (2), (3), or (5)" and inserting in lieu thereof "(l)(1), (2), (3), (5), or (10); and

(iii) Subsection (p)(4)(F)(ii) is amended by striking out "(l)(1), (2), (3), or (5)" and inserting in lieu thereof "(l)(1), (2), (3), (5), or (10)".

Pub. L. 98-378, § 21(f)(1)-(4), (g), Aug. 16, 1984, 98 Stat. 1325, 1326, provided that, applicable with respect to refunds payable under section 6402 of this title after Dec. 31, 1985, this section, as amended by section 2653 of Pub. L. 98-369, is amended as follows:

(A) Subsection (l) is amended by adding at the end thereof the following new paragraph:

(11) Disclosure of certain information to agencies requesting a reduction under section 6402(c)

(A) Return information from Internal Revenue Service

The Secretary shall, upon receiving a written request, disclose to officers and employees of a State agency seeking a reduction under section 6402(c)—

(i) the fact that a reduction has been made or has not been made under such subsection with respect to any taxpayer;

(ii) the amount of such reduction;

(iii) whether such taxpayer filed a joint return;

(iv) taxpayer identity information with respect to the taxpayer against whom a reduction was made or not made and of any other person filing a joint return with such taxpayer; and

(v) the fact that a payment was made (and the amount of the payment) on the basis of a joint return in accordance with section 464(a)(3) of the Social Security Act.

(B) Restriction on use of disclosed information

Any officers and employees of an agency receiving return information under subparagraph (A) shall use such information only for the purposes of, and to the extent necessary in, establishing appropriate agency records or in the defense of any litigation or administrative procedure ensuing from a reduction made under section 6402(c).

(B)(i) Subsection (p)(3)(A) is further amended by striking out "or (10)" and inserting in lieu thereof "(10), or (11)";

(ii) Subsection (p)(4) is further amended by striking out "or (10)" and inserting in lieu thereof "(10), or (11)"; and

(iii) Subsection (p)(4)(F)(ii) is further amended by striking out "or (10)" and inserting in lieu thereof "(10), or (11)".

References in Text

The Social Security Act, referred to in subsec. (*l*)(1)(A), (B), (5), (6)(A), (7), (8)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. Parts A and D of title IV of the Social Security Act are classified generally to part A (§ 601 et seq.) and part D (§ 651 et seq.) of subchapter IV of chapter 7 of Title 42. Titles I, X, XIV, XVI, and XIX of the Social Security Act are classified generally to subchapters I (§ 301 et seq.), X (§ 1201 et seq.), XIV (§ 1351 et seq.), XVI (1381 et seq.), and XIX (§ 1396 et seq.), respectively, of chapter 7 of Title 42. Sections 232, 454, 1131, and 1616 of such Act are classified to sections 432, 654, 1320b-1, and 1382e, respectively, of Title 42. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Section 212(a) of Pub. L. 93-66, referred to in subsec. (*l*)(7)(D)(iii), (vii), is set out as a note under section 1382 of Title 42.

This Code, referred to in subsec. (*l*)(7)(D)(v), means the Internal Revenue Code of 1954, which comprises this title.

The Food Stamp Act of 1977, referred to in subsec. (*l*)(7)(D)(vi), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Amendments

1984—Subsec. (a)(2). Pub. L. 98-369, § 2651(k)(2), substituted ", any local child support enforcement agency, or any local agency administering a program listed in subsection (*l*)(7)(D)" for "or of any local child support enforcement agency".

Subsec. (d)(1). Pub. L. 98-369, § 449(a), substituted "44, 45, 51" for "44, 51".

Subsec. (*l*)(5). Pub. L. 98-369, § 2663(j)(5)(E), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare" in heading and text.

Subsec. (*l*)(6)(A)(i). Pub. L. 98-378, § 19(b)(1), inserted "social security account number (or numbers, if the individual involved has more than one such number),".

Subsec. (*l*)(7). Pub. L. 98-369, § 2651(k)(1), substituted provisions relating to information disclosure to Federal, State and local agencies administering programs under the Social Security Act or the Food Stamp Act of 1977 for former provisions which related to information disclosure by the Social Security Administration to the Department of Agriculture and State food stamp agencies.

Pub. L. 98-369, § 453(b)(5), amended directory language of Pub. L. 96-249, § 127(a)(1). See 1980 Amendment note below.

Subsec. (*l*)(8). Pub. L. 98-369, § 453(b)(6), directed that the par. (7) added by Pub. L. 96-265 be redesignated as par. (8). See 1980 Amendment note below.

Subsec. (*l*)(8)(A). Pub. L. 98-378, § 19(b)(2), substituted "social security account numbers, net earnings" for "net earnings".

Subsec. (*l*)(9). Pub. L. 98-369, § 453(a), added par. (9).

Subsec. (p)(3)(A). Pub. L. 98-369, § 453(b)(1), which directed that "(5), (7), (8), or (9)" be substituted for "(5), or (7)", was executed by substituting "(5), (7), (8), or (9)" for "(5), (7), or (8)" to reflect the probable intent of Congress.

Subsec. (p)(4). Pub. L. 98-369, § 453(b)(2), which directed that "(7), (8), or (9)" be substituted for "or (7)" in the material preceding subpar. (A), was executed by substituting "(7), (8), or (9)" for "(7), or (8)" to reflect the probable intent of Congress.

Subsec. (p)(4)(F)(i). Pub. L. 98-369, § 453(b)(3), which directed that "(*l*)(6), (7), (8), or (9)" be substituted for "(*l*)(6) or (7)", was executed by substituting "(*l*)(6), (7), (8), or (9)" for "(*l*)(6), (7), or (8)" to reflect the probable intent of Congress.

1983—Subsec. (h)(6). Pub. L. 98-21, § 121(c)(3)(A), added par. (6).

Subsec. (m)(2). Pub. L. 97-452 substituted "sections 3711, 3717, and 3718 of title 31" for "section 3 of the Federal Claims Collection Act of 1966 (31 U.S.C. 952)", wherever appearing.

Subsec. (p)(4). Pub. L. 98-21, § 121(c)(3)(B), inserted "(h)(6)," after "(h)(2)," in introductory provisions.

Subsec. (p)(4)(F)(ii). Pub. L. 98-21, § 121(c)(3)(B), inserted "(h)(6)," after "(h)(2),".

1980—Subsec. (*l*)(7). Pub. L. 96-249, § 127(a)(1), as amended by Pub. L. 96-611, § 11(a)(1), and Pub. L. 98-369, § 453(b)(5), added par. (7). Paragraph as originally enacted by Pub. L. 96-249 was designated subsec. (i)(7), but was redesignated subsec. (*l*)(7) through amendment by Pub. L. 96-611 and Pub. L. 98-369.

Effective Date of 1984 Amendment

Section 449(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending subsec. (d)(1) of this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

Amendment by section 453 of Pub. L. 98-369 effective on the first day of the first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

Amendment by section 2651(k) of Pub. L. 98-369 effective July 18, 1984, see section 2651(*l*)(1) of Pub. L. 98-369, set out as an Effective Date note under section 1320b-7 of Title 42, The Public Health and Welfare.

Amendment by section 2663 of Pub. L. 98-369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98-369, set out as a note under section 401 of Title 42.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-21 applicable to benefits received after Dec. 31, 1983, in taxable years ending after such date, except for any portion of a lump-sum payment of social security benefits received after Dec. 31, 1983, if the generally applicable payment date for such portion was before Jan. 1, 1984, see section 121(g) of Pub. L. 98-21, set out as an Effective Date note under section 86 of this title.

Section Referred to in Other Sections

This section is referred to in sections 274, 2204, 3406, 4424, 6104, 6108, 7213, 7431, 7602, 7809, 8021 of this title; title 5 section 3111; title 7 section 2020; title 13 section 91; title 28 section 594; title 29 section 1134; title 31 section 713; title 42 sections 432, 1320b-7, 1383; title 50 App. section 2411.

§ 6104. Publicity of information required from certain exempt organizations and certain trusts

(a) Inspection of applications for tax exemption

(1) Public inspection

[*See main edition for text of* (*A*)]

(B) Pension, etc., plans

The following shall be open to public inspection at such times and in such places as the Secretary may prescribe:

(i) any application filed with respect to the qualification of a pension, profit-sharing, or stock bonus plan under section 401(a) or 403(a), an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b),

[*See main edition for text of* (*ii*) *to* (*iv*)]

Except in the case of a plan participant, this subparagraph shall not apply to any plan referred to in clause (i) having not more than 25 participants.

[*See main edition for text of* (*C*) *and* (*D*), (*2*); (*b*) *and* (*c*)]

(d) Public inspection of private foundations' annual reports

The annual return required to be filed under section 6033 (relating to returns by exempt organizations) by any organization which is a private foundation within the meaning of section 509(a) shall be made available by the foundation managers for inspection at the principal office of the foundation during regular business hours by any citizen on request made within 180 days after the date of the publication of notice of its availability. Such notice shall be published, not later than the day prescribed for filing such annual return (determined with regard to any extension of time for filing), in a newspaper having general circulation in the county in which the principal office of the private foundation is located. The notice shall state that the annual return of the private foundation is available at its principal office for inspection during regular business hours by any citizen who requests it within 180 days after the date of such publication, and shall state the address and the telephone number of the private foundation's principal office and the name of its principal manager.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title III, § 306(b), title IV, § 491(d)(49), 98 Stat. 784, 852.)

AMENDMENTS

1984—Subsec. (a)(1)(B)(i). Pub. L. 98-369, § 491(d)(49), substituted "or 403(a)" for ", 403(a), or 405(a)".

Subsec. (d). Pub. L. 98-369, § 306(b), substituted "shall state the address and the telephone number of the private foundation's principal office" for "shall state the address of the private foundation's principal office".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 306(b) of Pub. L. 98-369 effective Jan. 1, 1985, see section 306(c) of Pub. L. 98-369, set out as a note under section 4946 of this title.

Amendment by section 491(d)(49) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

§ 6109. Identifying numbers

PRIOR PROVISIONS

A prior section 6109 was renumbered section 6113.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6103, 6676, 6695, 7701 of this title.

§ 6110. Public inspection of written determinations

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Resolution of disputes relating to disclosure

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Expedition of determination

The Tax Court shall make a decision with respect to any petition described in paragraph (3) at the earliest practicable date.

[*See main edition for text of* (*6*); (*g*) *to* (*l*)]

(As amended Pub. L. 98-620, title IV, § 402(28)(B), Nov. 8, 1984, 98 Stat. 3359.)

PRIOR PROVISIONS

A prior section 6110 was renumbered 6113.

AMENDMENTS

1984—Subsec. (f)(5). Pub. L. 98-620 struck out provision that the Court of Appeals had to expedite any review of such decision in every way possible.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 6111. Registration of tax shelters

(a) Registration

(1) In general

Any tax shelter organizer shall register the tax shelter with the Secretary (in such form and in such manner as the Secretary may prescribe) not later than the day on which the first offering for sale of interests in such tax shelter occurs.

(2) Information included in registration

Any registration under paragraph (1) shall include—

(A) information identifying and describing the tax shelter,

(B) information describing the tax benefits of the tax shelter represented (or to be represented) to investors, and

(C) such other information as the Secretary may prescribe.

(b) Furnishing of tax shelter identification number; inclusion on return

(1) Sellers, etc.

Any person who sells (or otherwise transfers) an interest in a tax shelter shall (at such times and in such manner as the Secretary shall prescribe) furnish to each investor who purchases (or otherwise acquires) an interest in such tax shelter from such person the identification number assigned by the Secretary to such tax shelter.

(2) Inclusion of number on return

Any person claiming any deduction, credit, or other tax benefit by reason of a tax shelter shall include (in such manner as the Secretary may prescribe) on the return of tax on which such deduction, credit, or other benefit is claimed the identification number assigned by the Secretary to such tax shelter.

(c) Tax shelter

For purposes of this section—

(1) In general

The term "tax shelter" means any investment—

(A) with respect to which any person could reasonably infer from the representations made, or to be made, in connection with the offering for sale of interests in the investment that the tax shelter ratio for any investor as of the close of any of the first 5 years ending after the date on which such investment is offered for sale may be greater than 2 to 1, and

(B) which is—

(i) required to be registered under a Federal or State law regulating securities,

(ii) sold pursuant to an exemption from registration requiring the filing of a notice with a Federal or State agency regulating the offering or sale of securities, or

(iii) a substantial investment.

(2) Tax shelter ratio defined

For purposes of this subsection, the term "tax shelter ratio" means, with respect to any year, the ratio which—

(A) the aggregate amount of the deductions and 200 percent of the credits which are represented to be potentially allowable to any investor under subtitle A for all periods up to (and including) the close of such year, bears to

(B) the investment base as of the close of such year.

(3) Investment base

(A) In general

Except as provided in this paragraph, the term "investment base" means, with respect to any year, the amount of money and the adjusted basis of other property (reduced by any liability to which such other property is subject) contributed by the investor as of the close of such year.

(B) Certain borrowed amounts excluded

For purposes of subparagraph (A), there shall not be taken into account any amount borrowed from any person—

(i) who participated in the organization, sale, or management of the investment, or

(ii) who is a related person (as defined in section 168(e)(4)) to any person described in clause (i),

unless such amount is unconditionally required to be repaid by the investor before the close of the year for which the determination is being made.

(C) Certain other amounts included or excluded

(i) Amounts held in cash equivalents, etc.

No amount shall be taken into account under subparagraph (A) which is to be held in cash equivalent or marketable securities.

(ii) Amounts included or excluded by Secretary

The Secretary may by regulation—

(I) exclude from the investment base any amount described in subparagraph (A), or

(II) include in the investment base any amount not described in subparagraph (A),

if the Secretary determines that such exclusion or inclusion is necessary to carry out the purposes of this section.

(4) Substantial investment

An investment is a substantial investment if—

(A) the aggregate amount which may be offered for sale exceeds $250,000, and

(B) there are expected to be 5 or more investors.

(d) Other definitions

For purposes of this section—

(1) Tax shelter organizer

The term "tax shelter organizer" means—

(A) the person principally responsible for organizing the tax shelter,

(B) if the requirements of subsection (a) are not met by a person described in subpargraph[6] (A) at the time prescribed therefor, any other person who participated in the organization of the tax shelter, and

(C) if the requirements of subsection (a) are not met by a person described in subparagraph (A) or (B) at the time prescribed therefor, any person participating in the sale or management of the investment at a time when the tax shelter was not registered under subsection (a).

(2) Year

The term "year" means—

(A) the taxable year of the tax shelter, or

(B) if the tax shelter has no taxable year, the calendar year.

(e) Regulations

The Secretary may prescribe regulations which provide—

(1) rules for the aggregation of similar investments offered by the same person or persons for purposes of applying subsection (c)(4),

(2) that only 1 person shall be required to meet the requirements of subsection (a) in cases in which 2 or more persons would otherwise be required to meet such requirements,

(3) exemptions from the requirements of this section, and

(4) such rules as may be necessary or appropriate to carry out the purposes of this section in the case of foreign tax shelters.

(Added Pub. L. 98-369, div. A, title I, § 141(a), July 18, 1984, 98 Stat. 677.)

PRIOR PROVISIONS

A prior section 6111 was renumbered 6113.

EFFECTIVE DATE

Section 141(d) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting sections 6111 and 6707 of this title and redesignating former section 6111 as 6112] shall apply to any tax shelter (within the meaning of section 6111 of the Internal Revenue Code of 1954, as added by this section) any interest in which is first sold to any investor after August 31, 1984.

"(2) SUBSTANTIAL INVESTMENT TEST.—For purposes of determining whether any investment is a tax shelter by reason of section 6111(c)(1)(B)(iii) of such Code (as added by this section), only offers for sale after August 31, 1984, shall be taken into account.

"(3) FURNISHING OF SHELTER IDENTIFICATION NUMBER FOR INTERESTS SOLD BEFORE SEPTEMBER 1, 1984.—With respect to interests sold before September 1, 1984, any liability to act under paragraph (1) of section 6111(b) of such Code (as added by this section) which would (but for this sentence) arise before such date shall be deemed to arise on December 31, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6112, 6707 of this title.

§ 6112. Organizers and sellers of potentially abusive tax shelters must keep lists of investors

(a) In general

Any person who—

(1) organizes any potentially abusive tax shelter, or

(2) sells any interest in such a shelter,

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[6] So in original. Probably should be "subparagraph".

shall maintain (in such manner as the Secretary may by regulations prescribe) a list identifying each person who was sold an interest in such shelter and containing such other information as the Secretary may by regulations require.

(b) Potentially abusive tax shelter

For purposes of this section, the term "potentially abusive tax shelter" means—

(1) any tax shelter (as defined in section 6111) with respect to which registration is required under section 6111, and

(2) any entity, investment plan or arrangement, or other plan or arrangement which is of a type which the Secretary determines by regulations as having a potential for tax avoidance or evasion.

(c) Special rules

(1) Availability for inspection; retention of information on list

Any person who is required to maintain a list under subsection (a)—

(A) shall make such list available to the Secretary for inspection upon request by the Secretary, and

(B) except as otherwise provided under regulations prescribed by the Secretary, shall retain any information which is required to be included on such list for 7 years.

(2) Lists which would be required to be maintained by 2 or more persons

The Secretary shall prescribe regulations which provide that, in cases in which 2 or more persons are required under subsection (a) to maintain the same list (or portion thereof), only 1 person shall be required to maintain such list (or portion).

(Added Pub. L. 98-369, div. A, title I, § 142(a), July 18, 1984, 98 Stat. 681.)

Prior Provisions

A prior section 6112 was renumbered 6113.

Effective Date

Section 142(d) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting sections 6112 and 6708 of this title and redesignating former section 6112 as 6113] shall apply to any interest which is first sold to any investor after August 31, 1984."

Section Referred to in Other Sections

This section is referred to in section 6708 of this title.

§ 6113. Cross reference

For inspection of records, returns, etc., concerning gasoline or lubricating oils, see section 4102.

(Aug. 16, 1954, ch. 736, 68A Stat. 756, § 6109; renumbered § 6110, Oct. 5, 1961, Pub. L. 87-397, § 1(a), 75 Stat. 828; renumbered § 6111, and amended Oct. 4, 1976, Pub. L. 94-455, title XII, § 1201(a), title XIX, § 1906(a)(8), 90 Stat. 1660, 1824; renumbered § 6112 and 6113, July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 141(a), 142(a), 98 Stat. 677, 681.)

Amendments

1976—Pub. L. 94-455, among other changes, substituted in section heading "Cross reference" for "Cross references" and struck out in text reference to section 4876, relating to reports of Secretary of Agriculture concerning cotton futures, reference to section 4773, relating to inspection of returns, order forms, and prescriptions concerning narcotics and marihuana, and reference to section 4775 relating to authority of Secretary or his delegate to furnish list of special taxpayers.

CHAPTER 62—TIME AND PLACE FOR PAYING TAX

Subchapter A—Place and Due Date for Payment of Tax

Sec.
[6153. Repealed.]

Amendments

1984—Pub. L. 98-369, div. A, title IV, § 412(c)(3), July 18, 1984, 98 Stat. 793, struck out item 6153 "Installment payments of estimated income tax by individuals".

[§ 6153. Repealed. Pub. L. 98-369, div. A, title IV, § 412(a)(3), July 18, 1984, 98 Stat. 792]

Section, acts Aug. 16, 1954, ch. 736, 68A Stat. 758; Sept. 25, 1962, Pub. L. 87-682, § 1(a)(3), (c), 76 Stat. 575; Dec. 23, 1975, Pub. L. 94-164, § 5(b), 89 Stat. 975; June 30, 1976, Pub. L. 94-331, § 3(b), 90 Stat. 782; Sept. 3, 1976, Pub. L. 94-396, § 2(a)(2), 90 Stat. 1201; Sept. 17, 1976, Pub. L. 94-414, § 3(b), 90 Stat. 1273; Oct. 4, 1976, Pub. L. 94-455, title XIX, § 1906(b)(13)(A), 90 Stat. 1834; Aug. 13, 1981, Pub. L. 97-34, title VII, § 725(c)(3), 95 Stat. 346; Sept. 3, 1982, Pub. L. 97-248, title III, § 328(b)(3), 96 Stat. 618, related to installment payments of estimated income tax by individuals.

Effective Date of Repeal

Repeal applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 6654 of this title.

§ 6154. Installment payments of estimated income tax by corporations

Section Referred to in Other Sections

This section is referred to in sections 243, 6201, 6601, 6651 of this title.

§ 6157. Payment of Federal unemployment tax on quarterly or other time period basis

[See main edition for text of (a)]

(b) Computation of tax

The tax for any calendar quarter or other period referred to in paragraph (1) or (2) of subsection (a) shall be computed by multiplying the amount of wages (as defined in section 3306(b)) paid in such calendar quarter or other period by 0.6 percent. In the case of wages paid in any calendar quarter or other period during a calendar year to which paragraph (1) of section 3301 applies, the amount of such wages shall be multiplied by 0.8 percent in lieu of 0.6 percent.

[See main edition for text of (c)]

(d) Quarterly payment of railroad unemployment repayment tax

(1) In general

Every rail employer shall compute the tax imposed by section 3321 for each calendar quarter in any taxable period in the manner provided in paragraph (2). The tax so computed shall, except as otherwise provided in paragraph (3), be paid in such manner and at such time as may be provided in regulations prescribed by the Secretary.

(2) Computation of tax

The tax for any calendar quarter shall be computed by multiplying the aggregate amount of rail wages paid in such calendar quarter by the applicable percentage determined under section 3321(c).

(3) Exceptions

No payment shall be required under this subsection—

(A) for the last calendar quarter in any taxable period, and

(B) for any calendar quarter if the tax under section 3321 for such quarter, plus any unpaid amounts for prior calendar quarters in the taxable period, does not exceed $100.

(4) Definitions

For purposes of this subsection, the terms "taxable period", "rail employer", and "rail wages" have the same respective meanings as when used in chapter 23A.

(Added Pub. L. 91-53, § 2(a), Aug. 7, 1969, 83 Stat. 91, and amended Pub. L. 91-373, title I, § 101(b)(1), (2), Aug. 10, 1970, 84 Stat. 696; Pub. L. 92-329, § 2(b), June 30, 1972, 86 Stat. 398; Pub. L. 94-455, title XIX, § 1906(a)(11), (b)(13)(A), Oct. 4, 1976, 90 Stat. 1825, 1834; Pub. L. 94-566, title I, § 114(b), title II, § 211(c)(3), Oct. 20, 1976, 90 Stat. 2669, 2677; Pub. L. 97-248, title II, § 271(b)(2)(C), (c)(3)(C), Sept. 3, 1982, 96 Stat. 555; Pub. L. 98-76, title II, § 231(b)(1), Aug. 12, 1983, 97 Stat. 428.)

AMENDMENTS

1983—Subsec. (d). Pub. L. 98-76 added subsec. (d).

1982—Subsec. (b). Pub. L. 97-248, § 271(c)(3)(C), substituted "0.6" for "0.5" in two places.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98-76, set out as an Effective Date note under section 3321 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by section 271(c)(3)(C) of Pub. L. 97-248 applicable to remuneration paid after Dec. 31, 1984, see section 271(d)(2) of Pub. L. 97-248, as amended, set out as a note under section 3301 of this title.

Amendment by section 271(b)(2)(C) of Pub. L. 97-248 applicable to remuneration paid after Dec. 31, 1982, see section 271(d)(1) of Pub. L. 97-248, as amended, set out as a note under section 3301 of this title.

Subchapter B—Extensions of Time for Payment

§ 6166. Extension of time for payment of estate tax where estate consists largely of interest in closely held business

[See main edition for text of (a)]

(b) Definitions and special rules

[See main edition for text of (1) to (7)]

(8) Stock in holding company treated as business company stock in certain cases

(A) In general

If the executor elects the benefits of this paragraph, then—

(i) Holding company stock treated as business company stock

For purposes of this section, the portion of the stock of any holding company which represents direct ownership (or indirect ownership through 1 or more other holding companies) by such company in a business company shall be deemed to be stock in such business company.

(ii) 5-year deferral for principal not to apply

The executor shall be treated as having selected under subsection (a)(3) the date prescribed by section 6151(a).

(iii) 4-percent interest rate not to apply

Section 6601(j) (relating to 4-percent rate of interest) shall not apply.

(B) All stock must be non-readily-tradable stock

No stock shall be taken into account for purposes of applying this paragraph unless it is non-readily-tradable stock (within the meaning of paragraph (7)(B)).

(C) Application of voting stock requirement of paragraph (1)(C)(i)

For purposes of clause (i) of paragraph (1)(C), the deemed stock resulting from the application of subparagraph (A) shall be treated as voting stock to the extent that voting stock in the holding company owns directly (or through the voting stock of 1 or more other holding companies) voting stock in the business company.

(D) Definitions

For purposes of this paragraph—

(i) Holding company

The term "holding company" means any corporation holding stock in another corporation.

(ii) Business company

The term "business company" means any corporation carrying on a trade or business.

(9) Deferral not available for passive assets

(A) In general

For purposes of subsection (a)(1) and determining the closely held business amount (but not for purposes of subsection (g)), the value of any interest in a closely held business shall not include the value of that portion of such interest which is attributable to passive assets held by the business.

(B) Passive asset defined

For purposes of this paragraph—

(i) In general

The term "passive asset" means any asset other than an asset used in carrying on a trade or business.

(ii) Stock treated as passive asset

The term "passive asset" includes any stock in another corporation unless—

(I) such stock is treated as held by the decedent by reason of an election under paragraph (8), and

(II) such stock qualified under subsection (a)(1).

(iii) Exception for active corporations

If—

(I) a corporation owns 20 percent or more in value of the voting stock of another corporation, or such other corporation has 15 or fewer shareholders, and

(II) 80 percent or more of the value of the assets of each such corporation is attributable to assets used in carrying on a trade or business,

then such corporations shall be treated as 1 corporation for purposes of clause (ii). For purposes of applying subclause (II) to the corporation holding the stock of the other corporation, such stock shall not be taken into account.

[*See main edition for text of* (*c*) *to* (*f*)]

(g) Acceleration of payment

(1) Disposition of interest; withdrawal of funds from business

[*See main edition for text of* (*A*) *to* (*D*)]

(E) Changes in interest in holding company

If any stock in a holding company is treated as stock in a business company by reason of subsection (b)(8)(A)—

(i) any disposition of any interest in such stock in such holding company which was included in determining the gross estate of the decedent, or

(ii) any withdrawal of any money or other property from such holding company attributable to any interest included in determining the gross estate of the decedent,

shall be treated for purposes of subparagraph (A) as a disposition of (or a withdrawal with respect to) the stock qualifying under subsection (a)(1).

(F) Changes in interest in business company

If any stock in a holding company is treated as stock in a business company by reason of subsection (b)(8)(A)—

(i) any disposition of any interest in such stock in the business company by such holding company, or

(ii) any withdrawal of any money or other property from such business company attributable to such stock by such holding company owning such stock,

shall be treated for purposes of subparagraph (A) as a disposition of (or a withdrawal with respect to) the stock qualifying under subsection (a)(1).

(2) Undistributed income of estate

[*See main edition for text of* (*A*) *and* (*B*)]

(C) For purposes of this paragraph, if any stock in a corporation is treated as stock in another corporation by reason of subsection (b)(8)(A), any dividends paid by such other corporation to the corporation shall be treated as paid to the estate of the decedent to the extent attributable to the stock qualifying under subsection (a)(1).

[*See main edition for text of* (*3*); (*h*) *and* (*i*)]

(j) Cross references

[*See main edition for text of* (*1*) *to* (*5*)]

(6) Payment of estate tax by employee stock ownership plan or eligible worker-owned cooperative

For provision allowing plan administrator or eligible worker-owned cooperative to elect to pay a certain portion of the estate tax in installments under the provisions of this section, see section 2210(c).

(As amended Pub. L. 98-369, div. A, title V, § 544(b)(4), title X, § 1021(a)-(d), July 18, 1984, 98 Stat. 894, 1024-1026.)

Amendments

1984—Subsec. (b)(8). Pub. L. 98-369, § 1021(a), added par. (8).

Subsec. (b)(9). Pub. L. 98-369, § 1021(b), added par. (9).

Subsec. (g)(1)(E), (F). Pub. L. 98-369, § 1021(c), added subpars. (E) and (F).

Subsec. (g)(2)(C). Pub. L. 98-369, § 1021(d), added subpar. (C).

Subsec. (j)(6). Pub. L. 98-369, § 544(b)(4), added par. (6).

Effective Date of 1984 Amendment

Amendment by section 544(b)(4) of Pub. L. 98-369 applicable to estates of decedents which are required to file returns on a date (including any extensions) after July 18, 1984, see section 544(d) of Pub. L. 98-369, set out as an Effective Date note under section 2210 of this title.

Section 1021(e) of Pub. L. 98-369 provided that:

"(1) In general.—The amendments made by this section [amending this section] shall apply with respect to estates of decedents dying after the date of the enactment of this Act [July 18, 1984].

"(2) Special rule.—

"(A) In general.—At the election of the executor, if—

"(i) a corporation has 15 or fewer shareholders on June 22, 1984, and at all times thereafter before the date of the decedent's death, and

"(ii) stock of such corporation is included in the gross estate of the decedent,

then all other corporations all of the stock of which is owned directly or indirectly by the corporation described in clauses (i) and (ii) shall be treated as one corporation for purposes of section 6166 of the Internal Revenue Code of 1954.

"(B) Effect of election.—Any executor who elects the application of this paragraph shall be treated as having made the election under paragraph (8) of section 6166(b) of such Code."

LAND DIVERTED UNDER 1983 PAYMENT-IN-KIND PROGRAM

Land diverted from production of agricultural commodities under a 1983 payment-in-kind program to be treated, for purposes of this section, as used during the 1983 crop year by qualified taxpayers in the active conduct of the trade or business of farming, with qualified taxpayers who materially participate in the diversion and devotion to conservation uses under a 1983 payment-in-kind program to be treated as materially participating in the operation of such land during the 1983 crop year, see section 3 of Pub. L. 98-4, set out as a note under section 61 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 303, 2011, 2032A, 2035, 2210, 2621, 6324A, 6503, 6601, 7403 of this title.

CHAPTER 63—ASSESSMENT

Subchapter A—In General

§ 6201. Assessment authority

(a) Authority of Secretary

The Secretary is authorized and required to make the inquiries, determinations, and assessments of all taxes (including interest, additional amounts, additions to the tax, and assessable penalties) imposed by this title, or accruing under any former internal revenue law, which have not been duly paid by stamp at the time and in the manner provided by law. Such authority shall extend to and include the following:

[*See main edition for text of* (1) *to* (3)]

(4) Erroneous credit under section 32 or 34

If on any return or claim for refund of income taxes under subtitle A there is an overstatement of the credit allowable by section 34 (relating to certain uses of gasoline and special fuels) or section 32 (relating to earned income), the amount so overstated which is allowed against the tax shown on the return or which is allowed as a credit or refund may be assessed by the Secretary in the same manner as in the case of a mathematical or clerical error appearing upon the return, except that the provisions of section 6213(b)(2) (relating to abatement of mathematical or clerical error assessments) shall not apply with regard to any assessment under this paragraph.

(b) Amount not to be assessed

(1) Estimated income tax

No unpaid amount of estimated income tax required to be paid under section 6154 or 6654 shall be assessed.

(2) Federal unemployment tax

No unpaid amount of Federal unemployment tax or tax imposed by section 3321 for any calendar quarter or other period of a calendar year, computed as provided in section 6157, shall be assessed.

[*See main edition for text of* (c) *and* (d)]

(As amended Aug. 12, 1983, Pub. L. 98-76, title II, § 231(b)(2)(A), 97 Stat. 429; July 18, 1984, Pub. L. 98-369, div. A, title IV, §§ 412(b)(5), 474(r)(32), 98 Stat. 792, 845.)

AMENDMENTS

1984—Subsec. (a)(4). Pub. L. 98-369, § 474(r)(32), substituted "section 32 or 34" for "section 39 or 43" in heading, and in text substituted "section 34" for "section 39" and "section 32" for "section 43".

Subsec. (b)(1). Pub. L. 98-369, § 412(b)(5), amended par. (1) generally, substituting "estimated income tax required to be paid under section 6154 or 6654" for "estimated tax under section 6153 or 6154".

1983—Subsec. (a)(4). Pub. L. 97-424 substituted "and special fuels" for ", special fuels, and lubricating oil" after "gasoline".

Subsec. (b)(2). Pub. L. 98-76 substituted "Federal unemployment tax or tax imposed by section 3321" for "Federal unemployment tax".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 412(b)(5) of Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

Amendment by section 474(r)(32) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98-76, set out as an Effective Date note under section 3321 of this title.

Amendment by Pub. L. 97-424 applicable with respect to articles sold after Jan. 6, 1983, see section 515(c) of Pub. L. 97-424, set out as a note under section 34 of this title.

Subchapter B—Deficiency Procedures in the Case of Income, Estate, Gift, and Certain Excise Taxes

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6230, 6601, 6652, 6662, 6676, 6677, 6678, 6679, 6682, 6687, 6693, 6696, 6697, 6698, 6703, 6706, 7463, 7611 of this title.

§ 6211. Definition of a deficiency

[*See main edition for text of* (a)]

(b) Rules for application of subsection (a)

For purposes of this section—

(1) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to payments on account of estimated tax, without regard to the credit under section 31, without regard to the credit under section 33, and without regard to any credits resulting from the collection of amounts assessed under section 6851 (relating to termination assessments).

[*See main edition for text of* (2) *and* (3)]

(4) The tax imposed by subtitle A and the tax shown on the return shall both be determined without regard to the credit under section 34, unless, without regard to such credit, the tax imposed by subtitle A exceeds the excess of the amount specified in subsection

(a)(1) over the amount specified in subsection (a)(2).

[*See main edition for text of* (5) *and* (6)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(33), 98 Stat. 845.)

Amendments

1984—Subsec. (b)(1). Pub. L. 98-369, § 474(r)(33)(A), substituted "without regard to the credit under section 33" for "without regard to so much of the credit under section 32 as exceeds 2 percent of the interest on obligations described in section 1451".

Subsec. (b)(4). Pub. L. 98-369, § 474(r)(33)(B), substituted "section 34" for "section 39".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1314, 1481, 6213, 6503, 6601, 6653, 6661, 6662, 6861 of this title.

§ 6212. Notice of deficiency

Section Referred to in Other Sections

This section is referred to in sections 1033, 1039, 1311, 2513, 4941, 4942, 4943, 4945, 4951, 4952, 4963, 4975, 4995, 6013, 6040, 6155, 6213, 6503, 6512, 6851, 6861, 6901, 7421, 7463 of this title; title 29 section 1342.

§ 6213. Restrictions applicable to deficiencies; petition to Tax Court

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Suspension of filing period for certain excise taxes

The running of the time prescribed by subsection (a) for filing a petition in the Tax Court with respect to the taxes imposed by section 4941 (relating to taxes on self-dealing), 4942 (relating to taxes on failure to distribute income), 4943 (relating to taxes on excess business holdings), 4944 (relating to investments which jeopardize charitable purpose), 4945 (relating to taxes on taxable expenditures), 4951 (relating to taxes on self-dealing), or 4952 (relating to taxes on taxable expenditures), 4971 (relating to excise taxes on failure to meet minimum funding standard), 4975 (relating to excise taxes on prohibited transactions) shall be suspended for any period during which the Secretary has extended the time allowed for making correction under section 4963(e).

[*See main edition for text of* (*f*) *and* (*g*)]

(h) Cross references

[*See main edition for text of* (*1*) *and* (*2*)]

(3) For assessment as if a mathematical error on the return, in the case of erroneous claims for credits under section 32 or 34, see section 6201(a)(4).

[*See main edition for text of* (*4*)]

(As amended July 18, 1984, Pub. L. 98-369, title III, § 305(b)(4), title IV, § 474(r)(34), 98 Stat. 784, 845.)

Amendments

1984—Subsec. (e). Pub. L. 98-369, § 305(b)(4), substituted "section 4963(e)" for "section 4962(e)".

Subsec. (h)(3). Pub. L. 98-369, § 474(r)(34), substituted "section 32 or 34" for "section 39".

Effective Date of 1984 Amendment

Amendment by section 305(b)(4) of Pub. L. 98-369 applicable to taxable events occurring after Dec. 31, 1984, see section 305(c) of Pub. L. 98-369, set out as an Effective Date note under section 4962 of this title.

Amendment by section 474(r)(34) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section Referred to in Other Sections

This section is referred to in sections 303, 2011, 2014, 4942, 4961, 4963, 6013, 6155, 6201, 6204, 6212, 6230, 6501, 6512, 6601, 6651, 6861, 6863, 6871, 7404, 7421 of this title.

§ 6214. Determinations by Tax Court

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Cross reference

For provision giving Tax Court jurisdiction to determine whether any portion of deficiency is a substantial underpayment attributable to tax motivated transactions, see section 6621(d)(4).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 144(b), 98 Stat. 683.)

References in Text

Section 4962(b), referred to in subsec. (c), was renumbered section 4963(b) of this title by Pub. L. 98-369, div. A, title III, § 305(a), July 18, 1984, 98 Stat. 783.

Amendments

1984—Subsec. (e). Pub. L. 98-369 added subsec. (e).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable with respect to interest accruing after Dec. 31, 1984, see section 144(c) of Pub. L. 98-369, set out as a note under section 6621 of this title.

Subchapter C—Tax Treatment of Partnership Items

Sec.
6233. Extension to entities filing partnership returns, etc.

Amendments

1984—Pub. L. 98-369, div. A, title VII, § 714(p)(2)(E), July 18, 1984, 98 Stat. 965, added item 6233.

§ 6230. Additional administrative provisions

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Claims arising out of erroneous computations, etc.

(1) In general

A partner may file a claim for refund on the grounds that—

[*See main edition for text of* (*A*)]

(B) the Secretary failed to allow a credit or to make a refund to the partner in the amount of the overpayment attributable to the application to the partner of a settlement, a final partnership administrative adjustment, or the decision of a court in an action brought under section 6226 or section 6228(a).

[*See main edition for text of* (2) *to* (4); (d) *to* (l)]

(As amended Pub. L. 98-369, div. A, title VII, § 714(p)(2)(A), July 18, 1984, 98 Stat. 964.)

AMENDMENTS

1984—Subsec. (c)(1)(B). Pub. L. 98-369 deleted parenthetical phrase "(or erroneously computed the amount of any such credit or refund)" after "section 6228(a)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

§ 6231. Definitions and special rules

(a) Definitions

For purposes of this subchapter—

[*See main edition for text of* (1) *to* (8)]

(9) Pass-thru partner

The term "pass-thru partner" means a partnership, estate, trust, S corporation, nominee, or other similar person through whom other persons hold an interest in the partnership with respect to which proceedings under this subchapter are conducted.

[*See main edition for text of* (10) *to* (12)]

(b) Items cease to be partnership items in certain cases

[*See main edition for text of* (1)]

(2) Circumstances in which notice is permitted

The Secretary may mail the notice referred to in subparagraph (A) of paragraph (1) to a partner with respect to partnership items for a partnership taxable year only if—

[*See main edition for text of* (A)]

(B)(i) such partner has filed a request under section 6227(c) for administrative adjustment of one or more of such items, and

[*See main edition for text of* (ii), (3); (c)]

(d) Time for determining partner's profits interest in partnership

(1) In general

For purposes of section 6223(b) (relating to special rules for partnerships with more than 100 partners) and paragraph (11) of subsection (a) (relating to 5-percent group), the interest of a partner in the profits of a partnership for a partnership taxable year shall be determined—

(A) in the case of a partner whose entire interest in the partnership is disposed of during such partnership taxable year, as of the moment immediately before such disposition, or

[*See main edition for text of* (B), (2); (e)]

(f) Special rule for losses and credits of foreign partnerships

Except to the extent otherwise provided in regulations, in the case of any partnership the tax matters partner of which resides outside the United States or the books of which are maintained outside the United States, no loss or credit shall be allowable to any partner unless section 6031 is complied with for the partnership's taxable year in which such loss or credit arose at such time as the Secretary prescribes by regulations.

(As amended Pub. L. 98-369, div. A, title VII, § 714(p)(2)(B)-(D), (I), July 18, 1984, 98 Stat. 964, 965.)

AMENDMENTS

1984—Subsec. (a)(9). Pub. L. 98-369, § 714(p)(2)(B), substituted "S corporation" for "electing small business corporation".

Subsec. (b)(2)(B). Pub. L. 98-369, § 714(p)(2)(I), substituted section "6227(c)" for "6227(b)".

Subsec. (d)(1)(A). Pub. L. 98-369, § 714(p)(2)(C), amended subpar. (A) generally, substituting "disposed of" and "disposition" for "liquidated, sold, or exchanged" and "liquidation, sale, or exchange", respectively.

Subsec. (f). Pub. L. 98-369, § 714(p)(2)(D), substituted "such loss or credit" for "such deduction or credit".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

§ 6232. Extension of subchapter to windfall profit tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6501, 6511 of this title.

§ 6233. Extension to entities filing partnership returns, etc.

(a) General rule

If a partnership return is filed by an entity for a taxable year but it is determined that the entity is not a partnership for such year, then, to the extent provided in regulations, the provisions of this subchapter are hereby extended in respect of such year to such entity and its items and to persons holding an interest in such entity.

(b) Similar rules in certain cases

If for any taxable year—

(1) an entity files a return as an S corporation but it is determined that the entity was not an S corporation for such year, or

(2) a partnership return or S corporation return is filed but it is determined that there is no entity for such taxable year,

then, to the extent provided in regulations, rules similar to the rules of subsection (a) shall apply.

(Added Pub. L. 98-369, div. A, title VII, § 714(p)(1), July 18, 1984, 98 Stat. 964.)

EFFECTIVE DATE

Section effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 31 of this title.

CHAPTER 64—COLLECTION

Subchapter A—General Provisions

§ 6302. Mode or time of collection

[See main edition for text of (a) to (c)]

(d) Time for payment of manufacturers excise tax on sport fishing equipment

The tax imposed by section 4161(a) (relating to manufacturers excise tax on sport fishing equipment) shall be due and payable on the date for filing the return for such tax.

(e) Cross references

(1) For treatment of earned income advance amounts as payment of withholding and FICA taxes, see section 3507(d).

(2) For depositary requirements applicable to the windfall profit tax imposed by section 4986, see section 4995(b).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title X, § 1015(c), 98 Stat. 1018.)

AMENDMENTS

1984—Subsecs. (d), (e). Pub. L. 98-369 added subsec. (d) and redesignated former subsec. (d) as (e).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to articles sold by the manufacturer, producer, or importer after Sept. 30, 1984, see section 1015(e) of Pub. L. 98-369, set out as an Effective Date note under section 4162 of this title.

DEPOSITARY SCHEDULES

Pub. L. 98-76, title II, § 226, Aug. 12, 1983, 97 Stat. 426, provided that: "Effective on and after January 1, 1984, the times for making payments prescribed under section 6302 of the Internal Revenue Code of 1954 with respect to the taxes imposed by chapter 22 of such Code shall be the same as the times prescribed under such section which apply to the taxes imposed by chapters 21 and 24 of such Code."

Pub. L. 98-76, title II, § 227(c), Aug. 12, 1983, 97 Stat. 426, provided that: "Section 226 [set out above] shall take effect on January 1, 1984."

Subchapter B—Receipt of Payment

§ 6311. Payment by check or money order

[See main edition for text of (a)]

(b) Check or money order unpaid

[See main edition for text of (1)]

(2) Liability of banks and others

If any certified, treasurer's, or cashier's check (or other guaranteed draft) or any money order so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check (or draft) upon all the assets of the financial institution on which drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of such assets in preference to any other claims whatsoever against such financial institution or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such financial institution.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 448(a), 98 Stat. 817.)

AMENDMENTS

1984—Subsec. (b)(2). Pub. L. 98-369 substituted "or cashier's check (or other guaranteed draft)" for "or cashier's check", "the amount of such check (or draft)" for "the amount of such check", and "the financial institution" for "the bank or trust company", and substituted "such financial institution" for "such bank" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 448(b) of Pub. L. 98-369 provided that: "The amendments made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

§ 6317. Payments of Federal unemployment tax for calendar quarter

Payment of Federal unemployment tax or tax imposed by section 3321 for a calendar quarter or other period within a calendar year pursuant to section 6157 shall be considered payment on account of the tax imposed by chapter 23 and 23A, as the case may be, of such calendar year.

(As amended Pub. L. 98-76, title II, § 231(b)(2)(B), Aug. 12, 1983, 97 Stat. 429.)

AMENDMENTS

1983—Pub. L. 98-76 inserted "or tax imposed by section 3321" after "Federal unemployment tax", and substituted "chapter 23 and 23A, as the case may be," for "chapter 23".

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98-76, set out as an Effective Date note under section 3321 of this title.

Subchapter C—Lien for Taxes

§ 6323. Validity and priority against certain persons

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6324, 6324A, 6325, 6332 of this title; title 11 section 724; title 18 sections 3565, 3613; title 30 section 934.

§ 6325. Release of lien or discharge of property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7103, 7426 of this title; title 18 section 3613.

Subchapter D—Seizure of Property for Collection of Taxes

§ 6331. Levy and distraint

[See main edition for text of (a)]

(b) Seizure and sale of property

The term "levy" as used in this title includes the power of distraint and seizure by any means. Except as otherwise provided in subsection (e), a levy shall extend only to property possessed and obligations existing at the time thereof. In any case in which the Secretary may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible or intangible).

[See main edition for text of (c) to (f)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 714(*o*), 98 Stat. 964.)

AMENDMENTS

1984—Subsec. (b). Pub. L. 98-369 substituted "subsection (e)" for "subsection (d)(3)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6332, 6335, 6851, 6861, 6862, 7206 of this title; title 18 section 3613.

§ 6332. Surrender of property subject to levy

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323, 6342 of this title; title 18 section 3613; title 29 section 1368; title 30 section 934.

§ 6334. Property exempt from levy

[See main edition for text of (a) and (b)]

(c) No other property exempt

Notwithstanding any other law of the United States (including section 207 of the Social Security Act), no property or rights to property shall be exempt from levy other than the property specifically made exempt by subsection (a).

[See main edition for text of (d)]

(As amended July 18, 1984, Pub. L. 98-369, div. B, title VI, § 2661(*o*)(5), 98 Stat. 1159.)

REFERENCES IN TEXT

Section 207 of the Social Security Act, referred to in subsection (c), is classified to section 407 of Title 42, The Public Health and Welfare.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 added "(including section 207 of the Social Security Act)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as though included in the enactment of the Social Security Amendments of 1983, Pub. L. 98-21, see section 2664(a) of Pub. L. 98-369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6305, 6323, 6331 of this title; title 18 sections 3565, 3613.

§ 6335. Sale of seized property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6331, 6337, 6338, 6339, 6340, 6343, 6502, 7426 of this title; title 18 section 3613.

§ 6336. Sale of perishable goods

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6335, 6863, 7103 of this title; title 18 section 3613.

§ 6337. Redemption of property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6338 of this title; title 18 section 3613.

§ 6338. Certificate of sale; deed of real property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6339 of this title; title 18 section 3613.

§ 6339. Legal effect of certificate of sale of personal property and deed of real property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3613.

§ 6340. Records of sale

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6337 of this title; title 18 section 3613.

§ 6341. Expense of levy and sale

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3613.

§ 6342. Application of proceeds of levy

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6207 of this title; title 18 section 3613.

§ 6343. Authority to release levy and return property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6502, 6503, 6532 of this title; title 18 section 3613.

Subchapter E—Collection of State Individual Income Taxes

§ 6362. Qualified State individual income taxes

[See main edition for text of (a) and (b)]

(c) Qualified resident tax which is a percentage of the Federal tax

(1) In general

A tax meets the requirements of this subsection only if it is imposed as a specified percentage of the excess of the taxes imposed by chapter 1 over the sum of the credits allowable under part IV of subchapter A of chapter 1 (other than the credits allowable by sections 31 and 34).

[See main edition for text of (2) to (4)]

(d) Qualified nonresident tax

[*See main edition for text of* (*1*)]

(2) Wage and other business income

The term "wage and other business income" means—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) the distributive share of income of any trade or business carried on by a trust, estate, or an S corporation to the extent such share (i) is includible in the gross income of the individual for the taxable year, and (ii) would constitute net earnings from self-employment (within the meaning of section 1402(a)) if such trade or business were carried on by a partnership.

(e) Requirements relating to residence

A tax imposed by a State meets the requirements of this subsection only if for purposes of such tax—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Current collection of tax

In applying chapter 24 (relating to withholding) and provisions relating to estimated income tax (and amendments thereto)—

[*See main edition for text of* (*A*) *and* (*B*); (*f*)]

(As amended Pub. L. 98-369, div. A, title IV, §§ 412(b)(6), 474(r)(35), title VII, § 721(x)(5), July 18, 1984, 98 Stat. 792, 845, 972.)

Amendments

1984—Subsec. (c)(1). Pub. L. 98-369, § 474(r)(35), substituted "sections 31 and 34" for "sections 31 and 39".

Subsec. (d)(2)(C). Pub. L. 98-369, § 721(x)(5), substituted "an S corporation" for "electing small business corporation (within the meaning of section 1371(a))".

Subsec. (e)(5). Pub. L. 98-369, § 412(b)(6), substituted "provisions relating to estimated income tax" for "section 6015 and other provisions relating to declarations of estimated income".

Effective Date of 1984 Amendment

Amendment by section 412(b)(6) of Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

Amendment by section 474(r)(35) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 721(x)(5) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

§ 6363. State agreements; other procedures

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Judicial review

[*See main edition for text of* (*1*) *to* (*3*)]

[(4) **Repealed. Pub. L. 98-620, title IV, § 402(28)(C), Nov. 8, 1984, 98 Stat. 3359**]

(As amended Pub. L. 98-620, title IV, § 402(28)(C), Nov. 8, 1984, 98 Stat. 3359.)

Amendments

1984—Subsec. (d)(4). Pub. L. 98-620 struck out par. (4) which had provided that any judicial proceedings under this section would be entitled to, and upon request of the Secretary or the State would receive, a preference and would be heard and determined as expeditiously as possible.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 6365. Definitions and special rules

[*See main edition for text*]

(As amended Pub. L. 98-67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369.)

Amendments

1983—Subsec. (c)(2). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

CHAPTER 65—ABATEMENTS, CREDITS, AND REFUNDS

Subchapter A—Procedure in General

§ 6401. Amounts treated as overpayments

[*See main edition for text of* (*a*)]

(b) Excessive credits

(1) In general

If the amount allowable as credits under subpart C of part IV of subchapter A of chapter 1 (relating to refundable credits) exceeds the tax imposed by subtitle A (reduced by the credits allowable under subparts A, B, and D of such part IV), the amount of such excess shall be considered an overpayment.

(2) Special rule for credit under section 33

For purposes of paragraph (1), any credit allowed under section 33 (relating to withholding of tax on nonresident aliens and on foreign corporations) for any taxable year shall be treated as a credit allowable under subpart C of part IV of subchapter A of chapter 1 only if an election under subsection (g) or (h) of section 6013 is in effect for such taxable year.

[*See main edition for text of* (*c*)]

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369; July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(36), title VII, § 735(c)(16), 98 Stat. 846, 985.)

Amendments

1984—Subsec. (b). Pub. L. 98-369, § 474(r)(36), amended subsec. (b) generally. Prior to amendment subsec. (b) read as follows: "If the amount allowable as credits under sections 31 (relating to tax withheld on wages) and 39 (relating to certain uses of gasoline and special fuels), and 43 (relating to earned income credit), exceeds the tax imposed by subtitle A (reduced by the credits allowable under subpart A of part IV of subchapter A of chapter 1, other than the credits allowable under sections 31, 39, and 43), the amount of such excess shall be considered an overpayment. For purposes of the preceding sentence, any credit allowed under paragraph (1) of section 32 (relating to withholding of tax on nonresident aliens and on foreign corporations) to a nonresident alien individual for a taxable year with respect to which an election under section 6013(g) or (h) is in effect shall be treated as an amount allowable as a credit under section 31."

Pub. L. 98-369, § 735(c)(16), substituted "and special fuels" for ", special fuels, and lubricating oil".

1983—Subsec. (b). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(36) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 735(c)(16) of Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35, 6514 of this title.

§ 6402. Authority to make credits or refunds

AMENDMENT OF SECTION

Pub. L. 98-369, div. B, title VI, §2653(b)(1), (2), (c), July 18, 1984, 98 Stat. 1154-1156, provided that, applicable with respect to refunds payable under this section after Dec. 31, 1985, and before Jan. 1, 1988, this section is amended as follows:

(1) In subsection (a) "subsections (c) and (d)" is substituted for "subsection (c)".

(2) The following new subsections are added at the end thereof:

(d) Collection of debts owed to Federal agencies

(1) In general

Upon receiving notice from any Federal agency that a named person owes a past-due legally enforceable debt (other than any OASDI overpayment and past-due support subject to the provisions of subsection (c)) to such agency, the Secretary shall—

(A) reduce the amount of any overpayment payable to such person by the amount of such debt;

(B) pay the amount by which such overpayment is reduced under subparagraph (A) to such agency; and

(C) notify the person making such overpayment that such overpayment has been reduced by an amount necessary to satisfy such debt.

(2) Priorities for offset

Any overpayment by a person shall be reduced pursuant to this subsection after such overpayment is reduced pursuant to subsection (c) with respect to past-due support collected pursuant to an assignment under section 402(a)(26) of the Social Security Act and before such overpayment is credited to the future liability for tax of such person pursuant to subsection (b). If the Secretary receives notice from a Federal agency or agencies of more than one debt subject to paragraph (1) that is owed by a person to such agency or agencies, any overpayment by such person shall be applied against such debts in the order in which such debts accrued.

(3) Definitions

For purposes of this subsection the term "OASDI overpayment" means any overpayment of benefits made to an individual under title II of the Social Security Act.

(e) Review of reductions

No court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c) or (d). No such reduction shall be subject to review by the Secretary in an administrative proceeding. No action brought against the United States to recover the amount of any such reduction shall be considered to be a suit for refund of tax. This subsection does not preclude any legal, equitable, or administrative action against the Federal agency to which the amount of such reduction was paid.

(f) Federal agency

For purposes of this section, the term "Federal agency" means a department, agency, or instrumentality of the United States (other than an agency subject to section 9 of the Act of May 18, 1933 (48 Stat. 63, chapter 32; 16 U.S.C. 831h)), and includes a Government corporation (as such term is defined in section 103 of title 5, United States Code).

(g) Cross reference

For procedures relating to agency notification of the Secretary, see section 3721 of title 31, United States Code.

Pub. L. 98-378, § 21(e), (g), Aug. 16, 1984, 98 Stat. 1325, 1326, provided that, applicable with respect to refunds payable under this section after Dec. 31, 1985, this section is amended as follows:

(1) subsection (c) is amended by striking out "to which such support has been assigned" and inserting in lieu thereof "collecting such support", and by inserting before the last sentence thereof the following: "A reduction under this subsection shall be applied first to satisfy any past-due support which has been assigned to the State under section 402(a)(26) or 471(a)(17) of the Social Security Act, and shall be applied to satisfy any other past-due support after any other reductions allowed by law (but before a credit against future liability for an internal revenue tax) have been made."

(2) Subsection (g), as added by section 2653 of Pub. L. 98-369, is redesignated (h), and the following new subsection is inserted after subsection (f):

(g) Treatment of payments to States

The Secretary may provided that, for purposes of determining interest, the payment of any amount withheld under subsection (c) to a

State shall be treated as a payment to the person or persons making the overpayment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6103, 6403, 6513, 6861 of this title.

§ 6405. Reports of refunds and credits

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Refunds attributable to certain disaster losses

If any refund or credit of income taxes is attributable to the taxpayer's election under section 165(i) to deduct a disaster loss for the taxable year immediately preceding the taxable year in which the disaster occurred, the Secretary is authorized in his discretion to make the refund or credit, to the extent attributable to such election, without regard to the provisions of subsection (a) of this section. If such refund or credit is made without regard to subsection (a), there shall thereafter be submitted to such Joint Committee a report containing the matter specified in subsection (a) as soon as the Secretary shall determine the correct amount of the tax for the taxable year for which the refund or credit is made.

[*See main edition for text of* (*e*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 711(c)(3), 98 Stat. 946.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 substituted "section 165(i)" for "section 165(h)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Subchapter B—Rules of Special Application

AMENDMENTS

1983—Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

§ 6411. Tentative carryback and refund adjustments

(a) Application for adjustment

A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback provided in section 172(b), by a business credit carryback provided in section 39, by a research credit carryback provided in section 30(g)(2) or by a capital loss carryback provided in section 1212(a)(1), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer and shall be filed, on or after the date of filing for the return for the taxable year of the net operating loss, net capital loss, or unused business credit from which the carryback results and within a period of 12 months after such taxable year or, with respect to any portion of a research credit carryback or a business credit carryback attributable to a net operating loss carryback or a net capital loss carryback from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year (or, with respect to any portion of a business credit carryback attributable to a research credit carryback from a subsequent taxable year within a period of 12 months from the end of such subsequent taxable year), in the manner and form required by regulations prescribed by the Secretary. The applications shall set forth in such detail and with such supporting data and explanation as such regulations shall require—

(1) The amount of the net operating loss, net capital loss, unused research credit, or unused business credit;

[*See main edition for text of* (*2*) *to* (*6*)]

Except for purposes of applying section 6611(f)(3)(B), an application under this subsection shall not constitute a claim for credit or refund.

(b) Allowance of adjustments

Within a period of 90 days from the date on which an application for a tentative carryback adjustment is filed under subsection (a), or from the last day of the month in which falls the last date prescribed by law (including any extension of time granted the taxpayer) for filing the return for the taxable year of the net operating loss, net capital loss, unused research credit, or unused business credit from which such carryback results, whichever is the later, the Secretary shall make, to the extent he deems practicable in such period, a limited examination of the application, to discover omissions and errors of computation therein, and shall determine the amount of the decrease in the tax attributable to such carryback upon the basis of the application and the examination, except that the Secretary may disallow, without further action, any application which he finds contains errors of computation which he deems cannot be corrected by him within such 90-day period or material omissions. Such decrease shall be applied against any unpaid amount of the tax decreased (including any amount of such tax as to which an extension of time under section 6164 is in effect) and any remainder shall be credited against any unsatisfied amount of any tax for the taxable year immediately preceding the taxable year of the net operating loss, net capital loss, unused research credit, or unused business credit the time for payment of which tax is extended under section 6164. Any remainder shall, within such 90-day period, be either credited against any tax or installment thereof then due from the taxpayer, or refunded to the taxpayer.

(c) Consolidated returns

If the corporation seeking a tentative carryback adjustment under this section, made or was required to make a consolidated return, either for the taxable year within which the net operating loss, net capital loss, unused research credit, or unused business credit arises, or for the preceding taxable year affected by such loss or credit, the provisions of this section shall apply only to such extent and subject to such conditions, limitations, and exceptions as the Secretary may by regulations prescribe.

[*See main edition for text of* (*d*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(37), title VII, § 714(n)(2)(B), 98 Stat. 846, 964.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 474(r)(37)(A), amended provisions preceding par. (1) generally. Prior to amendment, such provisions read as follows: "A taxpayer may file an application for a tentative carryback adjustment of the tax for the prior taxable year affected by a net operating loss carryback provided in section 172(b), by an investment credit carryback provided in section 46(b), by a work incentive program carryback provided in section 50A(b), by a new employee credit carryback provided in section 53(b), by a research credit carryback provided in section 44F(g)(2) by an employee stock ownership credit carryback provided by section 44G(b)(2), or by a capital loss carryback provided in section 1212(a)(1), from any taxable year. The application shall be verified in the manner prescribed by section 6065 in the case of a return of such taxpayer, and shall be filed, on or after the date of filing of the return for the taxable year of the net operating loss, net capital loss, unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit, from which the carryback results and within a period of 12 months from the end of such taxable year (or, with respect to any portion of an investment credit carryback, a work incentive program carryback, a new employee credit carryback, a research credit carryback, or employee stock ownership credit carryback from a taxable year attributable to a net operating loss carryback or a capital loss carryback (or, in the case of a work incentive program carryback, to an investment credit carryback, or, in the case of a new employee credit carryback, to an investment credit carryback or a work incentive program carryback, or, in the case of a research credit carryback, to an investment credit carryback, a work incentive program carryback, or a new employee credit carryback, or, in the case of an employee stock ownership credit carryback, to an investment credit carryback, a new employee credit carryback or a research and experimental credit carryback) from a subsequent taxable year, within a period of 12 months from the end of such subsequent taxable year), in the manner and form required by regulations prescribed by the Secretary. The application shall set forth in such detail and with such supporting data and explanation as such regulations shall require—".

Pub. L. 98-369, § 714(n)(2)(B), in provisions following par. (6), substituted "Except for purposes of applying section 6611(f)(3)(B), an application" for "An application".

Subsec. (a)(1). Pub. L. 98-369, § 474(r)(37)(A), substituted "unused research credit, or unused business credit" for "unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit".

Subsecs. (b), (c). Pub. L. 98-369, § 474(r)(37)(B), substituted "unused research credit, or unused business credit" for "unused investment credit, unused work incentive program credit, unused new employee credit, unused research credit, or unused employee stock ownership credit" wherever appearing.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(37) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 714(n)(2)(B) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6040, 6164, 6213, 6405, 6501, 6511, 6515, 6611 of this title.

§ 6412. Floor stocks refunds

(a) In general

(1) Tires and gasoline

Where before October 1, 1988, any article subject to the tax imposed by section 4071 or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale, there shall be credited or refunded (without interest) to the manufacturer, producer, or importer an amount equal to the difference between the tax paid by such manufacturer, producer, or importer on his sale of the article and the amount of tax made applicable to such article on and after October 1, 1988, if claim for such credit or refund is filed with the Secretary on or before March 31, 1989, based upon a request submitted to the manufacturer, producer, or importer before January 1, 1989, by the dealer who held the article in respect of which the credit or refund is claimed, and, on or before March 31, 1989, reimbursement has been made to such dealer by such manufacturer, producer, or importer for the tax reduction on such article or written consent has been obtained from such dealer to allowance of such credit or refund. No credit or refund shall be allowable under this paragraph with respect to gasoline in retail stocks held at the place where intended to be sold at retail, nor with respect to gasoline held for sale by a producer or importer of gasoline.

(2) Definitions

For purposes of this section—

(A) The term "dealer" includes a wholesaler, jobber, distributor, or retailer.

[*See main edition for text of* (*B*); (*b*)]

(c) Other laws applicable

All provisions of law, including penalties, applicable in respect of the taxes imposed by sections 4071 and 4081 shall, insofar as applicable and not inconsistent with subsections (a) and (b) of this section, apply in respect of the credits and refunds provided for in subsection (a) to the same extent as if such credits or refunds constituted overpayments of such taxes.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 735(c)(12), 98 Stat. 983.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 735(c)(12)(A), (B) substituted "Tires and gasoline" for "Trucks, tires, tubes, tread rubber, and gasoline" in heading, and in text substituted "Where before October 1, 1988, any article subject to the tax imposed by section 4071 or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale," for "Where before October 1, 1988, any article subject to the tax imposed by section 4061(a)(1), 4071((a)(1), (3) or (4), or 4081 has been sold by the manufacturer, producer, or importer and on such date is held by a dealer and has not been used and is intended for sale (or, in the case of tread rubber, is intended for sale or is held for use),", and struck out provision that no credit or refund shall be allowable under this paragraph with respect to inner tubes for bicycle tires (as defined in section 4221(e)(4)(B)).

Subsec. (a)(2)(A). Pub. L. 98-369, § 735(c)(12)(C), substituted "The term 'dealer' includes a wholesaler, jobber, distributor, or retailer" for "The term 'dealer' includes a wholesaler, jobber, distributor, or retailer, or, in the case of tread rubber subject to tax under section 4071(a)(4), includes any person (other than the manufacturer, producer, or importer thereof) who holds such tread rubber for sale or use".

Subsec. (c). Pub. L. 98-369, § 735(c)(12)(D), substituted "4071" for "4061, 4071,".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

§ 6413. Special rules applicable to certain employment taxes

[See main edition for text of (a) and (b)]

(c) Special refunds

[See main edition for text of (1)]

(2) Applicability in case of Federal and State employees, employees of certain foreign affiliates, and governmental employees in Guam, American Samoa, and the District of Columbia

[See main edition for text of (A) and (B)]

(C) Employees of certain foreign affiliates

For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121(*l*) as would be wages if such services constituted employment; the term "employer" includes any American employer which has entered into an agreement pursuant to section 3121(*l*); the term "tax" or "tax imposed by section 3101," includes, in the case of services covered by an agreement entered into pursuant to section 3121(*l*), an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121(*l*) has been paid to the Secretary.

[See main edition for text of (D) to (F), (3); (d)]

(As amended Apr. 20, 1983, Pub. L. 98-21, title III, § 321(e)(4), 97 Stat. 120; Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369.)

Amendments

1983—Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

Subsec. (c)(2). Pub. L. 98-21, § 321(e)(4)(B), substituted "foreign affiliates" for "foreign corporations" in heading.

Subsec. (c)(2)(C). Pub. L. 98-21, § 321(e)(4)(A), substituted "foreign affiliates" for "foreign corporations" in heading and, in text, substituted "American employer" for "domestic corporation".

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-21 applicable to agreements entered into after Apr. 20, 1983, except that at the election of any American employer such amendment shall also apply to any agreement entered into on or before Apr. 20, 1983, see section 321(f) of Pub. L. 98-21, set out as a note under section 406 of this title.

Section Referred to in Other Sections

This section is referred to in sections 21, 31, 3121, 6612, 6653 of this title; title 10 section 1451; title 42 sections 401, 1395i.

§ 6416. Certain taxes on sales and services

(a) Condition to allowance

(1) General rule

No credit or refund of any overpayment of tax imposed by chapter 31 (relating to retail excise taxes), or chapter 32 (manufacturers taxes), shall be allowed or made unless the person who paid the tax establishes, under regulations prescribed by the Secretary, that he—

[See main edition for text of (A) and (B)]

(C) in the case of an overpayment under subsection (b)(2) of this section—

[See main edition for text of (i) and (ii), (D)]

(2) Exceptions

This subsection shall not apply to—

(A) the tax imposed by section 4041 (relating to tax on special fuels) on the use of any liquid, and

(B) an overpayment of tax under paragraph (1), (3)(A), (4), (5), or (6) of subsection (b) of this section.

(3) Special rule

For purposes of this subsection, in any case in which the Secretary determines that an article is not taxable, the term "ultimate purchaser" (when used in paragraph (1)(B) of this subsection) includes a wholesaler, jobber, distributor, or retailer who, on the 15th day after the date of such determination, holds such article for sale; but only if claim for credit or refund by reason of this paragraph is filed on or before the date for filing the return with respect to the taxes imposed under chapter 32 for the first period which begins more than 60 days after the date on such determination.

(b) Special cases in which tax payments considered overpayments

Under regulations prescribed by the Secretary, credit or refund (without interest) shall be allowed or made in respect of the overpayments determined under the following paragraphs:

(1) Price readjustments

(A) In general

Except as provided in subparagraph (B) or (C), if the price of any article in respect of which a tax, based on such price, is imposed by chapter 32 or by section 4051, is readjusted by reason of the return or repossession of the article or a covering or container, or by a bona fide discount, rebate, or allowance, including a readjustment for local advertising (but only to the extent provided in section 4216(e)(2) and (3)), the part of the tax proportionate to the part of the price repaid or credited to the purchaser shall be deemed to be an overpayment.

[*See main edition for text of* (*B*)]

(C) Adjustment of tire price

No credit or refund of any tax imposed by subsection (a) or (b) of section 4071 shall be allowed or made by reason of an adjustment of a tire pursuant to a warranty or guarantee.

(2) Specified uses and resales

The tax paid under chapter 32 (or under paragraph (1)(A) or (2)(A) of section 4041(a) or under section 4051) in respect of any article (other than coal taxable under section 4121) shall be deemed to be an overpayment if such article was, by any person—

(A) exported;

(B) used or sold for use as supplies for vessels or aircraft;

(C) sold to a State or local government for the exclusive use of a State or local government;

(D) sold to a nonprofit educational organization for its exclusive use;

(E) in the case of any tire taxable under section 4071(a), sold to any person for use as described in section 4221(e)(3); or

(F) in the case of gasoline, used or sold for use in the production of special fuels referred to in section 4041.

Subparagraphs (C) and (D) shall not apply in the case of any tax paid under section 4064.

(3) Tax-paid articles used for further manufacture, etc.

If the tax imposed by chapter 32 has been paid with respect to the sale of any article (other than coal taxable under section 4121) by the manufacturer, producer, or importer thereof and such article is sold to a subsequent manufacturer or producer before being used, such tax shall be deemed to be an overpayment by such subsequent manufacturer or producer if—

(A) in the case of any article other than gasoline taxable under section 4081, such article is used by the subsequent manufacturer or producer as material in the manufacture or production of, or as a component part of—

(i) another article taxable under chapter 32, or

(ii) an automobile bus chassis or an automobile bus body,

manufactured or produced by him; or

(B) in the case of gasoline taxable under section 4081, such gasoline is used by the subsequent manufacturer or producer, for nonfuel purposes, as a material in the manufacture or production of any other article manufactured or produced by him.

(4) Tires

If—

(A) the tax imposed by section 4071 has been paid with respect to the sale of any tire by the manufacturer, producer, or importer thereof, and

(B) such tire is sold by any person on or in connection with, or with the sale of, any other article, such tax shall be deemed to be an overpayment by such person if such other article is—

(i) an automobile bus chassis or an automobile bus body, or

(ii) by such person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft.

[*See main edition for text of* (*5*)]

(6) Truck chassis, bodies, and semitrailers used for further manufacture

If—

(A) the tax imposed by section 4051 has been paid with respect to the sale of any article, and

(B) before any other use, such article is by any person used as a component part of another article taxable under section 4051 manufactured or produced by him,

such tax shall be deemed to be an overpayment by such person. For purposes of the preceding sentence, an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

This subsection shall apply in respect of an article only if the exportation or use referred to in the applicable provision of this subsection occurs before any other use, or, in the case of a sale or resale, the use referred to in the applicable provision of this subsection is to occur before any other use.

(c) Refund to exporter or shipper

Under regulations prescribed by the Secretary the amount of any tax imposed by chapter 31, or chapter 32 erroneously or illegally collected in respect of any article exported to a foreign country or shipped to a possession of the United States may be refunded to the exporter or shipper thereof, if the person who paid such tax waives his claim to such amount.

(d) Credit on returns

Any person entitled to a refund of tax imposed by chapter 31 or 32, paid to the Secretary may, instead of filing a claim for refund, take credit therefor against taxes imposed by such chapter due on any subsequent return.

(e) Accounting procedures for like articles

Under regulations prescribed by the Secretary, if any person uses or resells like articles, then for purposes of this section the manufacturer, producer, or importer of any such article may be identified, and the amount of tax paid under chapter 32 in respect of such article may be determined—

(1) on a first-in-first-out basis,

(2) on a last-in-first-out basis, or

(3) in accordance with any other consistent method approved by the Secretary.

(f) Meaning of terms

For purposes of this section, any term used in this section has the same meaning as when used in chapter 31, 32, or 33, as the case may be.

[(g) Repealed. Pub. L. 98-369, div. A, title VII, § 735(c)(13)(E), July 18, 1984, 98 Stat. 984]

[(h) and (i) Redesignated (e) and (f)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, §§ 734(b), (j), 735(c)(13), 98 Stat. 978, 980, 984.)

AMENDMENTS

1984—Subsec. (a)(1)(C). Pub. L. 98-369, § 734(b)(2)(B)(iii), struck out ", (b)(3)(C), or (D), or (b)(4)" before "of this section".

Subsec. (a)(2)(B). Pub. L. 98-369, §§ 734(b)(1)(B), (2)(B)(iv), 735(c)(13)(D), substituted "(4), (5), or (6) of subsection (b)" for "or (B), or (5) of subsection (b)".

Subsec. (a)(3). Pub. L. 98-369, § 734(b)(2)(B)(v), in amending par. (3) generally, struck out the subpar. (A) designation before "in any case", substituted a period for "; and" after "determination", and struck out subpar. (B) which had provided that in applying paragraph (1) to any overpayment under paragraph (2)(F), (3)(C), or (4) of subsection (b), the term "ultimate vendor" means the ultimate vendor of the other article.

Subsec. (b)(1)(A). Pub. L. 98-369, § 734(j), added "or by section 4051" after "by chapter 32".

Subsec. (b)(1)(C). Pub. L. 98-369, § 735(c)(13)(A), substituted "subsection (a) or (b) of section 4071" for "section 4071(a)(1) or (2) or section 4071(b)".

Subsec. (b)(2). Pub. L. 98-369, § 735(c)(13)(B), inserted a period after "section 4064" at end of the flush sentence following subpar. (F).

Subsec. (b)(2)(A). Pub. L. 98-369, § 735(c)(13)(F), struck out "(except in any case to which subsection (g) applies)" after "exported".

Subsec. (b)(2)(E). Pub. L. 98-369, § 735(c)(13)(B), added subpar. (E).

Pub. L. 98-369, § 734(b)(2)(B)(i), struck out former subpar. (E) which related to tires or inner tubes resold for use or tread rubber on recapped or retreaded tires resold for use.

Subsec. (b)(2)(F). Pub. L. 98-369, § 735(c)(13)(B), added subsec. (F) and struck out former subsec. (F) which related to any article taxable under section 4061(b) (other than spark plugs and storage batteries), used or sold for use as repair or replacement parts or accessories for farm equipment (other than equipment taxable under section 4061(a).

Subsec. (b)(2)(G) to (M). Pub. L. 98-369, § 735(c)(13)(B), struck out subpars. (G) through (M) which had related to tread rubber, gasoline, articles used with automobile buses, boxes or containers, light-duty trucks, tires and inner tubes, recapped tires, and tires sold for use in connection with qualified buses.

Subsec. (b)(3). Pub. L. 98-369, § 735(c)(13)(C), struck out provision at end that for purposes of subparagraphs (A) and (B), an article shall be treated as having been used as a component part of another article if, had it not been broken or rendered useless in the manufacture or production of such other article, it would have been so used.

Subsec. (b)(3)(A) Pub. L. 98-369, § 735(c)(13)(C), substituted "gasoline taxable under section 4081," for "an article to which subparagraphs (B), (C), (D), or (E) applies,".

Subsec. (b)(3)(B). Pub. L. 98-369, § 735(c)(13)(C), substituted "gasoline taxable under section 4081," for "a part or accessory taxable under section 4061(b)", substituted "gasoline" for "article", added "for nonfuel purposes,", and substituted a period for a semicolon after "produced by him".

Subsec. (b)(3)(C). Pub. L. 98-369, § 734(b)(2)(B)(ii), struck out subpar. (C) which related to tires or inner tubes taxable under section 4071(a) of this title.

Subsec. (b)(3)(D) to (F). Pub. L. 98-369, § 735(c)(13)(C), struck out subpar. (D) which related to tread rubber in respect of which tax was paid under section 4071(a)(4) used in the recapping or retreading of a tire, subpar. (E) which related to bicycle tires or inner tubes used for such a tire, and subpar. (F) which dealt with gasoline taxable under section 4081. See subpar. (B) for similar provisions.

Subsec. (b)(4)(A). Pub. L. 98-369, § 734(b)(2)(A), amended par. (4) generally. Prior to amendment par. (4) provided that if (A) a tire or inner tube taxable under section 4071, or a recapped or retreaded tire in respect of which tax under section 4071(a)(4) was paid on the tread rubber used in the recapping or retreading, is sold by the manufacturer, producer, or importer thereof on or in connection with, or with the sale of, any other article manufactured or produced by him; and (B) such other article is (i) an automobile bus chassis or an automobile bus body, or (ii) by any person exported, sold to a State or local government for the exclusive use of a State or local government, sold to a nonprofit educational organization for its exclusive use, or used or sold for use as supplies for vessels or aircraft, any tax imposed by chapter 32 in respect of such tire or inner tube which has been paid by the manufacturer, producer, or importer thereof shall be deemed to be an overpayment by him.

Subsec. (b)(6). Pub. L. 98-369, § 734(b)(1)(A), added par. (6).

Subsec. (c). Pub. L. 98-369, § 735(c)(13)(E), redesignated subsec. (e) as (c). Former subsec. (c), which related to credit for tax paid on tires or inner tubes, was struck out.

Subsec. (d) to (f). Pub. L. 98-369, § 735(c)(13)(E), redesignated subsecs. (f), (h), and (i), as subsecs. (d), (e), and (f), respectively. Former subsec. (d) had been previously repealed and former subsec. (e) was redesignated (c).

Subsec. (g). Pub. L. 98-369, § 735(c)(13)(E), struck out subsec. (g) which related to trucks, buses, tractors, etc.

Subsecs. (h), (i). Pub. L. 98-369, § 735(c)(13)(E), redesignated subsecs. (h) and (i) as (e) and (f), respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4216, 4227, 6421, 6612, 7851 of this title.

§ 6420. Gasoline used on farms

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Income tax credit in lieu of payment

[See main edition for text of (1)]

(2) Allowance of credit against income tax

For allowance of credit against the tax imposed by subtitle A, see section 34.

[See main edition for text of (h) and (i)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(38), 98 Stat. 846.)

AMENDMENTS

1984—Subsec. (g)(2). Pub. L. 98-369 substituted "section 34" for "section 39".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

For effective date of amendment by Pub. L. 97-473, see section 204 of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 34, 48, 103, 451, 483, 1274, 4041, 4084, 6206, 6416, 6421, 6427, 6504, 6511, 6612, 6675, 7210, 7603, 7604, 7605, 7609, 7610, 9502, 9503 of this title.

§ 6421. Gasoline used for certain nonhighway purposes or by local transit systems

[See main edition for text of (a) to (h)]

(i) Income tax credit in lieu of payment

[See main edition for text of (1) and (2)]

(3) Allowance of credit against income tax

For allowance of credit against the tax imposed by subtitle A, see section 34.

[See main edition for text of (j)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 474(r)(38), 98 Stat. 846.)

AMENDMENTS

1984—Subsec. (i)(3). Pub. L. 98-369 substituted "section 34" for "section 39".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

For effective date of amendment by Pub. L. 97-473, see section 204 of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 34, 4041, 4084, 4483, 6206, 6427, 6504, 6511, 6612, 6675, 7210, 7603, 7604, 7605, 7609, 7610, 9502, 9503 of this title; title 16 section 460*l*-11.

§ 6427. Fuels not used for taxable purposes

(a) Nontaxable uses

Except as provided in subsection (j), if tax has been imposed under section 4041(a) or (c) on the sale of any fuel and the purchaser uses such fuel other than for the use for which sold, or resells such fuel, the Secretary shall pay (without interest) to him an amount equal to—

[See main edition for text of (1) and (2)]

(b) Intercity, local, or school buses

(1) Allowance

Except as provided in paragraph (2)[1] and subsection (j), if any fuel on the sale of which tax was imposed by subsection (a) of section 4041 is used in an automobile bus while engaged in—

[See main edition for text of (A) and (B)]

the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the product of the number of gallons of such fuel so used multiplied by the rate at which tax was imposed on such fuel by subsection (a) of section 4041.

(2) 3-cent reduction in refund in certain cases

(A) In general

Except as provided in subparagraph (B), the rate of tax taken into account under paragraph (1) shall not exceed 12 cents.

(B) Exception

Subparagraph (A) shall not apply to fuel used in any automobile bus while engaged in furnishing (for compensation) intracity passenger land transportation—

(i) which is available to the general public, and

(ii) which is scheduled and along regular routes,

but only if such bus is a qualified local bus.

(C) Qualified local bus

For purposes of this paragraph, the term "qualified local bus" means any local bus—

(i) which has a seating capacity of at least 20 adults (not including the driver), and

(ii) which is under contract (or is receiving more than a nominal subsidy) from any State or local government (as defined in section 4221(d)) to furnish such transportation.

(3) Limitation in case of nonscheduled intercity or local buses

Paragraph (1)(A) shall not apply in respect of fuel used in any automobile bus while engaged in furnishing transportation which is not scheduled and not along regular routes unless the seating capacity of such bus is at least 20 adults (not including the driver).

(c) Use for farming purposes

Except as provided in subsection (j), if any fuel on the sale of which tax was imposed under section 4041(a) or (c) is used on a farm for farming purposes (within the meaning of section 6420(c)), the Secretary shall pay (without interest) to the purchaser an amount equal to the amount of the tax imposed on the sale of the fuel. For purposes of this subsection, if fuel is used on a farm by any person other than the owner, tenant, or operator of such farm, the rules of paragraph (4) of section 6420(c) shall be applied (except that "liquid taxable under section 4041" shall be substituted for "gasoline" each place it appears in such paragraph (4)).

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[1] Par. (2) redesignated (3) by Pub. L. 98-369.

(d) Use by certain aircraft museums or in certain helicopters

Except as provided in subsection (j), if—

[*See main edition for text of (1) and (2)*]

is used by an aircraft museum (as defined in section 4041(h)(2)) in an aircraft or vehicle owned by such museum and used exclusively for purposes set forth in section 4041(h)(2)(C), or is used in a helicopter for a purpose described in section 4041(*l*), the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline or fuel an amount equal to the aggregate amount of the tax imposed on such gasoline or fuel.

(e) Use in certain taxicabs

(1) In general

Except as provided in subsection (j), if—

[*See main edition for text of (A) and (B)*]

is used in a qualified taxicab while engaged exclusively in furnishing qualified taxicab services, the Secretary shall pay (without interest) to the ultimate purchaser of such gasoline or fuel an amount determined at the rate of 4 cents a gallon.

[*See main edition for text of (2)*]

(3) Termination

This subsection shall not apply after September 30, 1985.

(f) Gasoline used to produce certain alcohol fuels

(1) In general

Except as provided in subsection (j), if any gasoline on which a tax is imposed by section 4081 at the rate of 9 cents a gallon is used by any person in producing a mixture described in section 4081(c) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the amount determined at the rate of 5⅓ cents a gallon. The preceding sentence shall not apply with respect to any mixture sold or used after December 31, 1992.

[*See main edition for text of (2)*]

(g) Advance repayment of increased diesel fuel tax to original purchasers of diesel-powered automobiles and light trucks

(1) In general

Except as provided in subsection (j), the Secretary shall pay (without interest) to the original purchaser of any qualified diesel-powered highway vehicle an anount [4] equal to the diesel fuel differential amount.

(2) Qualified diesel-powered highway vehicle

For purposes of this subsection, the term "qualified diesel-powered highway vehicle" means any diesel-powered highway vehicle which—

(A) has at least 4 wheels,

(B) has a gross vehicle weight rating of 10,000 pounds or less, and

(C) is registered for highway use in the United States under the laws of any State.

(3) Diesel fuel differential amount

For purposes of this subsection, the term "diesel fuel differential amount" means—

(A) except as provided in subparagraph (B), $102, or

(B) in the case of a truck or van, $198.

(4) Original purchaser

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B), the term "original purchaser" means the first person to purchase the qualified diesel-powered vehicle for use other than resale.

(B) Exception for certain persons not subject to fuels tax

The term "original purchaser" shall not include any State or local government (as defined in section 4221(d)(4)) or any nonprofit educational organization (as defined in section 4221(d)(5)).

(C) Treatment of demonstration use by dealer

For purposes of subparagraph (A), use as a demonstrator by a dealer shall not be taken into account.

(5) Vehicles to which subsection applies

Except as provided in paragraph (6), this subsection shall only apply to qualified diesel-powered highway vehicles originally purchased after January 1, 1985, and before January 1, 1988.

(6) Special rule for certain vehicles held on January 1, 1985

(A) In general

In the case of any person holding a qualified diesel-powered highway vehicle on January 1, 1985—

(i) such person shall be treated as if he originally purchased such vehicle on December 31, 1984, but

(ii) the amount payable under paragraph (1) to such person for such vehicle shall be the applicable fraction of the diesel fuel differential amount.

(B) Applicable fraction

For purposes of subparagraph (A), the applicable fraction is the fraction determined in accordance with the following table:

If the model year of the vehicle is:	The applicable fraction is:
1984 or 1985	1
1983	⅚
1982	4/6
1981	3/6
1980	2/6
1979	⅙

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[4] So in original. Probably should be "amount".

In the case of a 1978 or earlier model year vehicle, the applicable fraction shall be zero.

(7) Basis reduction

For the purposes of subtitle A, the basis of any qualified diesel-powered highway vehicle shall be reduced by the amount payable under this subsection with respect to such vehicle.

(h) Time for filing claims; period covered

(1) General rule

Except as provided in paragraph (2), not more than one claim may be filed under subsection (a), (b), (c), (d), (e), (f), or (g) by any person with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during his taxable year; and no claim shall be allowed under this paragraph with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during any taxable year unless filed by the purchaser not later than the time prescribed by law for filing a claim for credit or refund of overpayment of income tax for such taxable year. For purposes of this paragraph, a person's taxable year shall be his taxable year for purposes of subtitle A.

(2) Exceptions

(A) In general

If—

(i) $1,000 or more is payable under subsections (a), (b), (d), (e), and (g),

(ii) $50 or more is payable under subsection (e), or

(iii) $200 or more is payable under subsection (f),

to any person with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during any of the first three quarters of his taxable year, a claim may be filed under this section by the purchaser with respect to fuel used (or a qualified diesel powered highway vehicle purchased) during such quarter.

(B) Special rule

If the requirements of clause (ii) or clause (iii) of subparagraph (A) are met by any person for any quarter but the requirements of subparagraph (A)(i) are not met by such person for such quarter, such person may file a claim under subparagraph (A) for such quarter only with respect to amounts referred to in the clause (or clauses) of subparagraph (A) the requirements of which are met by such person for such quarter.

(C) Time for filing claim

No claim filed under this paragraph shall be allowed unless filed on or before the last day of the first quarter following the quarter for which the claim is filed.

(i) Applicable laws

(1) In general

All provisions of law, including penalties, applicable in respect of the taxes imposed by section 4041 shall, insofar as applicable and not inconsistent with this section, apply in respect of the payments provided for in this section to the same extent as if such payments constituted refunds of overpayments of the tax so imposed.

(2) Examination of books and witnesses

For the purpose of ascertaining the correctness of any claim made under this section, or the correctness of any payment made in respect of any such claim, the Secretary shall have the authority granted by paragraphs (1), (2), and (3) of section 7602 (relating to examination of books and witnesses) as if the claimant were the person liable for tax.

(j) Income tax credit in lieu of payment

(1) Persons not subject to income tax

Payment shall be made under this section only to—

(A) the United States or an agency or instrumentality thereof, a State, a political subdivision of a State, or any agency or instrumentality of one or more States or political subdivisions, or

(B) an organization exempt from tax under section 501(a) (other than an organization required to make a return of the tax imposed under subtitle A for its taxable year).

(2) Exception

Paragraph (1) shall not apply to a payment of a claim filed under subsection (h)(2).

(3) Allowance of credit against income tax

For allowance of credit against the income tax imposed by subtitle A for fuel used or resold by the purchaser, see section 34.

(k) Special rules with respect to noncommercial aviation

For purposes of subsection (a), in the case of gasoline—

(1) on which tax was imposed under section 4041(c)(2),

(2) on which tax was not imposed under section 4081, and

(3) which was not used as an off-highway business use (within the meaning of section 6421(d)(2)),

the amount of the payment under subsection (a) shall be an amount equal to the amount of gasoline used as described in subsection (a) or resold multiplied by the rate equal to the excess of the rate of tax imposed by section 4041(c)(2) over the rate of tax imposed by section 4081.

(*l*) Regulations

The Secretary may by regulations prescribe the conditions, not inconsistent with the provisions of this section, under which payments may be made under this section.

(m) Termination of subsections (a), (b), (c), (d), and (g)

Subsections (a), (b), (c), (d), and (g) shall only apply with respect to fuels purchased before October 1, 1988.

(n) Cross references

(1) For civil penalty for excessive claims under this section, see section 6675.

(2) For fraud penalties, etc., see chapter 75 (section 7201 and following, relating to crimes, other offenses, and forfeitures).

(3) For treatment of an Indian tribal government as a State (and a subdivision of an Indian tribal government as a political subdivision of a State), see section 7871.

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(38), title VII, §§ 732(a)(3), 734(c)(2), title IX, §§ 911(b), (d)(2)(B)-(F), 912(d), 914, 915(a), July 18, 1984, 98 Stat. 846, 977, 979, 1005-1008.)

AMENDMENTS

1984—Subsecs. (a), (b)(1). Pub. L. 98-369, § 911(d)(2)(B), substituted "subsection (j)" for "subsection (i)".

Subsec. (b)(2), (3). Pub. L. 98-369, § 915(a), added par. (2) and redesignated former par. (2) as (3).

Subsecs. (c), (d), (e)(1). Pub. L. 98-369, § 911(d)(2)(B), substituted "subsection (j)" for "subsection (i)".

Subsec. (e)(3). Pub. L. 98-369, § 914, substituted "September 30, 1985" for "September 30, 1984".

Subsec. (f)(1). Pub. L. 98-369, § 911(d)(2)(B), substituted "subsection (j)" for "subsection (i)".

Pub. L. 98-369, § 912(d), substituted "5⅛ cents" for "4⅝ cents".

Pub. L. 98-369, § 732(a)(3), substituted "4⅝ cents" for "5 cents".

Subsec. (g). Pub. L. 98-369, § 911(b), added subsec. (g). Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 98-369, § 911(b), redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsec. (h)(1). Pub. L. 98-369, § 911(d)(2)(C), substituted "(f), or (g)" for "or (f)", and inserted "(or a qualified diesel powered highway vehicle purchased)" after "fuel used" in two places.

Subsec. (h)(2)(A). Pub. L. 98-369, § 911(d)(2)(D), substituted "(e), and (g)" for "and (e)", and inserted "(or a qualified diesel powered highway vehicle purchased)" after "fuel used" in two places.

Subsec. (i). Pub. L. 98-369, § 911(b), redesignated former subsec. (h) as (i). Former subsec. (i) redesignated (j).

Subsec. (i)(3). Pub. L. 98-369, § 474(r)(38), substituted "section 34" for "section 39".

Subsec. (j). Pub. L. 98-369, § 911(b), redesignated former subsec. (i), relating to income tax credit in lieu of payment, as (j). Former subsec. (j), relating to special rules with respect to noncommercial aviation, redesignated (k).

Pub. L. 98-369, § 734(c)(2), added subsec. (j) relating to special rules with respect to noncommercial aviation. Former subsec. (j), relating to regulations, redesignated (k).

Subsec. (j)(2). Pub. L. 98-369, § 911(d)(2)(E), which directed the amendment of subsec. (k)(2) by substituting "(h)(2)" for '(g)(2)" was executed to subsec. (j)(2) to reflect the probable intent of Congress.

Subsec. (k). Pub. L. 98-369, § 911(b), redesignated former subsec. (j), relating to special rules with respect to noncommerical aviation, as (k). Former subsec. (k), relating to regulations, redesignated (*l*).

Pub. L. 98-369, § 734(c)(2), redesignated former subsec. (j), relating to regulations, as (k). Former subsec. (k), relating to termination of subsections, redesignated (*l*).

Subsec. (*l*). Pub. L. 98-369, § 911(b), redesignated former subsec. (k), relating to regulations, as (*l*). Former subsec. (*l*), relating to termination of subsections, redesignated (m).

Pub. L. 98-369, § 734(c)(2), redesignated former subsec. (k), relating to termination of subsections, as (*l*). Former subsec. (*l*), relating to cross references, redesignated (m).

Subsec. (m). Pub. L. 98-369, § 911(b), (d)(2)(F), redesignated former subsec. (*l*), relating to termination of subsections, as (m) and substituted "(d), and (g)" for "and (d)" in heading and text. Former subsec. (m), relating to cross references, redesignated (n).

Pub. L. 98-369, § 734(c)(2), redesignated former subsec. (*l*), relating to cross references, as (m).

Subsec. (n). Pub. L. 98-369, § 911(b), redesignated former subsec. (m), relating to cross references, as (n).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(38) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 732(a)(3) of Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

Amendment by section 734(c)(2) of Pub. L. 98-369 effective on the first day of the first calendar quarter beginning after July 18, 1984, see section 734(c)(3) of Pub. L. 98-369, set out as a note under section 4082 of this title.

Section 911(e) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 34, 4041, 6427, 7210, 7603 to 7605, 7609, 7610, and 9503 of this title] shall take effect on August 1, 1984."

Amendment by section 912(d) of Pub. L. 98-369 effective Jan. 1, 1985, see section 912(g) of Pub. L. 98-369, set out as a note under section 40 of this title.

Section 915(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall take effect on August 1, 1984."

EFFECTIVE AND TERMINATION DATES OF 1983 AMENDMENTS

For effective date of amendment by Pub. L. 97-473, see section 204 of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 34, 4081, 6206, 6504, 6675, 7210, 7603, 7604, 7605, 7609, 7610, 9502, 9503 of this title.

§ 6428. 1981 Rate reduction tax credit

REFERENCES IN TEXT

Sections 39 and 43, referred to in subsec. (b)(1), were renumbered sections 34 and 32 of this title, respectively, by Pub. L. 98-369, div. A, title IV, § 471(c)(1), July 18, 1984, 98 Stat. 826.

CHAPTER 66—LIMITATIONS

Subchapter A—Limitations on Assessment and Collection

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7611 of this title.

§ 6501. Limitations on assessment and collection

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Exceptions

[*See main edition for text of* (*1*) *to* (*5*)]

(6) Termination of private foundation status

In the case of a tax on termination of private foundation status under section 507, such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(7) Special rule for certain amended returns

Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by subtitle A for any taxable year would otherwise expire, the Secretary receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Secretary receives such document.

(8) Failure to notify Secretary under section 6038B

In the case of any tax imposed on any exchange by reason of subsection (a) or (d) of section 367, the time for assessment of such tax shall not expire before the date which is 3 years after the date on which the Secretary is notified of such exchange under section 6038B(a).

[*See main edition for text of* (*d*) *to* (*f*)]

(g) Certain income tax returns of corporations

[*See main edition for text of* (*1*) *and* (*2*)]

(3) DISC

If a corporation determines in good faith that it is a DISC (as defined in section 992(a)) and files a return as such under section 6011(c)(2) and if such corporation is thereafter held to be a corporation which is not a DISC for the taxable year for which the return is filed, such return shall be deemed the return of a corporation which is not a DISC for purposes of this section.

[*See main edition for text of* (*h*) *to* (*j*)]

(k) Tentative carryback adjustment assessment period

In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback and refund adjustments) by reason of a net operating loss carryback, a capital loss carryback, an investment credit carryback, a work incentive program carryback, or a new employee credit carryback to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in subsection (h) or (j), whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h) or (j), as the case may be.

(*l*) Special rule for chapter 42 and similar taxes

(1) In general

For purposes of any tax imposed by chapter 42 (other than section 4940) or by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, or trust (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred. For purposes of section 4940, such return is the return filed by the private foundation for the taxable year for which the tax is imposed.

(2) Certain contributions to section 501(c)(3) organizations

In the case of a deficiency of tax of a private foundation making a contribution in the manner provided in section 4942(g)(3) (relating to certain contributions to section 501(c)(3) organizations) attributable to the failure of a section 501(c)(3) organization to make the distribution prescribed by section 4942(g)(3), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year with respect to which the contribution was made.

(3) Certain set-asides described in section 4942(g)(2)

In the case of a deficiency attributable to the failure of an amount set aside by a private foundation for a specific project to be treated as a qualifying distribution under the provisions of section 4942(g)(2)(B)(ii), such deficiency may be assessed at any time before the expiration of 2 years after the expiration of the period within which a deficiency may be assessed for the taxable year to which the amount set aside relates.

(m) Special rules for windfall profit tax

(1) Oil subject to withholding

(A) In general

In the case of any oil to which section 4995(a) applies and with respect to which no return is required, the return referred to in this section shall be the return (of the person liable for the tax imposed by section 4986) of the taxes imposed by subtitle A for the taxable year in which the removal year ends.

(B) Removal year

For purposes of subparagraph (A), the term "removal year" means the calendar year in which the oil is removed from the premises.

(2) Extension of liability attributable to DOE reclassification

(A) In general

In the case of the tax imposed by chapter 45, if a Department of Energy change becomes final, the period for assessing any deficiency attributable to such change shall not expire before the date which is 1 year after the date on which such change becomes final.

(B) Department of Energy change

For purposes of subparagraph (A) and section 6511(h)(2), the term "Department of Energy change" means any change by the Department of Energy in the classification under the June 1979 energy regulations (as defined in section 4996(b)(8)(C)) of a property or of domestic crude oil from a property.

(3) Cross reference

For extension of period for windfall profit tax items of partnerships, see section 6229 as made applicable by section 6232.

(n) Cross references

(1) For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4).

(2) For extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229.

(3) For extension of period in the case of certain contributions in aid of construction, see section 118(c).

[(*o*) Repealed. Pub. L. 98–369, div. A, title I, § 163(b)(1), July 18, 1984, 98 Stat. 698]

[(p) Repealed. Pub. L. 98–369, div. A, title IV, § 474(r)(39), July 18, 1984, 98 Stat. 846]

[(q) Redesignated (m)]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title I, §§ 131(d)(2), 163(b)(1), title II, § 211(b)(24), title III, § 314(a)(3), title IV, §§ 447(a), 474(r)(39), title VII, § 714(p)(2)(F), title VIII, § 801(d)(14), 98 Stat. 664, 698, 757, 787, 817, 846, 965, 997.)

Amendments

1984—Subsec. (c)(6). Pub. L. 98–369, § 211(b)(24)(A), redesignated par. (7) as (6) and struck out former par. (6) which had provided that, in the case of any tax imposed under section 802(a) by reason of section 802(b)(3) on account of a termination of the taxpayer as an insurance company or as a life insurance company to which section 815(d)(2)(A) applied, or on account of a distribution by the taxpayer to which section 815(d)(2)(B) applied such tax could be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) for the taxable year for which the taxpayer ceased to be an insurance company, the second taxable year for which the taxpayer was not a life insurance company, or the taxable year in which the distribution was actually made, as the case might be.

Subsec. (c)(7). Pub. L. 98–369, § 447(a), added par. (7).

Pub. L. 98–369, § 211(b)(24)(A), redesignated former par. (7) as (6).

Subsec. (c)(8). Pub. L. 98–369, § 131(d)(2), added par. (8).

Subsec. (g)(3). Pub. L. 98–369, § 801(d)(14), substituted "section 6011(c)(2)" for "section 6011(e)(2)".

Subsec. (k). Pub. L. 98–369, § 163(b)(1), redesignated subsec. (m) as (k).

Pub. L. 98–369, § 211(b)(24)(B), struck out former subsec. (k) which provided that in the case of a deficiency attributable to the application to the taxpayer of section 815(d)(5) (relating to reductions of policyholders surplus account of life insurance companies for certain unused deductions), such deficiency could be assessed at any time before the expiration of the period within which a deficiency for the last taxable year to which the loss described in section 815(d)(5)(A) was carried under section 812(b)(2) could be assessed.

Subsec. (*l*). Pub. L. 98–369, § 163(b)(1), redesignated subsec. (n) as (*l*) and struck out former subsec. (*l*) which read "For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4)."

Subsec. (*l*)(3). Pub. L. 98–369, § 315(a)(3), substituted "section 4942(g)(2)(B)(ii)" for "section 4942(g)(2)(B)(i)(II)" in subsec. (n)(3), which was redesignated subsec. (*l*)(3) by Pub. L. 98–369, § 163(b)(1).

Subsec. (m). Pub. L. 98–369, § 163(b)(1), redesignated subsec. (p) as (m). Former subsec. (m) redesignated (k).

Subsec. (n). Pub. L. 98–369, § 163(b)(1), added subsec. (n). Former subsec. (n) redesignated (*l*).

Subsec. (n)(3). Pub. L. 98–369, § 315(a)(3), substituted "section 4942(g)(2)(B)(ii)" for "section 4942(g)(2)(B)(i)(II)" in subsec. (n)(3), which was redesignated subsec. (*l*)(3) by Pub. L. 98–369, § 163(b)(1).

Subsec. (*o*). Pub. L. 98–369, § 163(b)(1), struck out subsec. (*o*) which read "For extension of period in the case of partnership items (as defined in section 6231(a)(3), see section 6229."

Subsec. (p). Pub. L. 98–369, § 163(b)(1), redesignated subsec. (p) as (m).

Pub. L. 98–369, § 474(r)(39), redesignated subsec. (q) as (p). Former subsec. (p), which related to deficiencies attributable to an election under section 44B, was struck out.

Subsec. (q). Pub. L. 98–369, § 474(r)(39), redesignated subsec. (q) as (p).

Subsec. (q)(3). Pub. L. 98–369, § 714(p)(2)(F), amended par. (3) generally. Prior to amendment par. (3) related to partnership items of federally registered partnerships and provided that under regulations prescribed by the Secretary, rules similar to the rules of subsection (*o*) shall apply to the tax imposed by section 4986.

Effective Date of 1984 Amendment

Amendment by section 131(d)(2) of Pub. L. 98–369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98–369, set out as a note under section 367 of this title.

Amendment by section 163(b)(1) of Pub. L. 98–369 applicable to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of this title ends after Dec. 31, 1984, see section 163(c) of Pub. L. 98–369, set out as a note under section 118 of this title.

Amendment by section 211(b)(24) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 314(a)(3) of Pub. L. 98–369 effective July 18, 1984, see section 314(a)(4) of Pub. L. 98–369, set out as a note under section 4942 of this title.

Section 447(b) of Pub. L. 98–369 provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to documents received by the Secretary of the Treasury (or his delegate) after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 474(r)(39) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 714(p)(2)(F) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 801(d)(14) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, set out as an Effective Date note under section 921 of this title.

Section Referred to in Other Sections

This section is referred to in sections 250, 302, 303, 547, 551, 815, 860, 982, 1033, 1039, 1102, 2016, 2053, 2204, 5006, 5703, 6013, 6503, 6511, 6229, 7609 of this title.

§ 6503. Suspension of running of period of limitation

[See main edition for text of (a) to (f)]

(g) Suspension pending correction

The running of the periods of limitations provided in sections 6501 and 6502 on the making of assessments or the collection by levy or a proceeding in court in respect of any tax imposed by chapter 42 or section 507, 4951, 4952, 4971, or 4975 shall be suspended for any period described in section 507(g)(2) or during which the Secretary has extended the time for making correction under section 4963(e).

[See main edition for text of (h) to (j)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title III, § 305(b)(4), 98 Stat. 784.)

AMENDMENTS

1984—Subsec. (g). Pub. L. 98-369 substituted "section 4963(e)" for "section 4962(e)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable events occurring after Dec. 31, 1984, see section 305(c) of Pub. L. 98-369, set out as an Effective Date note under section 4962 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1505, 6158, 6166, 6167, 6873 of this title; title 18 section 3613.

Subchapter B—Limitations on Credit or Refund

§ 6511. Limitations on credit or refund

[See main edition for text of (a) to (c)]

(d) Special rules applicable to income taxes

[See main edition for text of (1) to (3)]

(4) Special period of limitation with respect to investment credit carrybacks

[See main edition for text of (A) and (B)]

(C) Credit carryback defined

For purposes of this paragraph, the term "credit carryback" means any business carryback under section 39 and any research credit carryback under section 30(g)(2).

(5) Special period of limitation with respect to self-employment tax in certain cases

If the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to an agreement, or modification of an agreement, made pursuant to section 218 of the Social Security Act (relating to coverage of State and local employees), and if the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made if claim therefor is filed on or before the last day of the second year after the calendar year in which such agreement (or modification) is agreed to by the State and the Secretary of Health and Human Services.

(6) Special period of limitation with respect to amounts included in income subsequently recaptured under qualified plan termination

If the claim for credit or refund relates to an overpayment of tax imposed by subtitle A on account of the recapture, under section 4045 of the Employee Retirement Income Security Act of 1974, of amounts included in income for a prior taxable year, the 3-year period of limitation prescribed in subsection (a) shall be extended, for purposes of permitting a credit or refund of the amount of the recapture, until the date which occurs one year after the date on which such recaptured amount is paid by the taxpayer.

[(7) Redesignated (6)]

[See main edition for text of (e)]

(f) Special rule for chapter 42 and certain chapter 43 taxes

For purposes of any tax imposed by chapter 42 or section 4975, the return referred to in subsection (a) shall be the return specified in section 6501(*l*)(1).

[See main edition for text of (g)]

(h) Special rules for windfall profit taxes

(1) Oil subject to withholding

In the case of any oil to which section 4995(a) applies and with respect to which no return is required, the return referred to in subsection (a) shall be the return (of the person liable for the tax imposed by section 4986) of the taxes imposed by subtitle A for the taxable year in which the removal year (as defined in section 6501(q)(1)(B)) [1] ends.

(2) Special rule for DOE reclassification

In the case of any tax imposed by chapter 45, if a Department of Energy change (as defined in section 6501(q)(2)(B)) [1] becomes final, the period for filing a claim for credit or refund for any overpayment attributable to such change shall not expire before the date which is 1 year after the date on which such change becomes final.

(3) Cross reference

For period of limitation for windfall profit tax items of partnerships, see section 6227(a) and subsections (c) and (d) of section 6230 as made applicable by section 6232.

(i) Cross references

(1) For time return deemed filed and tax considered paid, see section 6513.

(2) For limitations with respect to certain credits against estate tax, see sections 2011(c), 2014(b), and 2015.

(3) For limitations in case of floor stocks refunds, see section 6412.

(4) For a period of limitations for credit or refund in the case of joint income returns after separate returns have been filed, see section 6013(b)(3).

(5) For limitations in case of payments under section 6420 (relating to gasoline used on farms), see section 6420(b).

(6) For limitations in case of payments under section 6421 (relating to gasoline used for certain nonhighway purposes or by local transit systems), see section 6421(c).

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[1] See References in Text note below.

(7) For a period of limitations for refund of an overpayment of penalties imposed under section 6694 or 6695, see section 6696(d)(2).

[(j) Redesignated (i)]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title I, § 163(b)(2), title II, § 211(b)(25), title IV, § 474(r)(40), title VII, §§ 714(p)(2)(G), 735(c)(14), div. B, title VI, § 2663(j)(5)(F), 98 Stat. 698, 757, 847, 965, 984, 1171.)

REFERENCES IN TEXT

Section 4045 of the Employee Retirement Income Security Act of 1974, referred to in subsec. (d)(6), is classified to section 1345 of Title 29, Labor.

Section 6501(q), referred to in subsec. (h)(1), (2) was redesignated section 6501(m) by Pub. L. 98–369, div. A, title I, § 163(b)(1), title IV, § 474(r)(39), July 18, 1984, 98 Stat. 698, 846.

AMENDMENTS

1984—Subsec. (d)(4)(C). Pub. L. 98–369, § 474(r)(40), substituted "business carryback under section 39 and any research credit carryback under section 30(g)(2)" for "investment credit carryback, work incentive program credit carryback, new employee credit carryback, research credit carryback, and employee stock ownership credit carryback".

Subsec. (d)(5). Pub. L. 98–369, § 2663(j)(5)(F), substituted "Secretary of Health and Human Services" for "Secretary of Health, Education, and Welfare".

Subsec. (d)(6), (7). Pub. L. 98–369, § 211(b)(25), redesignated par. (7) as (6) and struck out former par. (6) relating to a special period of limitation with respect to reduction of policyholders surplus account of life insurance companies.

Subsec. (f). Pub. L. 98–369, § 163(b)(2), substituted "section 6501(*l*)(1)" for "section 6501(n)(1)".

Subsec. (h)(3). Pub. L. 98–369, § 714(p)(2)(G), amended par. (3) generally. Prior to amendment par. (3) related to partnership items of federally registered partnerships and provided that under regulations prescribed by the Secretary, rules similar to the rules of subsection (g) shall apply to the tax imposed by section 4986.

Subsecs. (i), (j). Pub. L. 98–369, § 735(c)(14), redesignated subsec. (j) as (i) and struck out former subsec. (i) which related to a special rule for certain tread rubber tax credits or refunds.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 163(b)(2) of Pub. L. 98–369 applicable to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of this title ends after Dec. 31, 1984, see section 163(c) of Pub. L. 98–369, set out as a note under section 118 of this title.

Amendment by section 211(b)(25) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 474(r)(40) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 714(p)(2)(G) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 735(c)(14) of Pub. L. 98–369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97–424, to which such amendment relates, see section 736 of Pub. L. 98–369, set out as a note under section 4051 of this title.

Amendment by section 2663(j)(5)(F) of Pub. L. 98–369 effective July 18, 1984, but not to be construed as changing or affecting any right, liability, status or interpretation which existed (under the provisions of law involved) before that date, see section 2664(b) of Pub. L. 98–369, set out as a note under section 401 of Title 42, The Public Health and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 815, 2011, 2014, 6013, 6501, 6512, 6513, 6601, 6611, 6901 of this title.

§ 6513. Time return deemed filed and tax considered paid

[See main edition for text of (a) to (d)]

(e) Payments of Federal unemployment tax

Notwithstanding subsection (a), for purposes of section 6511 any payment of tax imposed by chapter 23 which, pursuant to section 6157, is made for a calendar quarter or other period within a calendar year shall, if made before the last day prescribed for filing the return for the calendar year (determined without regard to any extension of time for filing), be considered made on such last day. Notwithstanding subsection (a), for purposes of section 6511, any payment of tax imposed by chapter 23A which, pursuant to section 6157, is made for a calendar quarter within a taxable period shall, if made before the last day prescribed for filing the return for the taxable period (determined without regard to any extension of time for filing), be considered made on such last day.

(As amended Aug. 12, 1983, Pub. L. 98–76, title II, § 231(b)(2)(C), 97 Stat. 429.)

AMENDMENTS

1983—Subsec. (e). Pub. L. 98–76 added provisions that notwithstanding subsection (a), for purposes of section 6511, any payment of tax imposed by chapter 23A which, pursuant to section 6157, is made for a calendar quarter within a taxable period shall, if made before the last day prescribed for filing the return for the taxable period (determined without regard to any extension of time for filing), be considered made on such last day.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98–76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98–76, set out as an Effective Date note under section 3321 of this title.

CHAPTER 67—INTEREST

Subchapter A—Interest on Underpayments

§ 6601. Interest on underpayment, nonpayment, or extensions of time for payment, of tax

[See main edition for text of (a) to (c)]

(d) Income tax reduced by carryback or adjustment for certain unused deductions

[See main edition for text of (1) and (2)]

(3) Filing date

For purposes of this subsection, the term "filing date" has the meaning given to such term by section 6611(f)(3)(A).

[(4) Redesignated (3)]

(e) Applicable rules

Except as otherwise provided in this title—

[See main edition for text of (1)]

(2) Interest on penalties, additional amounts, or additions to the tax

(A) In general

Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax (other than an addition to tax imposed under section 6651(a)(1), 6659, 6660, or 6661) only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(B) Interest on certain additions to tax

Interest shall be imposed under this section with respect to any addition to tax imposed by section 6651(a)(1), 6659, 6660, or 6661 for the period which—

(i) begins on the date on which the return of the tax with respect to which such addition to tax is imposed is required to be filed (including any extensions), and

(ii) ends on the date of payment of such addition to tax.

[See main edition for text of (3); (f) and (g)]

(h) Exception as to estimated tax

This section shall not apply to any failure to pay any estimated tax required to be paid by section 6154 or 6654.

(i) Exception as to Federal unemployment tax

This section shall not apply to any failure to make a payment of tax imposed by section 3301 or 3321 for a calendar quarter or other period within a taxable year required under authority of section 6157.

[See main edition for text of (j) to (k)]

(As amended Aug. 12, 1983, Pub. L. 98-76, title II, § 231(b)(2)(D), 97 Stat. 429; July 18, 1984, Pub. L. 98-369, div. A, title I, § 158(a), title II, § 211(b)(26), title IV, § 412(b)(7), title VII, § 714(n)(1), 98 Stat. 696, 757, 792, 963.)

AMENDMENTS

1984—Subsec. (d)(2)(A). Pub. L. 98-369, § 714(n)(1), made technical correction to directory language of Pub. L. 97-248, § 346(c)(2)(B). See 1982 Amendment note below.

Subsec. (d)(3), (4). Pub. L. 98-369, § 211(b)(26), redesignated par. (4) as (3) and struck out former par. (3) which had provided that if the amount of any tax imposed by subtitle A was reduced by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such reduction in tax would not affect the computation of interest under this section for the period ending with the last day of the last taxable year to which the loss described in section 815(d)(5)(A) was carried under section 812(b)(2).

Subsec. (e)(2). Pub. L. 98-369, § 158(a), in amending par. (2) generally, added "(other than an addition to tax imposed under section 6651(a)(1), 6659, 6660, or 6661)", and added subpar. (B).

Subsec. (h). Pub. L. 98-369, § 412(b)(7), amended subsec. (h) generally, substituting "any estimated tax required to be paid by section 6154 or 6654" for "estimated tax required by section 6153 or section 6154".

1983—Subsec. (i). Pub. L. 98-76 inserted "or 3321" after "3301".

1982—Subsec. (d)(2)(A). Pub. L. 97-248, § 346(c)(2)(B), as amended by Pub. L. 98-369, § 346(c)(2)(B), substituted "the filing date for" for "the last day of" in two places.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 158(b) of Pub. L. 98-369 provided that: "The amendment made by this section [amending this section] shall apply to interest accrued after the date of the enactment of this Act [July 18, 1984], except with respect to additions to tax for which notice and demand is made before such date."

Amendment by section 211(b)(26) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98-369, set out as an Effective Date note under section 801 of this title.

Amendment by section 412(b)(7) of Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

Amendment by section 714(n)(1) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 98-76 applicable to remuneration paid after June 30, 1986, see section 231(d) of Pub. L. 98-76, set out as an Effective Date note under section 3321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 815, 860, 936, 995, 1016, 1397, 2210, 5684, 6166, 6167, 6504, 6621, 6653, 7404 of this title; title 29 section 1307; title 46 App. section 1177.

Subchapter B—Interest on Overpayments

§ 6611. Interest on overpayments

[See main edition for text of (a) to (e)]

(f) Refund of income tax caused by carryback or adjustment for certain unused deductions

[See main edition for text of (1) and (2)]

(3) Special rules for paragraphs (1) and (2)

[See main edition for text of (A) and (B)]

(C) Application of subparagraph (B) where section 6411(a) claim filed

For purposes of subparagraph (B)(i)(II), if a taxpayer—

(i) files a claim for refund of any overpayment described in paragraph (1) or (2) with respect to the taxable year to which a loss or credit is carried back, and

(ii) subsequently files an application under section 6411(a) with respect to such overpayment, then the claim for overpayment shall be treated as having been filed on the date the application under section 6411(a) was filed.

[(4) Repealed. Pub. L. 98–369, div. A, title II, § 211(b)(27), July 18, 1984, 98 Stat. 757]

[*See main edition for text of* (*g*) *to* (*i*)]

(As amended July 18, 1984, Pub. L. 98–369, div. A, title II, § 211(b)(27), title VII, § 714(n)(2)(A), 98 Stat. 757, 964.)

AMENDMENTS

1984—Subsec. (f)(3)(C). Pub. L. 98–369, § 714(n)(2)(A), added subpar. (C).

Subsec. (f)(4). Pub. L. 98–369, § 211(b)(27), struck out par. (4) which provided that for purposes of subsection (a), if any overpayment of tax imposed by subtitle A arose by operation of section 815(d)(5) (relating to reduction of policyholders surplus account of life insurance companies for certain unused deductions), such overpayment would be deemed not to have been made prior to the close of the last taxable year to which the loss described in section 815(d)(5)(A) was carried under section 812(b)(2).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 211(b)(27) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 714(n)(2)(A) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 815, 1397, 6411, 6601 of this title.

Subchapter C—Determination of Interest Rate; Compounding of Interest

§ 6621. Determination of rate of interest

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Interest on substantial underpayments attributable to tax motivated transactions

(1) In general

In the case of interest payable under section 6601 with respect to any substantial underpayment attributable to tax motivated transactions, the annual rate of interest established under this section shall be 120 percent of the adjusted rate established under subsection (b).

(2) Substantial underpayment attributable to tax motivated transactions

For purposes of this subsection, the term "substantial underpayment attributable to tax motivated transactions" means any underpayment of taxes imposed by subtitle A for any taxable year which is attributable to 1 or more tax motivated transactions if the amount of the underpayment for such year so attributable exceeds $1,000.

(3) Tax motivated transactions

(A) In general

For purposes of this subsection, the term "tax motivated transaction" means—

(i) any valuation overstatement (within the meaning of section 6659(c)),

(ii) any loss disallowed by reason of section 465(a) and any credit disallowed under section 46(c)(8),

(iii) any straddle (as defined in section 1092(c) without regard to subsections (d) and (e) of section 1092), and

(iv) any use of an accounting method specified in regulations prescribed by the Secretary as a use which may result in a substantial distortion of income for any period.

(B) Regulatory authority

The Secretary may by regulations specify other types of transactions which will be treated as tax motivated for purposes of this subsection and may by regulations provide that specified transactions being treated as tax motivated will no longer be so treated. In prescribing regulations under the preceding sentence, the Secretary shall take into account—

(i) the ratio of tax benefits to cash invested,

(ii) the methods of promoting the use of this type of transaction, and

(iii) other relevant considerations.

(C) Effective date for regulations

Any regulations prescribed under subparagraph (A)(iv) or (B) shall apply only to interest accruing after a date (specified in such regulations) which is after the date on which such regulations are prescribed.

(4) Jurisdiction of Tax Court

In the case of any proceeding in the Tax Court for a redetermination of a deficiency, the Tax Court shall also have jurisdiction to determine the portion (if any) of such deficiency which is a substantial underpayment attributable to tax motivated transactions.

(As amended Pub. L. 98–369, div. A, title I, § 144(a), July 18, 1984, 98 Stat. 682.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98–369 added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 144(c) of Pub. L. 98–369 provided that: "The amendments made by this section [amending sections 6214 and 6621 of this title] shall apply with respect to interest accruing after December 31, 1984."

EFFECTIVE DATE OF 1982 AMENDMENT

Section 345(b) of Pub. L. 97–248, as amended by Pub. L. 98–369, div. A, title VII, § 714(m), July 18, 1984, 98 Stat. 963, provided that: "The amendment made by this section [amending this section] shall apply to adjustments taking effect on or after January 1, 1983."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47, 48, 167, 644, 852, 4497, 6214, 6332, 6343, 6601, 6602, 6611, 6654, 6655, 7426 of this title; title 15 sections 1116, 1117; title 19 sections 1592, 1677g; title 28 sections 1961, 2411, 2644; title 29 section 1132; title 30 section 934, 1721.

CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

Subchapter A—Additions to the Tax and Additional Amounts

Sec.
6660. Addition to tax in the case of valuation understatement for purposes of estate or gift taxes.[1]

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, § 155(c)(2)(B), July 18, 1984, 98 Stat. 695, added item 6660.

§ 6651. Failure to file tax return or to pay tax

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Exception for estimated tax

This section shall not apply to any failure to pay any estimated tax required to be paid by section 6154 or 6654.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 412(b)(8), 98 Stat. 792.)

AMENDMENTS

1984—Subsec. (d). Pub. L. 98-369 in amending subsec. (d) generally, substituted in heading "estimated tax" for "declarations of estimated tax", deleted provisions making section inapplicable to any failure to file a declaration of estimated tax required by section 6015 or to any failure to pay any estimated tax required to be paid by section 6153, and made section inapplicable to any failure to pay any estimated tax required to be paid by section 6654.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3121, 4998, 5684, 5761, 6013, 6601, 6653, 6658, 6662 of this title; title 30 section 932; title 46 App. section 1177.

§ 6652. Failure to file certain information returns, registration statements, etc.

(a) Returns relating to information at source, payments of dividends, etc., and certain transfers of stock

(1) In general

In the case of each failure—

(A) to file a statement of the amount of payments to another person required by—

(i) section 6041(a) or (b) (relating to certain information at source),

(ii) section 6050A(a) (relating to reporting requirements of certain fishing boat operators), or

(iii) section 6051(d) (relating to information returns with respect to income tax withheld),

(B) to make a return required by—

[*See main edition for text of* (*i*) *and* (*ii*)]

(iii) section 6052(a) (relating to reporting payment of wages in the form of group term life insurance),

(iv) section 6053(c)(1) (relating to reporting with respect to certain tips),

(v) section 6050H(a) (relating to mortgage interest received in trade or business from individuals),

(vi) section 6050I(a) (relating to cash received in trade or business),

(vii) section 6050J(a) (relating to foreclosures and abandonments of security),

(viii) section 6050K (relating to exchanges of certain partnership interests), or

(ix) section 6050L (relating to returns relating to certain dispositions of donated property),[2]

[*See main edition for text of* (*C*)]

on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary and in the same manner as tax), by the person failing to file a statement referred to in subparagraph (A) or failing to make a return referred to in subparagraph (B) or (C), $50 for each such failure, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $50,000.

(2) Failure to file returns on interest, dividends, and patronage dividends

(A) In general

In the case of each failure to file a statement of the amount of payments to another person required by—

(i) section 6042(a)(1) (relating to payments of dividends),

(ii) section 6044(a)(1) (relating to payments of patronage dividends), or

(iii) section 6049(a) (relating to payments of interest),

on the date prescribed therefor (determined with regard to any extension of time for filing), there shall be paid by the person failing to file such statement a penalty of $50 for each such failure unless it is shown that such person exercised due diligence in attempting to satisfy the requirement with respect to such statement.

(B) Self-assessment

Any penalty imposed under subparagraph (A) on any person—

(i) for purposes of this subtitle, shall be treated as an excise tax imposed by subtitle D, and

(ii) shall be due and payable on April 1 of the calendar year following the calendar year for which such statement is required.

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[1] So in original. Does not conform to section catchline.

[2] So in original. Probably should be ", or".

(C) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subparagraph (A).

(3) Penalty in case of intentional disregard

If 1 or more failures to which paragraph (1) or (2) applies are due to intentional disregard of the filing requirement, then with respect to such failures—

(A) the penalty imposed under paragraph (1) or (2) shall not be less than an amount equal to—

(i) in the case of a return not described in clauses (ii) and (iii), 10 percent of the aggregate amount of the items required to be reported,

(ii) in the case of a return required to be filed by section 6045, 5 percent of the gross proceeds required to be reported, and

(iii) in the case of a return required to be filed by section 6041A(b), 6050H, 6050I, or 6050J, $100 for each such failure, and

(B) the $50,000 limitation under paragraph (1) shall not apply.

[*See main edition for text of* (*b*) *to* (*e*)]

(f) Information required in connection with certain plans of deferred compensation, etc.

In the case of failure to file a return or statement required under section 6058 (relating to information required in connection with certain plans of deferred compensation), 6047 (relating to information relating to certain trusts and annuity and bond purchase plans), or 6039D (relating to returns and records with respect to certain fringe benefit plans) on the date and in the manner prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause, there shall be paid (on notice and demand by the Secretary and in the same manner as tax) by the person failing so to file, $25 for each day during which such failure continues, but the total amount imposed under this subsection on any person for failure to file any return shall not exceed $15,000.

[*See main edition for text of* (*g*) *and* (*h*)]

(i) Failure to give notice to recipients of certain pension, etc., distributions

In the case of each failure to provide notice as required by section 3405(d)(10)(B), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such notice, an amount equal to $10 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $5,000.

(j) Failure to give written explanation to recipients of certain qualifying rollover distributions

In the case of each failure to provide a written explanation as required by section 402(f), at the time prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid, on notice and demand of the Secretary and in the same manner as tax, by the person failing to provide such written explanation, an amount equal to the $10 for each such failure, but the total amount imposed on such person for all such failures during any calendar year shall not exceed $5,000.

(k) Alcohol and tobacco taxes

For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E.

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 105(b)(1), 97 Stat. 380; July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 145(b)(1), (2), 146(b)(1), (2), 148(b)(1), (2), 149(b)(1), 155(b)(2)(A), title IV, § 491(d)(50), title V, § 531(b)(4)(B), title VII, § 714(j)(3), 98 Stat. 685, 686, 688, 689, 693, 852, 882, 963; Aug. 23, 1984, Pub. L. 98-397, title II, § 207(b), 98 Stat. 1450; Oct. 31, 1984, Pub. L. 98-611, § 1(d)(2), 98 Stat. 3177; Oct. 31, 1984, Pub. L. 98-612, § 1(b)(2), 98 Stat. 3181.)

AMENDMENTS

1984—Subsec. (a)(1)(B)(v). Pub. L. 98-369, § 145(b)(1), added cl. (v).

Subsec. (a)(1)(B)(vi). Pub. L. 98-369, § 146(b)(1), added cl. (vi).

Subsec. (a)(1)(B)(vii). Pub. L. 98-369, § 148(b)(1), added cl. (vii).

Subsec. (a)(1)(B)(viii). Pub. L. 98-369, § 149(b)(1), added cl. (viii).

Subsec. (a)(1)(B)(ix). Pub. L. 98-369, § 155(b)(2)(A), added cl. (ix).

Subsec. (a)(3)(A)(iii). Pub. L. 98-369, § 148(b)(2), substituted ", 6050I, or 6050J" for "or 6050I".

Pub. L. 98-369, § 146(b)(2), substituted ", 6050H or 6050I" for "or section 6050H".

Pub. L. 98-369, § 145(b)(2), added "or section 6050H" after "section 6041A(b)".

Subsec. (f). Pub. L. 98-611, § 1(d)(2), and Pub. L. 98-612, § 1(b)(2), made identical amendments, substituting "6039D (relating to returns and records with respect to certain fringe benefit plans)" for "125(h) (relating to information with respect to cafeteria plans)".

Pub. L. 98-369, § 531(b)(4)(B)(i), which directed the amendment of subsec. (f) by striking out "or 6047 (relating to information relating to certain trusts and annuity and bond purchase plans)" and inserting in lieu thereof ", 6047 (relating to information relating to certain trusts and annuity and bond purchase plans), or 125(h) (relating to information with respect to cafeteria plans)", was executed by substituting the quoted phrase for "or 6047 (relating to information relating to certain trusts and annuity plans)", as the probable intent of Congress.

Pub. L. 98-369, § 531(b)(4)(B)(ii), inserted in heading "; etc.".

Pub. L. 98-369, § 491(d)(50), struck out "and bond purchase" after "trusts and annuity".

Subsec. (i). Pub. L. 98-369, § 714(j)(3), added subsec. (i). Former subsec. (i), relating to alcohol and tobacco taxes, redesignated (j).

Subsec. (j). Pub. L. 98-397, § 207(b), added subsec. (j). Former subsec. (j), relating to alcohol and tobacco taxes, redesignated (k).

Pub. L. 98-369, § 714(j)(3), redesignated former subsec. (i), relating to alcohol and tobacco taxes, as (j).

Subsec. (k). Pub. L. 98-397, § 207(b), redesignated subsec. (j), relating to alcohol and tobacco taxes, as (k).

1983—Subsec. (a)(1)(A). Pub. L. 98-67, § 105(b)(1)(B), struck out cls. (ii), (iii), and (iv), redesignated cls. (v) and (vi) as (ii) and (iii), respectively, and in cl. (iii), as so redesignated, struck out "6042(e), 6044(f), 6049(e), or" preceding "6051(d)".

Subsec. (a)(2), (3). Pub. L. 98-67, § 105(b)(1)(A), (C), added par. (2), redesignated former par. (2) as (3), and in par. (3), as so redesignated, inserted references to paragraph (2) in the provisions preceding supar. (A) and in the provisions of subpar. (A) preceding cl. (i).

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-612 effective Jan. 1, 1985, see section 1(d)(2) of Pub. L. 98-612, set out as an Effective Date note under section 6039D of this title, as added by Pub. L. 98-612.

Amendment by Pub. L. 98-611 effective Jan. 1, 1985, see section 1(g)(2) of Pub. L. 98-611, set out as a note under section 127 of this title.

Amendment by Pub. L. 98-397 applicable to distributions after Dec. 31, 1984, see section 302(c) of Pub. L. 98-397, set out as a note under section 1001 of Title 29, Labor.

Amendment by section 145(b) of Pub. L. 98-369 applicable to amounts received after Dec. 31, 1984, see section 145(d) of Pub. L. 98-369, set out as an Effective Date note under section 6050H of this title.

Amendment by section 146(b) of Pub. L. 98-369 applicable to amounts received after Dec. 31, 1984, see section 146(d) of Pub. L. 98-369, set out as an Effective Date note under section 6050I of this title.

Amendment by section 148(b) of Pub. L. 98-369 applicable with respect to acquisitions of property and abandonments of property after Dec. 31, 1984, see section 148(d) of Pub. L. 98-369, set out as an Effective Date note under section 6050J of this title.

Amendment by section 149(b)(1) of Pub. L. 98-369 applicable with respect to exchanges after Dec. 31, 1984, see section 149(d) of Pub. L. 98-369, set out as an Effective Date note under section 6050K of this title.

Amendment by section 155(b)(2)(A) of Pub. L. 98-369 applicable to contributions made after Dec. 31, 1984, in taxable years ending after such date, see section 155(d)(1) of Pub. L. 98-369, set out as an Effective Date note under section 6050L of this title.

Amendment by section 491(d)(50) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Amendment by section 531(b)(4)(B) of Pub. L. 98-369 effective Jan. 1, 1985, see section 531(h) of Pub. L. 98-369, set out as an Effective Date note under section 132 of this title.

Amendment by section 714(j)(3) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Effective Date of 1983 Amendments

Amendment by Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

§ 6653. Failure to pay tax

[*See main edition for text of (a) to (f)*]

(g) Special Rule in the Case of Interest or Dividend Payments

(1) In general

If—

(A) any payment is shown on a return made by the payor under section 6042(a), 6044(a), or 6049(a), and

(B) the payee fails to include any portion of such payment in gross income,

any portion of an underpayment attributable to such failure shall be treated, for purposes of subsection (a), as due to negligence in the absence of clear and convincing evidence to the contrary.

(2) Penalty to apply only to portion of underpayment due to failure to include interest or dividend payment

If any penalty is imposed under subsection (a) by reason of paragraph (1), the amount of the penalty imposed by paragraph (1) of subsection (a) shall be 5 percent of the portion of the underpayment which is attributable to the failure described in paragraph (1).

(h) Special rule in the case of underpayment attributable to failure to meet certain substantiation requirements

(1) In general

Any portion of an underpayment attributable to a failure to comply with the requirements of section 274(d) shall be treated, for purposes of subsection (a), as due to negligence in the absence of clear and convincing evidence to the contrary.

(2) Penalty to apply only to portion of underpayment due to failure to meet substantiation requirements

If any penalty is imposed under subsection (a) by reason of paragraph (1), the amount of the penalty imposed by paragraph (1) of subsection (a) shall be 5 percent of the portion of the underpayment which is attributable to the failure described in paragraph (1).

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 106, 97 Stat. 382; July 18, 1984, Pub. L. 98-369, div. A, title I, § 179(b)(3), 98 Stat. 718.)

Amendments

1984—Subsec. (h). Pub. L. 98-369 added subsec. (h).

1983—Subsec. (a)(2)(B). Pub. L. 97-448, § 107(a)(3), inserted "(or, if earlier, the date of the payment of the tax)" after "assessment of the tax".

Subsec. (f). Pub. L. 97-448, § 105(a)(1)(D), redesignated subsec. (g), added by Pub. L. 97-34, as (f) and substituted "unrecognized gain" for "unrealized gain" in the subsec. heading.

Subsec. (g). Pub. L. 98-67 added subsec. (g).

Pub. L. 97-448, § 105(a)(1)(D), redesignated subsec. (g), added by Pub. L. 97-34, as (f).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 179(d)(2) of Pub. L. 98-369, set out as an Effective Date note under section 280F of this title.

Effective Date of 1983 Amendments

Amendment by Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

§ 6654. Failure by individual to pay estimated income tax

(a) Addition to the tax

Except as otherwise provided in this section, in the case of any underpayment of estimated tax by an individual, there shall be added to the tax under chapter 1 and the tax under chapter 2 for the taxable year an amount determined by applying—

(1) the applicable annual rate established under section 6621,

(2) to the amount of the underpayment,

(3) for the period of the underpayment.

(b) Amount of underpayment; period of underpayment

For purposes of subsection (a)—

(1) Amount

The amount of the underpayment shall be the excess of—

(A) the required installment, over

(B) the amount (if any) of the installment paid on or before the due date for the installment.

(2) Period of underpayment

The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier—

(A) the 15th day of the 4th month following the close of the taxable year, or

(B) with respect to any portion of the underpayment, the date on which such portion is paid.

(3) Order of crediting payments

For purposes of paragraph (2)(B), a payment of estimated tax shall be credited against unpaid required installments in the order in which such installments are required to be paid.

(c) Number of required installments; due dates

For purposes of this section—

(1) Payable in 4 installments

There shall be 4 required installments for each taxable year.

(2) Time for payment of installments

In the case of the following required installments:	**The due date is:**
1st	April 15
2nd	June 15
3rd	September 15
4th	January 15 of the following taxable year.

(d) Amount of required installments

For purposes of this section—

(1) Amount

(A) In general

Except as provided in paragraph (2), the amount of any required installment shall be 25 percent of the required annual payment.

(B) Required annual payment

For purposes of subparagraph (A), the term "required annual payment" means the lesser of—

(i) 80 percent of the tax shown on the return for the taxable year (or, if no return is filed, 80 percent of the tax for such year), or

(ii) 100 percent of the tax shown on the return of the individual for the preceding taxable year.

Clause (ii) shall not apply if the preceding taxable year was not a taxable year of 12 months or if the individual did not file a return for such preceding taxable year.

(2) Lower required installment where annualized income installment is less than amount determined under paragraph (1)

(A) In general

In the case of any required installment, if the individual establishes that the annualized income installment is less than the amount determined under paragraph (1)—

(i) the amount of such required installment shall be the annualized income installment, and

(ii) any reduction in a required installment resulting from the application of this subparagraph shall be recaptured by increasing the amount of the next required installment determined under paragraph (1) by the amount of such reduction (and by increasing subsequent required installments to the extent that the reduction has not previously been recaptured under this clause).

(B) Determination of annualized income installment

In the case of any required installment, the annualized income installment is the excess (if any) of—

(i) an amount equal to the applicable percentage of the tax for the taxable year computed by placing on an annualized basis the taxable income, alternative minimum taxable income, and adjusted self-employment income for months in the taxable year ending before the due date for the installment, over

(ii) the aggregate amount of any prior required installments for the taxable year.

(C) Special rules

For purposes of this paragraph—

(i) Annualization

The taxable income, alternative minimum taxable income, and adjusted self-employment income shall be placed on an annualized basis under regulations prescribed by the Secretary.

(ii) Applicable percentage

In the case of the following required installments:	**The applicable percentage is:**
1st	20
2nd	40
3rd	60
4th	80.

(iii) Adjusted self-employment income

The term "adjusted self-employment income" means self-employment income (as defined in section 1402(b)); except that section 1402(b) shall be applied by placing wages (within the meaning of section 1402(b)) for months in the taxable year ending before the due date for the installment on an annualized basis consistent with clause (i).

(e) Exceptions

(1) Where tax is small amount

No addition to tax shall be imposed under subsection (a) for any taxable year if the tax shown on the return for such taxable year (or, if no return is filed, the tax), reduced by the credit allowable under section 31, is less than $500.

(2) Where no tax liability for preceding taxable year

No addition to tax shall be imposed under subsection (a) for any taxable year if—

(A) the preceding taxable year was a taxable year of 12 months,

(B) the individual did not have any liability for tax for the preceding taxable year, and

(C) the individual was a citizen or resident of the United States throughout the preceding taxable year.

(3) Waiver in certain cases

(A) In general

No addition to tax shall be imposed under subsection (a) with respect to any underpayment to the extent the Secretary determines that by reason of casualty, disaster, or other unusual circumstances the imposition of such addition to tax would be against equity and good conscience.

(B) Newly retired or disabled individuals

No addition to tax shall be imposed under subsection (a) with respect to any underpayment if the Secretary determines that—

(i) the taxpayer—

(I) retired after having attained age 62, or

(II) became disabled,

in the taxable year for which estimated payments were required to be made or in the taxable year preceding such taxable year, and

(ii) such underpayment was due to reasonable cause and not to willful neglect.

(f) Tax computed after application of credits against tax

For purposes of this section, the term "tax" means—

(1) the tax imposed by chapter 1, plus

(2) the tax imposed by chapter 2, minus

(3) the sum of—

(A) the credits against tax allowed by part IV of subchapter A of chapter 1, other than the credit against tax provided by section 31 (relating to tax withheld on wages), plus

(B) to the extent allowed under regulations prescribed by the Secretary, any overpayment of the tax imposed by section 4986 (determined without regard to section 4995(a)(4)(B)).

(g) Application of section in case of tax withheld on wages

(1) In general

For purposes of applying this section, the amount of the credit allowed under section 31 for the taxable year shall be deemed a payment of estimated tax, and an equal part of such amount shall be deemed paid on each due date for such taxable year, unless the taxpayer establishes the dates on which all amounts were actually withheld, in which case the amounts so withheld shall be deemed payments of estimated tax on the dates on which such amounts were actually withheld.

(2) Separate application

The taxpayer may apply paragraph (1) separately with respect to—

(A) wage withholding, and

(B) all other amounts withheld for which credit is allowed under section 31.

(h) Special rule where return filed on or before January 31

If, on or before January 31 of the following taxable year, the taxpayer files a return for the taxable year and pays in full the amount computed on the return as payable, then no addition to tax shall be imposed under subsection (a) with respect to any underpayment of the 4th required installment for the taxable year.

(i) Special rules for farmers and fishermen

For purposes of this section—

(1) In general

If an individual is a farmer or fisherman for any taxable year—

(A) there shall be only 1 required installment for the taxable year,

(B) the due date for such installment shall be January 15 of the following taxable year,

(C) the amount of such installment shall be equal to the required annual payment (determined under subsection (d)(1)(B) by substituting "66⅔ percent" for "80 percent", and

(D) subsection (h) shall be applied—

(i) by substituting "March 1" for "January 31", and

(ii) by treating the required installment described in subparagraph (A) of this paragraph as the 4th required installment.

(2) Farmer or fisherman defined

An individual is a farmer or fisherman for any taxable year if—

(A) the individual's gross income from farming or fishing (including oyster farming) for the taxable year is at least 66⅔ percent of the total gross income from all sources for the taxable year, or

(B) such individual's gross income from farming or fishing (including oyster farming) shown on the return of the individual for the preceding taxable year is at least 66⅔ percent of the total gross income from all sources shown on such return.

(j) Fiscal years and short years

(1) Fiscal years

In applying this section to a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in this section, the months which correspond thereto.

(2) Short taxable year

This section shall be applied to taxable years of less than 12 months in accordance with regulations prescribed by the Secretary.

(k) Estates and trusts

This section shall not apply to any estate or trust.

(*l*) Regulations

The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369; July 18, 1984, Pub. L. 98-369, div. A, title IV, § 411, 98 Stat. 788.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 amended subsec. (a) generally, setting out the exception provision as the initial phrase, previously set out as the second phrase, substituting therein "subsection (d)" for "this section"; and substituting "determined by applying—" and provisions designated cls. (1) to (3) for provisions reading "determined at an annual rate established under section 6621 upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)))".

Subsec. (b). Pub. L. 98-369 amended subsec. (b) generally, substituting provisions relating to amount and period of underpayment for provisions relating only to amount of underpayment.

Subsec. (c). Pub. L. 98-369 amended subsec. (c) generally, substituting provisions relating to number of required installments and due dates for provisions respecting period of underpayment. See subsec. (b)(2) of this section.

Subsec. (d). Pub. L. 98-369 amended subsec. (d) generally, substituting provisions relating to amount of required installments for provisions designated "Exception" and describing conditions for nonimposition of an addition to the tax with respect to any underpayment of any installment.

Subsec. (e). Pub. L. 98-369 amended subsec. (e) generally, substituting provisions relating to exceptions for provisions relating to application of section in case of tax withheld on wages. See subsec. (g) of this section.

Subsec. (f). Pub. L. 98-369 amended subsec. (f) generally, substituting provisions relating to tax computed after application of credits against tax for provisions relating to exception where tax is small amount. See subsec. (e)(1) of this section.

Subsec. (g). Pub. L. 98-369 amended subsec. (g) generally, substituting provisions relating to application of section in case of tax withheld on wages for provisions relating to tax computed after application of credits against tax. See subsec. (f) of this section.

Subsec. (h). Pub. L. 98-369 amended subsec. (h) generally, substituting provisions relating to special rule for returns filed on or before January 31 for provisions relating to exception for no tax liability for preceding taxable year. See subsec. (e)(2) of this section.

Subsec. (i). Pub. L. 98-369 amended subsec. (i) generally, substituting provisions relating to special rules for farmers and fishermen for provisions relating to short taxable year. See subsec. (j)(2) of this section.

Subsecs. (j) to (*l*). Pub. L. 98-369, in amending section generally, added subsecs. (j) to (*l*).

1983—Subsec. (e)(1). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 414(a) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendments made by sections 411 and 412 [amending sections 871, 1403, 6012, 6020, 6201, 6362, 6601, 6651, 6654, 7203, 7216, and 7701 of this title and repealing sections 6015, 6073, and 6153 of this title] shall apply with respect to taxable years beginning after December 31, 1984.

"(2) WAIVER AUTHORITY.—The provisions of paragraph (3) of section 6654(e) of the Internal Revenue Code of 1954 (as amended by section 411) shall also apply with respect to underpayments for taxable years beginning in 1984."

INCREASE IN SECTION 31 CREDIT FOR TAXABLE YEARS WHICH INCLUDE ANY PORTION OF PERIOD JULY 1, 1983, TO DECEMBER 31, 1983

For purposes of determining the amount of any addition to tax under this section with respect to any installment required to be paid before July 1, 1983, the amount of the credit allowed by section 31 of this title for any taxable year which includes any portion of the period beginning July 1, 1983, and ending December 31, 1983, to be increased by an amount equal to 10 percent of the aggregate amount of payments (1) which are received during the portion of such taxable year after June 30, 1983, and before January 1, 1984, and (2) which (but for the repeal of sections 3451 to 3456 of this title) would have been subject to withholding under sections 3451 to 3456 of this title (determined without regard to any exemption described in former section 3452 of this title, see section 102(d) of Pub. L. 98-67, set out as a note under section 3451 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6201, 6601, 6622, 6651, 6658, 6662, 7203 of this title; title 42 section 430.

§ 6655. Failure by corporation to pay estimated income tax

UNDERPAYMENTS OF ESTIMATED TAX FOR 1984

Pub. L. 98-369, div. A, title II, subtitle A (§§ 211-219), § 218, July 18, 1984, 98 Stat. 766, provided that: "No addition to the tax shall be made under section 6655 of the Internal Revenue Code of 1954 (relating to failure by corporation to pay estimated tax) with respect to any underpayment of an installment required to be paid before the date of the enactment of this Act [July 18, 1984] to the extent—

"(1) such underpayment was created or increased by any provision of this subtitle, and

"(2) such underpayment is paid in full on or before the last date prescribed for payment of the first installment of estimated tax required to be paid after the date of the enactment of this Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 338, 809, 6154, 6425, 6622, 6658, 6662, 7203 of this title.

§ 6659. Addition to tax in the case of valuation overstatements for purposes of the income tax

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Valuation overstatement defined

For purposes of this section, there is a valuation overstatement if the value of any property, or the adjusted basis of any property, claimed on any return is 150 percent or more of the amount determined to be the correct amount of such valuation or adjusted basis (as the case may be).

[*See main edition for text of* (*d*) *and* (*e*)]

(f) Special rules for overstatement of charitable deduction

(1) Amount of applicable percentage

In the case of any underpayment attributable to a valuation overstatement with respect to charitable deduction property, the applicable percentage for purposes of subsection (a) shall be 30 percent.

(2) Limitation on authority to waive

In the case of any underpayment attributable to a valuation overstatement with respect to charitable deduction property, the Secretary may not waive any portion of the addition to tax provided by this section unless the Secretary determines that—

(A) the claimed value of the property was based on a qualified appraisal made by a qualified appraiser, and

(B) in addition to obtaining such appraisal, the taxpayer made a good faith investigation of the value of the contributed property.

(3) Definitions

For purposes of this subsection—

(A) Charitable deduction property

The term "charitable deduction property" means any property contributed by the taxpayer in a contribution for which a deduction was claimed under section 170. For purposes of paragraph (2), such term shall not include any securities for which (as of the date of the contribution) market quotations are readily available on an established securities market.

(B) Qualified appraiser

The term "qualified appraiser" means any appraiser meeting the requirements of the regulations prescribed under section 170(a)(1).

(C) Qualified appraisal

The term "qualified appraisal" means any appraisal meeting the requirements of the regulations prescribed under section 170(a)(1).

(g) Other definitions

For purposes of this section—

(1) Underpayment

The term "underpayment" has the meaning given to such term by section 6653(c)(1).

(2) Closely held corporation

The term "closely held corporation" means any corporation described in section 465(a)(1)(B).

(3) Personal service corporation

The term "personal service corporation" means any corporation which is a service organization (within the meaning of section 414(m)(3)).

(As amended Pub. L. 98-369, div. A, title I, § 155(c)(1), title VII, § 721(x)(4), July 18, 1984, 98 Stat. 693, 971.)

PRIOR PROVISIONS

A prior section 6659 was renumbered section 6662 of this title.

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369, § 155(c)(1)(A), redesignated former par. (1) as entire subsection and struck out par. (2) which provided that this section not apply to any property which, as of the close of the taxable year for which there was a valuation overstatement, had been held by the taxpayer for more than 5 years.

Subsec. (f). Pub. L. 98-369, § 155(c)(1)(B), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (f)(2). Pub. L. 98-369, § 721(x)(4), substituted "section 465(a)(1)(B)" for "section 465(a)(1)(C)".

Subsec. (g). Pub. L. 98-369, § 155(c)(1)(B), redesignated former subsec. (f) as (g).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 155(d)(2) of Pub. L. 98-369 provided that: "The amendments made by subsection (c) [enacting section 6660 of this title and amending this section] shall apply to returns filed after December 31, 1984."

Amendment by section 721(x)(4) of Pub. L. 98-369 effective as if included in the Subchapter S Revision Act of 1982, Pub. L. 97-354, see section 721(y)(1) of Pub. L. 98-369, set out as a note under section 1361 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6601, 6621, 6661 of this title.

§ 6660. Addition to tax in the case of valuation understatement for purposes of the estate or gift taxes

(a) Addition to the tax

In the case of any underpayment of a tax imposed by subtitle B (relating to estate and gift taxes) which is attributable to a valuation understatement, there shall be added to the tax an amount equal to the applicable percentage of the underpayment so attributed.

(b) Applicable percentage

For purposes of subsection (a), the applicable percentage shall be determined under the following table:

If the valuation claimed is the following percent of the correct valuation—	The applicable percentage is:
50 percent or more but not more than 66⅔ percent	10
40 percent or more but less than 50 percent	20
Less than 40 percent	30.

(c) Valuation understatement defined

For purposes of this section, there is a valuation understatement if the value of any property claimed on any return is 66⅔ percent or less of the amount determined to be the correct amount of such valuation.

(d) Underpayment must be at least $1,000

This section shall not apply if the underpayment is less than $1,000 for any taxable period (or, in the case of the tax imposed by chapter 11, with respect to the estate of the decedent).

(e) Authority to waive

The Secretary may waive all or any part of the addition to the tax provided by this section on a showing by the taxpayer that there was a reasonable basis for the valuation claimed on the return and that such claim was made in good faith.

(Added Pub. L. 98-369, div. A, title I, § 155(c)(2)(A), July 18, 1984, 98 Stat. 694.)

PRIOR PROVISIONS

A prior section 6660 was renumbered section 6662 of this title.

EFFECTIVE DATE

Section applicable to returns filed after Dec. 31, 1984, see section 155(d)(2) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 6659 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6601 of this title.

§ 6661. Substantial understatement of liability

[See main edition for text of (a)]

(b) Definition and special rule

[See main edition for text of (1)]

(2) Understatement

(A) In general

For purposes of paragraph (1), the term "understatement" means the excess of—

(i) the amount of the tax required to be shown on the return for the taxable year, over

(ii) the amount of the tax imposed which is shown on the return, reduced by any rebate (within the meaning of section 6211(b)(2)).

[See main edition for text of (B) and (C), (3); (c)]

(As amended Pub. L. 98-369, div. A, title VII, § 714(h)(3), July 18, 1984, 98 Stat. 962.)

AMENDMENTS

1984—Subsec. (b)(2)(A)(ii). Pub. L. 98-369 substituted "return, reduced by any rebate (within the meaning of section 6211(b)(2))" for "return".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 461, 1274, 6013, 6601 of this title.

§ 6662. Applicable rules

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5134, 5684, 5761 of this title.

Subchapter B—Assessable Penalties

Sec.	
6686.	Failure to file returns or supply information by DISC or FSC.
6705.	Failure by broker to provide notice to payors.
6706.	Original issue discount information requirements.
6707.	Failure to furnish information regarding tax shelters.
6708.	Failure to maintain lists of investors in potentially abusive tax shelters.[2]
6708.	Penalties with respect to mortgage credit certificates.[2]

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, §§ 41(c)(2), 141(c)(2), title VIII, § 801(d)(15)(B), July 18, 1984, 98 Stat. 556, 680, 997, added items 6686, 6706, and 6707.

Pub. L. 98-369, div. A, title VI, § 612(d)(2), July 18, 1984, 98 Stat. 912, added item 6708 "Penalties with respect to mortgage credit certificates".

Pub. L. 98-369, div. A, title I, § 142(c)(2), July 18, 1984, 98 Stat. 682, added item 6708 "Failure to maintain lists of investors in potentially abusive tax shelters".

1983—Pub. L. 98-67, title I, § 104(c)(2), Aug. 5, 1983, 97 Stat. 379, added item 6705.

§ 6672. Failure to collect and pay over tax, or attempt to evade or defeat tax

REFERENCES IN TEXT

The Court of Claims, referred to in subsec. (b)(2), and the United States Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97-164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 6673. Damages assessable for instituting proceedings before the Tax Court primarily for delay, etc.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 applicable to any action or proceeding in the Tax Court commenced after Dec. 31, 1982, or pending in the Tax Court on the day 120 days after July 18, 1984, see section 292(e)(2) of Pub. L. 97-248, as amended, set out as an Effective Date note under section 7430 of this title.

§ 6676. Failure to supply identifying numbers

(a) In general

If any person who is required by regulations prescribed under section 6109—

(1) to include his TIN in any return, statement, or other document,

(2) to furnish his TIN to another person, or

(3) except in the case of a return or statement required to be filed under section 6042, 6044, or 6049, to include in any return, statement, or other document made with respect to another person the TIN of such other person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall, unless it is shown that such failure is due to reasonable cause and not to willful neglect, pay a penalty of $5 for each such failure described in paragraph (1) and $50 for each such failure described in paragraph (2) or (3), except that the total amount imposed on such person for all such failures during any calendar year shall not exceed $50,000.

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[2] So in original. There are two items designated "6708".

(b) Penalties involving failures on interest and dividend returns

(1) In general

If any payor—

(A) is required to include in any return or statement required to be filed under section 6042, 6044, or 6049 with respect to any payee the TIN of such payee, and

(B) fails to include such number or includes an incorrect number,

then the payor shall pay a penalty of $50 for each such failure unless it is shown that the payor exercised due diligence in attempting to satisfy the requirement with respect to such TIN.

(c) Penalty for failure to supply identifying number under section 215

If any person who is required by regulations prescribed under section 215—

(1) to furnish his taxpayer identification number to another person, or

(2) to include on his return the taxpayer identification number of another person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall, unless it is shown that such failure is due to reasonable cause and not to willful neglect, pay a penalty of $50 for each such failure.

(d) Procedures relating to assessment of penalty

(1) Self-assessment of penalty imposed by subsection (b)

Any penalty imposed under subsection (b) on any person—

(A) for purposes of this subtitle, shall be treated as an excise tax imposed by subtitle D, and

(B) shall be due and payable on April 1 of the calendar year following the calendar year for which the return or statement was made.

(2) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by this section.

(As amended Pub. L. 98-67, title I, § 105(a), Aug. 5, 1983, 97 Stat. 380; Pub. L. 98-369, div. A, title IV, § 422(c), July 18, 1984, 98 Stat. 798.)

Amendments

1984—Subsecs. (c), (d). Pub. L. 98-369 added subsec. (c) and redesignated former subsec. (c) as (d).

1983—Subsec. (a). Pub. L. 98-67 amended subsec. (a) generally, striking out designation "(1)" after "(a)", substituting references to the TIN for references to the taxpayer identification number, and striking out par. (2) which defined "taxpayer identification number".

Subsec. (b). Pub. L. 98-67 in amending section generally, adding subsec. (b). Provisions of former subsec. (b) were incorporated into subsec. (c)(2).

Subsec. (c). Pub. L. 98-67 in amending section generally, added subsec. (c) consisting of new provisions relating to self-assessment of the penalty imposed by subsec. (b) and existing provisions (formerly set out in subsec. (b)) relating to the non-applicability of deficiency procedures contained in subchapter B of chapter 63.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to payments made after Dec. 31, 1984, see section 422(e)(3) of Pub. L. 98-369, set out as a note under section 71 of this title.

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

Section Referred to in Other Sections

This section is referred to in section 7205 of this title.

§ 6678. Failure to furnish certain statements

(a) In general

In the case of each failure—

(1) to furnish a statement under section 6041(d), 6041A(e), 6045(b), 6052(b), 6050H(d), 6050I(e), 6050J(e), 6050K(b), or 6050L(c), on the date prescribed therefor to a person with respect to whom a return has been made under section 6041(a), 6041A(a) or (b), 6045(a), 6052(a), 6050H(a), 6050I(a), 6050J(a), 6050K(a), 6050L(a), respectively,

(2) to furnish a statement under section 6039(a) on the date prescribed therefor to a person with respect to whom such a statement is required, or

(3) to furnish a statement under—

(A) section 4997(a) (relating to statements with respect to windfall profit tax on crude oil),

(B) section 6050A(b) (relating to statements furnished by certain fishing boat operators),

(C) section 6050C (relating to information regarding windfall profit tax on crude oil),

(D) section 6051 (relating to information returns with respect to income tax withheld) if the statement is required to be furnished to the employee,

(E) subsection (b) or (c) of section 6053 (relating to statements furnished by employers with respect to tips), or

(F) section 6031(b), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities),

on the date prescribed therefor to a person with respect to whom such a statement is required,

unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary and in the same manner as tax) by the person failing to so furnish the statement $50 for each such statement not so furnished, but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $50,000.

(b) Failure to file interest and dividend statements

(1) In general

In the case of any person who fails to furnish a statement under section 6042(c), 6044(e), or 6049(c) on the date prescribed therefor to a person with respect to whom a return has been made under section 6042(a)(1), 6044(a)(1), or 6049(a), respectively, such person shall pay a penalty of $50 for each such failure unless it is shown that such person exercised due diligence in attempting to satisfy the requirement with respect to such statement.

(2) Self-assessment

Any penalty imposed under paragraph (1) on any person—

(A) for purposes of this subtitle, shall be treated as an excise tax imposed by subtitle D, and

(B) shall be due and payable on April 1 of the calendar year following the calendar year for which such statement is required.

(3) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by paragraph (1).

(c) Failure to notify partnership of exchange of partnership interest

In the case of any person who fails to furnish the notice required by section 6050K(c)(1) on the date prescribed therefor, unless it is shown that such failure is due to reasonable cause and not to willful neglect, such person shall pay a penalty of $50 for each such failure.

(As amended Pub. L. 98-67, title I, § 105(b)(2), Aug. 5, 1983, 97 Stat. 381; Pub. L. 98-369, div. A, title I, §§ 145(b)(3), 146(b)(3), 148(b)(3), 149(b)(2), (3), 155(b)(2)(B), title VII, § 714(f), (g)(3), July 18, 1984, 98 Stat. 685, 686, 689, 690, 693, 961, 966.)

AMENDMENTS

1984—Subsec. (a)(1). Pub. L. 98-369, § 155(b)(2)(B), substituted "6050K(b), or 6050L(c)" for "or 6050K(b)" and "6050K(a), or 6050L(a)" for "or 6050K(a)".

Pub. L. 98-369, § 149(b)(2), substituted "6050J(e), or 6050K(b)" for "or 6050J(e)" and "6050J(a), or 6050K(a)" for "or 6050J(a)".

Pub. L. 98-369, § 148(b)(3), substituted "6050I(e), or 6050J(e)" for "or 6050I(e)" and "6050I(a), or 6050J(a)" for "or 6050I(a)".

Pub. L. 98-369, § 146(b)(3), substituted "6050H(d), or 6050I(e)" for "or 6050H(d)" and "6050H(a), or 6050I(a)" for "or 6050H(a)".

Pub. L. 98-369, § 145(b)(3), substituted "6052(b), or 6050H(d)" for "or 6052(b)" and "6052(a), or 6050H(a)" for "or 6052(a)".

Subsec. (a)(3)(E). Pub. L. 98-369, § 714(f), substituted section "6053" for "6053(c)".

Subsec. (a)(3)(F). Pub. L. 98-369, § 714(q)(3), added subpar. (F).

Subsec. (c). Pub. L. 98-369, § 149(b)(3), added subsec. (c).

1983—Subsec. (a). Pub. L. 98-67, § 105(b)(2)(A), designated existing provisions as subsec. (a).

Subsec. (a)(1). Pub. L. 98-67, § 105(b)(2)(B), (C), substituted "6045(b)," for "6042(c), 6044(e), 6045(b), 6049(c)," and "6045(a)," for "6042(a)(1), 6044(a)(1), 6045(a), 6049(a),".

Subsec. (b). Pub. L. 98-67, § 105(b)(2)(D), added subsec. (b).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 145(b)(3) of Pub. L. 98-369 applicable to amounts received after Dec. 31, 1984, see section 145(d) of Pub. L. 98-369, set out as an Effective Date note under section 6050H of this title.

Amendment by section 146(b)(3) of Pub. L. 98-369 applicable to amounts received after Dec. 31, 1984, see section 146(d) of Pub. L. 98-369, set out as an Effective Date note under section 6050I of this title.

Amendment by section 148(b)(3) of Pub. L. 98-369 applicable with respect to acquisitions of property and abandonments of property after Dec. 31, 1984, see section 148(d) of Pub. L. 98-369, set out as an Effective Date note under section 6050J of this title.

Amendment by section 149(b)(2), (3) of Pub. L. 98-369 applicable with respect to exchanges after Dec. 31, 1984, see section 149(d) of Pub. L. 98-369, set out as an Effective Date note under section 6050K of this title.

Amendment by section 155(b)(2)(B) of Pub. L. 98-369 applicable to contributions made after Dec. 31, 1984, in taxable years ending after such date, see section 155(d)(1) of Pub. L. 98-369, set out as an Effective Date note under section 6050L of this title.

Amendment by section 714(f) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 714(q)(3) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 714(q)(5) of Pub. L. 98-369, set out as an Effective Date note under section 6034A of this title.

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by Pub. L. 98-67, applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

§ 6682. False information with respect to withholding

(a) Civil penalty

In addition to any criminal penalty provided by law, if—

(1) any individual makes a statement under section 3402 or section 3406 which results in a decrease in the amounts deducted and withheld under chapter 24, and

(2) as of the time such statement was made, there was no reasonable basis for such statement,

such individual shall pay a penalty of $500 for such statement.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 98-67, title I, §§ 102(a), 107(a), Aug. 5, 1983, 97 Stat. 369, 382.)

AMENDMENTS

1983—Pub. L. 98-67 amended subsec. (a)(1) by adding reference to section 3406 and repealing amendments made by Pub. L. 97-248. See 1982 Amendment note below.

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 107(a) of Pub. L. 98-67 effective Aug. 5, 1983, see section 110(c) of Pub. L. 98-67, set out as a note under section 31 of this title.

§ 6686. Failure to file returns or supply information by DISC or FSC

In addition to the penalty imposed by section 7203 (relating to willful failure to file return, supply information, or pay tax) any person required to supply information or to file a return under section 6011(c) who fails to supply such information or file such return at the time prescribed by the Secretary, or who files a return which does not show the information required, shall pay a penalty of $100 for each failure to supply information (but the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $25,000) or a penalty of $1,000 for each failure to file a return, unless it is shown that such failure is due to reasonable cause.

(As amended Pub. L. 98-369, div. A, title VIII, § 801(d)(15)(A), July 18, 1984, 98 Stat. 997.)

Amendments

1984—Pub. L. 98-369 substituted "Failure to file returns or supply information by DISC or FSC" for "Failure of DISC to file returns" in section catchline, and in text substituted "section 6011(c)" for "section 6011(e)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

§ 6693. Failure to provide reports on individual retirement accounts or annuities

(a) The person required by subsection (i) or (*l*) of section 408 to file a report regarding an individual retirement account or individual retirement annuity at the time and in the manner required by such subsection shall pay a penalty of $50 for each failure unless it is shown that such failure is due to reasonable cause.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-369, div. A, title I, § 147(b), July 18, 1984, 98 Stat. 687.)

Amendments

1984—Subsec. (a). Pub. L. 98-369 substituted "$50" for "$10".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to failures occurring after July 18, 1984, see section 147(d)(2) of Pub. L. 98-369, set out as a note under section 219 of this title.

§ 6695. Other assessable penalties with respect to the preparation of income tax returns for other persons

[*See main edition for text of* (*a*)]

(b) Failure to inform taxpayer of certain recordkeeping requirements or to sign return

Any person who is an income tax return preparer with respect to any return or claim for refund and who is required by regulations to sign such return or claim—

(1) shall advise the taxpayer of the substantiation requirements of section 274(d) and obtain written confirmation from the taxpayer that such requirements were met with respect to any deduction or credit claimed on such return or claim for refund, and

(2) shall sign such return or claim for refund.

Any person who fails to comply with the requirements of the preceding sentence with respect to any return or claim shall pay a penalty of $25 for such failure, unless it is shown that such failure is due to reasonable cause and not to willful neglect.

[*See main edition for text of* (*c*) *to* (*f*)]

(As amended Pub. L. 98-369, div. A, title I, § 179(b)(2), July 18, 1984, 98 Stat. 718.)

Amendments

1984—Subsec. (b). Pub. L. 98-369 amended subsec. (b) generally, substituting provisions dealing with failure to inform taxpayer of certain recordkeeping requirements or to sign returns, for provisions dealing with failure to sign returns.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1984, see section 179(d)(2) of Pub. L. 98-369, set out as an Effective Date note under section 280F of this title.

§ 6699. Assessable penalties relating to tax credit employee stock ownership plan

(a) In general

If a taxpayer who has claimed an employee plan credit or a credit allowable under section 44G [4] (relating to the employee stock ownership credit) for any taxable year—

(1) fails to satisfy any requirement provided by section 409 with respect to a qualified investment made before January 1, 1983,

[*See main edition for text of* (*2*)]

(3) fails to satisfy any requirement provided under section 409 with respect to a credit claimed under section 44G [4] in taxable years ending after December 31, 1982, or

(4) fails to make any contribution which is required under section 44G(c)(1)(B) [4] within the period required for making such contribution,

the taxpayer shall pay a penalty in an amount equal to the amount involved in such failure.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98-369, div. A, title IV, § 491(e)(9), July 18, 1984, 98 Stat. 853.)

References in Text

Section 44G, referred to in subsecs. (a) and (c)(2)(B)(i), was renumbered section 41 by Pub. L. 98-369, div. A, title IV, § 471(c)(1), July 18, 1984, 98 Stat. 826.

Amendments

1984—Subsec. (a)(1), (3). Pub. L. 98-369 substituted "section 409" for "section 409A".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective Jan. 1, 1984, see section 491(f)(3) of Pub. L. 98-369, set out as a note under section 41 of this title.

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[4] See References in Text note below.

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SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 409 of this title.

§ 6700. Promoting abusive tax shelters, etc.

(a) Imposition of penalty

Any person who—

[*See main edition for text of (1) and (2)*]

shall pay a penalty equal to the greater of $1,000 or 20 percent of the gross income derived or to be derived by such person from such activity.

[*See main edition for text of (b) and (c)*]

(As amended Pub. L. 98-369, div. A, title I, § 143(a), July 18, 1984, 98 Stat. 682.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "20 percent" for "10 percent".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 143(c) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 6700 and 7408 of this title] shall take effect on the day after the date of the enactment of this Act [July 18, 1984]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6703, 7408, 7422 of this title; title 28 section 1509.

§ 6701. Penalties for aiding and abetting understatement of tax liability

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6703, 7408, 7422 of this title; title 28 section 1509; title 31 section 330.

§ 6704. Failure to keep records necessary to meet reporting requirements under section 6047(e) [1]

REFERENCES IN TEXT

Section 6047(e), referred to in section catchline and subsec. (a)(1), (2), was redesignated section 6047(d) by Pub. L. 98-369, div. A, title IV, § 491(d)(47), July 18, 1984, 98 Stat. 852.

§ 6705. Failure by broker to provide notice to payors

(a) In general

Any person required under section 3406(d)(2)(B) to provide notice to any payor who willfully fails to provide such notice to such payor shall pay a penalty of $500 for each such failure.

(b) Penalty in addition to other penalties

Any penalty imposed by this section shall be in addition to any other penalty provided by law.

(Added Pub. L. 98-67, title I, § 104(c)(1), Aug. 5, 1983, 97 Stat. 379.)

EFFECTIVE DATE

Section effective with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as an Effective Date of 1983 Amendment note under section 31 of this title.

§ 6706. Original issue discount information requirements

(a) Failure to show information on debt instrument

In the case of a failure to set forth on a debt instrument the information required to be set forth on such instrument under section 1275(c)(1), unless it is shown that such failure is due to reasonable cause and not to willful neglect, the issuer shall pay a penalty of $50 for each instrument with respect to which such a failure exists.

(b) Failure to furnish information to Secretary

Any issuer who fails to furnish information required under section 1275(c)(2) with respect to any issue of debt instruments on the date prescribed therefor (determined with regard to any extension of time for filing) shall pay a penalty equal to 1 percent of the aggregate issue price of such issue, unless it is shown that such failure is due to reasonable cause and not willful neglect. The amount of the penalty imposed under the preceding sentence with respect to any issue of debt instruments shall not exceed $50,000 for such issue.

(c) Deficiency procedures not to apply

Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, gift, and certain excise taxes) shall not apply in respect of the assessment or collection of any penalty imposed by this section.

(Added Pub. L. 98-369, div. A, title I, § 41(c)(1), July 18, 1984, 98 Stat. 555.)

EFFECTIVE DATE

Section effective on the day 30 days after July 18, 1984, see section 44(h) of Pub. L. 98-369, set out as a note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1275 of this title.

§ 6707. Failure to furnish information regarding tax shelters

(a) Failure to register tax shelter

(1) Imposition of penalty

If a person who is required to register a tax shelter under section 6111(a)—

(A) fails to register such tax shelter on or before the date described in section 6111(a)(1), or

(B) files false or incomplete information with the Secretary with respect to such registration,

such person shall pay a penalty with respect to such registration in the amount determined under paragraph (2). No penalty shall be imposed under the preceding sentence with respect to any failure which is due to reasonable cause.

(2) Amount of penalty

The penalty imposed under paragraph (1) with respect to any tax shelter shall be an amount equal to the greater of—

(A) $500, or

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[1] See References in Text note below.

(B) the lesser of (i) 1 percent of the aggregate amount invested in such tax shelter, or (ii) $10,000.

The $10,000 limitation in subparagraph (B) shall not apply where there is an intentional disregard of the requirements of section 6111(a).

(b) Failure to furnish tax shelter identification number

(1) Sellers, etc.

Any person who fails to furnish the identification number of a tax shelter which such person is required to furnish under section 6111(b)(1) shall pay a penalty of $100 for each such failure.

(2) Failure to include number on return

Any person who fails to include an identification number on a return on which such number is required to be included under section 6111(b)(2) shall pay a penalty of $50 for each such failure, unless such failure is due to reasonable cause.

(Added Pub. L. 98-369, div. A, title I, § 141(b), July 18, 1984, 98 Stat. 680.)

EFFECTIVE DATE

Section applicable to tax shelters (within the meaning of section 6111 of this title), any interest in which is first sold to any investor after Aug. 31, 1984, see section 141(d) of Pub. L. 98-369, set out as a note under section 6111 of this title.

§ 6708.[6] Failure to maintain lists of investors in potentially abusive tax shelters

(a) In general

Any person who fails to meet any requirement imposed by section 6112 shall pay a penalty of $50 for each person with respect to whom there is such a failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The maximum penalty imposed under this subsection for any calendar year shall not exceed $50,000.

(b) Penalty in addition to other penalties

The penalty imposed by this section shall be in addition to any other penalty provided by law.

(Added Pub. L. 98-369, div. A, title I, § 142(b), July 18, 1984, 98 Stat. 682.)

CODIFICATION

Another section 6708, set out second, was added by Pub. L. 98-369, § 612(d)(1).

EFFECTIVE DATE

Section applicable to any interest which is first sold to any investor after Aug. 31, 1984, see section 142(d) of Pub. L. 98-369, set out as a note under section 6112 of this title.

§ 6708.[6] Penalties with respect to mortgage credit certificates

(a) Negligence

If—

(1) any person makes a material misstatement in any verified written statement made under penalties of perjury with respect to the issuance of a mortgage credit certificate, and

(2) such misstatement is due to the negligence of such person,

such person shall pay a penalty of $1,000 for each mortgage credit certificate with respect to which such a misstatement was made.

(b) Fraud

If a misstatement described in subsection (a)(1) is due to fraud on the part of the person making such misstatement, in addition to any criminal penalty, such person shall pay a penalty of $10,000 for each mortgage credit certificate with respect to which such a misstatement is made.

(c) Reports

Any person required by section 25(g) to file a report with the Secretary who fails to file the report with respect to any mortgage credit certificate at the time and in the manner required by the Secretary shall pay a penalty of $200 for such failure unless it is shown that such failure is due to reasonable cause and not to willful neglect. In the case of any report required under the second sentence of section 25(g), the aggregate amount of the penalty imposed by the preceding sentence shall not exceed $2,000.

(d) Mortgage credit certificate

The term "mortgage credit certificate" has the meaning given to such term by section 25(c).

(Added Pub. L. 98-369, div. A, title VI, § 612(d)(1), July 18, 1984, 98 Stat. 912.)

CODIFICATION

Another section 6708, set out first, was added by Pub. L. 98-369, § 142(b).

EFFECTIVE DATE

Section applicable to interest paid or accrued after Dec. 31, 1984, on indebtedness incurred after Dec. 31, 1984, see section 612(g) of Pub. L. 98-369, set out as a note under section 25 of this title.

CHAPTER 69—GENERAL PROVISIONS RELATING TO STAMPS

§ 6801. Authority for establishment, alteration, and distribution

AMENDMENT OF SUBSECTION (b)

Pub. L. 98-369, div. A, title IV, §§ 454(c)(13), 456(b), July 18, 1984, 98 Stat. 822, 823, provided that, effective July 1, 1985, subsection (b) of this section is amended by striking out "several stamp taxes;" and all that follows and inserting in lieu thereof "several stamp taxes."

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[6] So in original. There are two sections designated "6708".

CHAPTER 70—JEOPARDY, RECEIVERSHIPS, ETC.

Subchapter A—Jeopardy

PART I—TERMINATION OF TAXABLE YEAR

§ 6851. Termination assessments of income tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6211, 6231, 6863, 6867, 7429, 7508, 7611 of this title; title 5 section 5568; title 37 section 558.

PART II—JEOPARDY ASSESSMENTS

§ 6861. Jeopardy assessments of income, estate, gift, and certain excise taxes

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 534, 6152, 6212, 6213, 6231, 6863, 6867, 7429, 7611 of this title; title 5 section 5568; title 37 section 558.

CHAPTER 71—TRANSFEREES AND FIDUCIARIES

§ 6901. Transferred assets

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6040 of this title; title 18 section 3613.

CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

Subchapter A—Crimes

PART I—GENERAL PROVISIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 6420, 6421, 6427, 7851 of this title; title 48 sections 1421i, 1612.

§ 7203. Willful failure to file return, supply information, or pay tax

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 412(b)(9), 98 Stat. 792.)

AMENDMENTS

1984—Pub. L. 98-369 struck out "(other than a return required under the authority of section 6015)" after "to make a return".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

§ 7205. Fraudulent withholding exemption certificate or failure to supply information

(a) Withholding on wages

Any individual required to supply information to his employer under section 3402 who willfully supplies false or fraudulent information, or who willfully fails to supply information thereunder which would require an increase in the tax to be withheld under section 3402, shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(b) Backup withholding on interest and dividends

If any individual willfully makes—

(1) any false certification or affirmation on any statement required by a payor in order to meet the due diligence requirements of section 6676(b), or

(2) a false certification under paragraph (1) or (2)(C) of section 3406(d),

then such individual shall, in addition to any other penalty provided by law, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both.

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, §§ 102(a), 107(b), 97 Stat. 369, 382; July 18, 1984, Pub. L. 98-369, div. A, title I, § 159(a), 98 Stat. 696.)

AMENDMENTS

1984—Pub. L. 98-369 in subsecs. (a) and (b) substituted "in addition to" for "in lieu of" and struck out reference to penalty under section 6682 after "penalty provided by law".

1983—Pub. L. 98-67 designated existing provisions as subsec. (a), added subsec. (b), and repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 159(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall apply to actions and failures to act occurring after the date of the enactment of this Act [July 18, 1984]."

EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by section 107(b) of Pub. L. 98-67 effective Aug. 5, 1983, see section 110(c) of Pub. L. 98-67, set out as a note under section 31 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3406 of this title.

§ 7207. Fraudulent returns, statements, or other documents

Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both. Any person required pursuant to subsection (b) of section 6047 or pursuant to subsection (d) of section 6104 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than $10,000 ($50,000 in the case of a corporation), or imprisoned not more than 1 year, or both.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 491(d)(51), 98 Stat. 852.)

AMENDMENTS

1984—Pub. L. 98-369 struck out "or (c)" after "subsection (b)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a ntoe under section 55 of title title.

§ 7210. Failure to obey summons

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda, or other papers, as required under sections 6420(e)(2), 6421(f)(2), 6427(i)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records, memoranda, or other papers, shall, upon conviction thereof, be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IX, § 911(d)(2)(G), 98 Stat. 1007.)

AMENDMENTS

1984—Pub. L. 98-369 substituted "6427(i)(2)" for "6427(h)(2)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

§ 7213. Unauthorized disclosure of information

(a) Returns and return information

[*See main edition for text of* (*1*)]

(2) State and other employees

It shall be unlawful for any person (not described in paragraph (1)) willfully to disclose to any person, except as authorized in this title, any return or return information (as defined in section 6103(b)) acquired by him or another person under subsection (d), (i)(3)(B)(i), (*l*)(6), (7), (8), or (9), or (m)(2) or (4) of section 6103. Any violation of this paragraph shall be a felony punishable by a fine in any amount not exceeding $5,000, or imprisonment of not more than 5 years, or both, together with the costs of prosecution.

[*See main edition for text of* (*3*) *to* (*5*); (*b*) *to* (*d*)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 453(b)(4), 98 Stat. 820.)

AMENDMENT OF SUBSECTION (a)(2)

Pub. L. 98-369, div. B, title VI, §2653(b)(4), (c), July 18, 1984, 98 Stat. 1156, provided that, applicable with respect to refunds payable under section 6402 of this title after Dec. 31, 1985, and before Jan. 1, 1988, subsection (a)(2) of this section is amended by substituting "(l)(6), (7), (8), (9), or (10)" for "(l)(6), (7), (8), or (9)".

Pub. L. 98-378, § 21(f)(5), (g), Aug. 16, 1984, 98 Stat. 1326, provided that, applicable with respect to refunds payable under section 6402 of this title after Dec. 31, 1985, subsection (a)(2) of this section is amended by substituting "(10), or (11)" for "or (10)".

AMENDMENTS

1984—Subsec. (a)(2). Pub. L. 98-369, § 453(b)(4), substituted "(7), (8), or (9)" for "(7), or (8)".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 453(b)(4) of Pub. L. 98-369 effective on the first day of the first calendar month which begins more than 90 days after July 18, 1984, see section 456(a) of Pub. L. 98-369, set out as an Effective Date note under section 5101 of this title.

§ 7215. Offenses with respect to collected taxes

[*See main edition for text*]

(As amended Pub. L. 98-67, title I, § 102(a), Aug. 5, 1983, 97 Stat. 369.)

AMENDMENTS

1983—Subsec. (b). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

§ 7216. Disclosure or use of information by preparers of returns

(a) General rule

Any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns of the tax imposed by chapter 1, or any person who for compensation prepares any such return for any other person, and who—

(1) discloses any information furnished to him for, or in connection with, the preparation of any such return, or

(2) uses any such information for any purpose other than to prepare, or assist in preparing, any such return,

shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 98-369, div. A, title IV, § 412(b)(10), July 18, 1984, 98 Stat. 792.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 deleted from introductory text "or declarations or amended declarations of estimated tax under section 6015," after "chapter 1," and deleted "or declaration" after "such return" in three places.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

Subchapter B—Other Offenses

§ 7275. Penalty for offenses relating to certain airline tickets and advertising

EFFECTIVE DATE OF 1982 AMENDMENT

Section 281A(b)(2) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title VII, § 714(b), July 18, 1984, 98 Stat. 961, provided that: "The amendment made by paragraph (1) [amending this section] shall apply with respect to transportation beginning after the date of the enactment of this Act [Sept. 3, 1982]."

Subchapter C—Forfeitures

PART I—PROPERTY SUBJECT TO FORFEITURE

§ 7302. Property used in violation of internal revenue laws

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5117, 5686, 5763, 7324, 7612 of this title.

CHAPTER 76—JUDICIAL PROCEEDINGS

Subchapter A—Civil Actions by the United States

§ 7402. Jurisdiction of district courts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7407, 7408, 7604 of this title; title 18 section 3613.

§ 7403. Action to enforce lien or to subject property to payment of tax

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3613.

§ 7408. Action to enjoin promoters of abusive tax shelters, etc.

(a) Authority to seek injunction

A civil action in the name of the United States to enjoin any person from further engaging in conduct subject to penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability) may be commenced at the request of the Secretary. Any action under this section shall be brought in the district court of the United States for the district in which such person resides, has his principal place of business, or has engaged in conduct subject to penalty under section 6700 or section 6701. The court may exercise its jurisdiction over such action (as provided in section 7402(a)) separate and apart from any other action brought by the United States against such person.

(b) Adjudication and decree

In any action under subsection (a), if the court finds—

(1) that the person has engaged in any conduct subject to penalty under section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability), and

(2) that injunctive relief is appropriate to prevent recurrence of such conduct,

the court may enjoin such person from engaging in such conduct or in any other activity subject to penalty under section 6700 or section 6701.

[*See main edition for text of* (c)]

(As amended Pub. L. 98-369, div. A, title I, § 143(b), July 18, 1984, 98 Stat. 682.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369, § 143(b)(1), (2), added "or section 6701 (relating to penalties for aiding and abetting understatement of tax liability)" and added reference to section 6701 at the end of the second sentence.

Subsec. (b). Pub. L. 98-369, § 143(b)(1), (3), added "or section 6701 (relating to penalties for aiding and abetting understatement of tax liability)," in par. (1) and added reference to section 6701 at the end thereof.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective on the day after July 18, 1984, see section 143(c) of Pub. L. 98-369, set out as a note under section 6700 of this title.

Subchapter B—Proceedings by Taxpayers and Third Parties

§ 7422. Civil actions for refund

[*See main edition for text of* (a) *to* (g)]

(h) Special rule for actions with respect to partnership items

No action may be brought for a refund attributable to partnership items (as defined in section 6231(a)(3)) except as provided in section 6228(b) or section 6230(c).

(i) Special rule for actions with respect to tax shelter promoter and understatement penalties

No action or proceeding may be brought in the United States Claims Court for any refund or credit of a penalty imposed by section 6700 (relating to penalty for promoting abusive tax shelters, etc.) or section 6701 (relating to penalties for aiding and abetting understatement of tax liability).

(j) Cross references

(1) For provisions relating generally to claims for refund or credit, see chapter 65 (relating to abatements, credit, and refund) and chapter 66 (relating to limitations).

(2) For duty of United States attorneys to defend suits, see section 507 of Title 28 of the United States Code.

(3) For jurisdiction of United States district courts, see section 1346 of Title 28 of the United States Code.

(4) For payment by the Treasury of judgments against internal revenue officers or employees, upon certificate of probable cause, see section 2006 of Title 28 of the United States Code.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title VII, § 714(g)(1), (p)(2)(H), 98 Stat. 961, 965.)

References in Text

Section 4962, referred to in subsec. (g)(1)(B), was renumbered section 4963 of this title by Pub. L. 98-369, div. A, title III, § 305(a), July 18, 1984, 98 Stat. 783.

Amendments

1984—Subsec. (h). Pub. L. 98-369, § 714(p)(2)(H), substituted "section 6231(a)(3)" for "section 6131(a)(3)".

Subsecs. (i), (j). Pub. L. 98-369, § 714(g)(1), added subsec. (i) and redesignated former subsec. (i) as (j).

Effective Date of 1984 Amendment

Amendment by section 714(g)(1) of Pub. L. 98-369 applicable to any claim for refund or credit filed after July 18, 1984, see section 714(g)(4) of Pub. L. 98-369, set out as an Effective Date note under section 1509 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 714(p)(2)(H) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

§ 7424. Intervention

Section Referred to in Other Sections

This section is referred to in title 18 section 3613; title 28 section 2409a.

§ 7425. Discharge of liens

Section Referred to in Other Sections

This section is referred to in section 7810 of this title; title 18 section 3613; title 28 section 2409a.

§ 7426. Civil actions by persons other than taxpayers

Section Referred to in Other Sections

This section is referred to in sections 6503, 6532, 7421 of this title; title 18 section 3613; title 28 sections 1346, 2409a.

§ 7428. Declaratory judgments relating to status and classification of organizations under section 501(c)(3), etc.

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Subpoena power for District Court for District of Columbia

In any action brought under this section in the district court of the United States for the District of Columbia, a subpoena requiring the attendance of a witness at a trial or hearing may be served at any place in the United States.

(As amended Pub. L. 98-369, div. A, title X, § 1033(b), July 18, 1984, 98 Stat. 1039.)

Amendments

1984—Subsec. (d). Pub. L. 98-369 added subsec. (d).

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable with respect to inquiries and examinations beginning after Dec. 31, 1984, see section 1033(d) of Pub. L. 98-369, set out as an Effective Date note under section 7611 of this title.

Section Referred to in Other Sections

This section is referred to in sections 7451, 7459, 7482, 7611 of this title; title 28 sections 1346, 1507, 2201.

§ 7429. Review of jeopardy assessment procedures

[*See main edition for text of* (*a*)]

(b) Judicial review

[*See main edition for text of* (*1*)]

(2) Determination by district court

Within 20 days after an action is commenced under paragraph (1), the district court shall determine whether or not—

[*See main edition for text of* (*A*) *and* (*B*)]

If the court determines that proper service was not made on the United States within 5 days after the date of the commencement of the action, the running of the 20-day period set forth in the preceding sentence shall not begin before the day on which proper service was made on the United States.

[*See main edition for text of* (*3*); (*c*) *to* (*g*)]

(As amended Pub. L. 98-369, div. A, title IV, § 446(a), July 18, 1984, 98 Stat. 817.)

Amendments

1984—Subsec. (b)(2). Pub. L. 98-369 added provision that if the court determines that proper service was not made on the United States within 5 days after the date of the commencement of the action, the running of the 20-day period shall not begin before the day on which proper service was made on the United States.

Effective Date of 1984 Amendment

Section 446(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall apply to actions commenced after the date of the enactment of this Act [July 18, 1984]."

§ 7430. Awarding of court costs and certain fees

(a) In general

In the case of any civil proceeding which is—

[*See main edition for text of* (*1*)]

(2) brought in a court of the United States (including the Tax Court and the United States Claims Court),

the prevailing party may be awarded a judgment for reasonable litigation costs incurred in such proceeding.

[*See main edition for text of* (*b*) *to* (*f*)]

(As amended Pub. L. 98-369, div. A, title VII, § 714(c), July 18, 1984, 98 Stat. 961.)

Amendments

1984—Subsec. (a)(2). Pub. L. 98-369 added reference to the United States Claims Court.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Effective Date

Section 292(e) of Pub. L. 97-248, as amended by Pub. L. 98-369, div. A, title I, § 160, July 18, 1984, 98 Stat. 696, provided that:

"(1) In general.—The amendments made by this section [enacting this section and amending section 6673 of this title and section 2412 of Title 28, Judiciary and Judicial Procedure] shall apply to civil actions or proceedings commenced after February 28, 1983.

"(2) Penalty.—The amendments made by subsections (b) and (d)(2) [amending section 6673 of this title] shall apply to any action or proceeding in the United States Tax Court which—

"(A) is commenced after December 31, 1982, or

"(B) is pending in the United States Tax Court on the day which is 120 days after the date of the enactment of the Tax Reform Act of 1984 [July 18, 1984]."

Section Referred to in Other Sections

This section is referred to in section 7611 of this title; title 28 section 2412.

§ 7431. Civil damages for unauthorized disclosure of returns and return information

[See main edition for text of (a) to (e)]

(f) Extension to information obtained under section 3406

For purposes of this section—

(1) any information obtained under section 3406 (including information with respect to any payee certification failure under subsection (d) thereof) shall be treated as return information, and

(2) any use of such information other than for purposes of meeting any requirement under section 3406 or (subject to the safeguards set forth in section 6103) for purposes permitted under section 6103 shall be treated as a violation of section 6103.

For purposes of subsection (b), the reference to section 6103 shall be treated as including a reference to section 3406.

(As amended Pub. L. 98-67, title I, § 104(b), Aug. 5, 1983, 97 Stat. 379.)

Amendments

1983—Subsec. (f). Pub. L. 98-67 added subsec. (f).

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-67 effective Aug. 5, 1983, see section 110(c) of Pub. L. 98-67, set out as a note under section 31 of this title.

Section Referred to in Other Sections

This section is referred to in section 3406 of this title; title 5 section 3111.

Subchapter C—The Tax Court

PART I—ORGANIZATION AND JURISDICTION

§ 7448. Annuities to surviving spouses and dependent children of judges

[See main edition for text of (a) to (g)]

(h) Entitlement to annuity

In case any judge electing under subsection (b) shall die while a judge after having rendered at least 5 years of civilian service computed as prescribed in subsection (n), for the last 5 years of which the salary deductions provided for by subsection (c) or the deposits required by subsection (d) have actually been made or the salary deductions required by the civil service retirement laws have actually been made—

[See main edition for text of (1)]

(2) if such judge is survived by a surviving spouse and a dependent child or children, there shall be paid to such surviving spouse an immediate annuity in an amount computed as provided in subsection (m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such surviving spouse, but not to exceed $4,644 per year divided by the number of such children or $1,548 per year, whichever is lesser; or

(3) if such judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which such surviving spouse would have been entitled under paragraph (2) of this subsection had such spouse survived, but not to exceed $5,580 per year divided by the number of such children or $1,860 per year, whichever is lesser.

The annuity payable to a surviving spouse under this subsection shall be terminable upon such surviving spouse's death or remarriage. The annuity payable to a child under this subsection shall be terminable upon (A) his attaining the age of 18 years, (B) his marriage, or (C) his death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability his annuity shall be terminable only upon death, marriage, or recovery from such disability. In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

[See main edition for text of (i) to (o)]

(p) Estimates of expenditures

The chief judge shall submit to the President annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the survivors annuity fund, and such supplemental and deficiency estimates as may be required from time to time for the same purposes, according to law. The chief judge shall cause periodic examinations of the survivors annuity fund to be made by an actuary, who may be an actuary employed by another department of the Government temporarily assigned for the purpose, and whose findings and recommendations shall be transmitted by the chief judge to the Tax Court.

[See main edition for text of (q) to (t)]

(As amended Pub. L. 98-216, § 3(c)(1), Feb. 14, 1984, 98 Stat. 6; Pub. L. 98-369, div. A, title IV, § 462(a), July 18, 1984, 98 Stat. 824.)

Amendments

1984—Subsec. (h)(2). Pub. L. 98-369, § 462(a)(1), substituted "$4,644" for "$900" and "$1,548" for "$360".

Subsec. (h)(3). Pub. L. 98-369, § 462(a)(2), substituted "$5,580 per year divided by the number of such children or $1,860 per year, whichever is lesser" for "$480 per year".

Subsec. (p). Pub. L. 98-216 substituted "President" for "Bureau of the Budget".

Effective Date of 1984 Amendment

Section 462(b) of Pub. L. 98-369, provided that: "The amendments made by this subsection (a) [probably should be "section" which amended this section] shall apply to annuities payable with respect to months beginning after the date of the enactment of this Act [July 18, 1984]."

PART II—PROCEDURE

Sec.
7463. Disputes involving $10,000 or less.

Amendments

1984—Pub. L. 98-369, div. A, title IV, § 461(a)(2)(B), July 18, 1984, 98 Stat. 823, substituted "$10,000" for "$5,000" in item 7463.

§ 7456. Administration of oaths and procurement of testimony

(a) In general

For the efficient administration of the functions vested in the Tax Court or any division thereof, any judge or special trial judge of the Tax Court, the clerk of the court or his deputies, as such, or any other employee of the Tax Court designated in writing for the purpose by the chief judge, may administer oaths, and any judge or special trial judge of the Tax Court may examine witnesses and require, by subpoena ordered by the Tax Court or any division thereof and signed by the judge or special trial judge (or by the clerk of the Tax Court or by any other employee of the Tax Court when acting as deputy clerk)—

[See main edition for text of (1) and (2); (b)]

(c) Special trial judges

The chief judge may from time to time appoint special trial judges who shall proceed under such rules and regulations as may be promulgated by the Tax Court. Each special trial judge shall receive pay at an annual rate determined under section 225 of the Federal Salary Act of 1967 (2 U.S.C. 351-361), as adjusted by section 461 of title 28, United States Code, and also necessary traveling expenses and per diem allowances, as provided in subchapter I of chapter 57 of title 5, United States Code, while traveling on official business and away from Washington, District of Columbia.

(d) Proceedings which may be assigned to special trial judges

The chief judge may assign—

(1) any declaratory judgment proceeding,

(2) any proceeding under section 7463,

(3) any proceeding where neither the amount of the deficiency placed in dispute (within the meaning of section 7463) nor the amount of any claimed overpayment exceeds $10,000; and

(4) any other proceeding which the chief judge may designate,

to be heard by the special trial judges of the court, and the court may authorize a special trial judge to make the decision of the court with respect to any proceeding described in paragraph (1), (2), or (3), subject to such conditions and review as the court may provide.

[See main edition for text of (e)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, §§ 463(a), 464(a)-(c), 98 Stat. 824.)

Amendments

1984—Subsec. (a). Pub. L. 98-369, § 464(a), substituted "special trial judge" for "commissioner" in three places.

Subsec. (c). Pub. L. 98-369, § 464(b), substituted "Special trial judges" for "Commissioners" in heading, and in text substituted "special trial judges" for "commissioners" and "special trial judge" for "commissioner".

Subsec. (d). Pub. L. 98-369, § 464(c), substituted "Special trial judges" for "Commissioners" in heading, and substituted "special trial judges" for "commissioners" and "special trial judge" for "commissioner" in provisions following par. (4).

Pub. L. 98-369, § 463(a), in amending subsec. (d) generally, struck out "and" at the end of par. (2), substituted "any proceeding" for "any other proceeding" and "$10,000; and" for "$5,000," in par. (3), added par. (4), and substituted "any proceeding described in paragraph (1), (2), or (3), subject to such conditions and review as the court may provide" for "any such proceeding, subject to such conditions and review as the court may by rule provide" in the provisions following par. (4).

Effective Date of 1984 Amendment

Section 463(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if enacted as part of the Miscellaneous Revenue Act of 1982 [Pub. L. 97-362]."

Section 464(e)(1) of Pub. L. 98-369 provided that: "The amendments made by this section [amending sections 7456 and 7471 of this title and enacting a provision set out as a note under section 7456 of this title] shall take effect on the date of the enactment of this Act [July 18, 1984]."

References to Commissioners Deemed References to Special Trial Judges

Section 464(e)(2) of Pub. L. 98-369 provided that: "Any reference in any law to a commissioner of the Tax Court shall be treated as a reference to a special trial judge of the Tax Court."

§ 7461. Publicity of proceedings

(a) General rule

Except as provided in subsection (b), all reports of the Tax Court and all evidence received by the Tax Court and its divisions, including a transcript of the stenographic report of the hearings, shall be public records open to the inspection of the public.

(b) Exceptions

(1) Trade secrets or other confidential information

The Tax Court may make any provision which is necessary to prevent the disclosure of trade secrets or other confidential information, including a provision that any document or information be placed under seal to be opened only as directed by the court.

(2) Evidence, etc.

After the decision of the Tax Court in any proceeding has become final, the Tax Court may, upon motion of the taxpayer or the Secretary, permit the withdrawal by the party entitled thereto of originals of books, documents, and records, and of models, diagrams, and other exhibits, introduced in evidence before the Tax Court or any division; or the Tax Court may, on its own motion, make such other disposition thereof as it deems advisable.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 465(a), 98 Stat. 825.)

AMENDMENTS

1984—Pub. L. 98-369, in amending section generally, designated existing provisions as subsecs. (a) and (b)(2), added subsec. (b)(1), and in subsec. (b)(2), as so designated, struck out reference ot the Secretary's delegate.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 465(b) of Pub. L. 98-369 provided that: "The amendment made by subsection (a) [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

§ 7463. Disputes involving $10,000 or less

(a) In general

In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds—

(1) $10,000 for any one taxable year, in the case of the taxes imposed by subtitle A,

(2) $10,000, in the case of the tax imposed by chapter 11,

(3) $10,000 for any one calendar year, in the case of the tax imposed by chapter 12, or

(4) $10,000 for any 1 taxable period (or, if there is no taxable period, taxable event) in the case of any tax imposed by subtitle D which is described in section 6212(a) (relating to a notice of deficiency),

at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460.

[*See main edition for text of* (*b*) *to* (*f*)]

(As amended Pub. L. 98-369, div. A, title IV, § 461(a)(1), (2)(A), July 18, 1984, 98 Stat. 823.)

AMENDMENTS

1984—Pub. L. 98-369, § 461(a)(2)(A), substituted "$10,000" for "$5,000" in section catchline.

Subsec. (a). Pub. L. 98-369, § 461(a)(1), substituted "$10,000" for "$5,000" in pars. (1) to (4).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 461(b) of Pub. L. 98-369 provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [July 18, 1984]."

PART III—MISCELLANEOUS PROVISIONS

§ 7471. Employees

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Special trial judges

For compensation and travel and subsistence allowances of special trial judges of the Tax Court, see section 7456(c).

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IV, § 464(d), 98 Stat. 825.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-369 substituted references to special trial judges for references to commissioners in the subsection heading and text.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 effective July 18, 1984, see section 464(e)(1) of Pub. L. 98-369, set out as a note under section 7456 of this title.

PART IV—DECLARATORY JUDGMENTS

Sec.
[7477. Repealed.]

AMENDMENTS

1984—Pub. L. 98-369, div. A, title I, § 131(e)(2)(B), July 18, 1984, 98 Stat. 665, struck out item 7477 "Declaratory judgments relating to transfers of property from the United States".

§ 7476. Declaratory judgments relating to qualification of certain retirement plans

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Retirement plan

For purposes of this section, the term "retirement plan" means—

(1) a pension, profit-sharing, or stock bonus plan described in section 401(a) or a trust which is part of such a plan,,[1] or

(2) an annuity plan described in section 403(a).

[(3) Repealed. Pub. L. 98-369, div. A, title IV, § 491(d)(52), July 18, 1984, 98 Stat. 852.]

[*See main edition for text of* (*d*)]

(As amended Pub. L. 98-369, div. A, title IV, § 491(d)(52), July 18, 1984, 98 Stat. 852.)

AMENDMENTS

1984—Subsec. (c)(3). Pub. L. 98-369 struck out par. (3) which included a bond purchase plan described in section 405(a) within the term "retirement plan".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

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[1] So in original.

[§ 7477. Repealed. Pub. L. 98-369, div. A, title I, § 131(e)(1), July 18, 1984, 98 Stat. 664]

Section, added Pub. L. 94-455, title X, § 1042(d)(1), Oct. 4, 1976, 90 Stat. 1637, and amended Pub. L. 95-600, title III, § 336(b)(2)(B), Nov. 6, 1978, 92 Stat. 2842, provided for declaratory judgments relating to transfers of property from the United States.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special ruels for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as an Effective Date of 1984 Amendment note under section 367 of this title.

Subchapter D—Court Review of Tax Court Decisions

§ 7482. Courts of review

[See main edition for text of (a)]

(b) Venue

(1) In general

Except as otherwise provided in paragraphs (2) and (3), such decisions may be reviewed by the United States court of appeals for the circuit in which is located—

[See main edition for text of (A) to (C)]

(D) in the case of an organization seeking a declaratory decision under section 7428, the principal office or agency of the organization, or

(E) in the case of a petition under section 6226 or 6228(a), the principal place of business of the partnership,[1]

If for any reason no subparagraph of the preceding sentence applies, then such decisions may be reviewed by the Court of Appeals for the District of Columbia. For purposes of this paragraph, the legal residence, principal place of business, or principal office or agency referred to herein shall be determined as of the time the petition seeking redetermination of tax liability was filed with the Tax Court or as of the time the petition seeking a declaratory decision under section 7428, 7476, or 7477,[2] or the petition under section 6226 or 6228(a), was filed with the Tax Court.

[See main edition for text of (2) and (3); (c)]

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 131(e)(2)(A), 98 Stat. 665.)

REFERENCES IN TEXT

Section 7477, referred to in subsec. (b)(1), was repealed by Pub. L. 98-369, div. A, title I, § 131(e)(1), July 18, 1984, 98 Stat. 664.

AMENDMENTS

1984—Subsec. (b)(1)(D) to (F). Pub. L. 98-369 struck out subpar. (D) which provided that venue in the case of a person seeking declaratory judgment under section 7477 be the legal residence of such person if such person is not a corporation, or the principal place of business or principal office or agency of such person if such person is a corporation, and redesignated subpars. (E) and (F) as (D) and (E), respectively.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98-369, set out as a note under section 367 of this title.

CHAPTER 77—MISCELLANEOUS PROVISIONS

§ 7502. Timely mailing treated as timely filing and paying

[See main edition for text of (a) to (d)]

(e) Mailing of deposits

[See main edition for text of (1) and (2)]

(3) No application to certain deposits

Paragraph (1) shall not apply with respect to any deposit of $20,000 or more by any person who is required to deposit the tax more than once a month.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 157(a), 98 Stat. 695.)

AMENDMENTS

1984—Subsec. (e)(3). Pub. L. 98-369 added par. (3).

EFFECTIVE DATE OF 1984 AMENDMENT

Section 157(b) of Pub. L. 98-369 provided that: "The amendment made by this section [enacting subsec. (e)(3) of this section] shall apply to deposits required to be made after July 31, 1984."

§ 7503. Time for performance of acts where last day falls on Saturday, Sunday, or legal holiday

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7851 of this title.

§ 7505. Sale of personal property acquired by the United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3613.

§ 7506. Administration of real estate acquired by the United States

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7809 of this title; title 18 section 3613.

§ 7508. Time for performing certain acts postponed by reason of service in combat zone

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6504, 6533, 6901 of this title; title 18 section 3613.

CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

Subchapter A—Examination and Inspection

Sec.

[7607. Repealed.]

7611. Restrictions on church tax inquiries and examinations.

7612. Cross references.

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[1] So in original. The comma probably should be a period.

[2] See References in Text note below.

Amendments

1984—Pub. L. 98-573, title II, § 213(b)(2), Oct. 30, 1984, 98 Stat. 2988, struck out item 7607 "Additional authority for Bureau of Customs".

Pub. L. 98-369, div. A, title X, § 1033(c)(2), July 18, 1984, 98 Stat. 1039, added item 7611 and redesignated former item 7611 as 7612.

Subchapter Referred to in Other Sections

This subchapter is referred to in section 274 of this title.

§ 7603. Service of summons

A summons issued under section 6420(e)(2), 6421(f)(2), 6427(i)(2), or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IX, § 911(d)(2)(G), 98 Stat. 1007.)

Amendments

1984—Pub. L. 98-369 substituted "6427(i)(2)" for "6427(h)(2)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

§ 7604. Enforcement of summons

[*See main edition for text of* (*a*)]

(b) Enforcement

Whenever any person summoned under section 6420(e)(2), 6421(f)(2), 6427(i)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary may apply to the judge of the district court or to a United States commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

(c) Cross references

[*See main edition for text of* (*1*)]

(2) Penalties

For penalties applicable to violation of section 6420(e)(2), 6421(f)(2), 6427(i)(2), or 7602, see section 7210.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IX, § 911(d)(2)(G), 98 Stat. 1007.)

Amendments

1984—Subsecs. (b), (c)(2). Pub. L. 98-369 substituted "6427(i)(2)" for "6427(h)(2)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

§ 7605. Time and place of examination

(a) Time and place

The time and place of examination pursuant to the provisions of section 6320(e)(2), 6421(f)(2), 6427(i)(2), or 7602 shall be such time and place as may be fixed by the Secretary and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2), 6421(f)(2), or 6427(i)(2), the date fixed for appearance before the Secretary shall not be less than 10 days from the date of the summons.

[*See main edition for text of* (*b*)]

(c) Cross reference

For provisions restricting church tax inquiries and examinations, see section 7611.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title IX, § 911(d)(2)(G), title X, § 1033(c)(1), 98 Stat. 1007, 1039.)

Amendments

1984—Subsec. (a). Pub. L. 98-369, § 911(d)(2)(G), substituted "6427(i)(2)" for "6427(h)(2)" in two places.

Subsec. (c). Pub. L. 98-369, § 1033(c)(1), amended subsec. (c) generally, substituting a cross reference relating to church tax inquiries for provisions relating to church tax inquiries.

Effective Date of 1984 Amendment

Amendment by section 911(d)(2)(G) of Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

Amendment by section 1033 of Pub. L. 98-369 applicable with respect to inquiries and examinations beginning after Dec. 31, 1984, see section 1033(d) of Pub. L. 98-369, set out as an Effective Date note under section 7611 of this title.

[§ 7607. Repealed. Pub. L. 98-473, title II, § 320(b), Oct. 12, 1984, 98 Stat. 2056, and Pub. L. 98-573, title II, § 213(b)(1), Oct. 30, 1984, 98 Stat. 2988]

Section, added July 18, 1956, ch. 629, title I, § 104(a), 70 Stat. 570, and amended Oct. 27, 1970, Pub. L. 91-513, title III, § 1102(g)(1), 84 Stat. 1292, set forth additional authority for Bureau of Customs with respect to firearms, warrants, etc.

Another section 7607 was renumbered section 7612.

Effective Date of Repeal

Repeal of section by Pub. L. 98-573 effective Oct. 15, 1984, see section 214(e) of Pub. L. 98-573, set out as an Effective Date of 1984 Amendment note under section 1304 of Title 19, Customs Duties.

§ 7608. Authority of internal revenue enforcement officers

Prior Provisions

A prior section 7608 was renumbered section 7612.

Section Referred to in Other Sections

This section is referred to in sections 5558, 5604 of this title.

§ 7609. Special procedures for third-party summonses

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Summons to which section applies

(1) In general

Except as provided in paragraph (2), a summons is described in this subsection if it is issued under paragraph (2) of section 7602(a) or under section 6420(e)(2), 6421(f)(2), or 6427(i)(2) and requires the production of records.

[*See main edition for text of* (*2*) *and* (*3*); (*d*) *to* (*g*)]

(h) Jurisdiction of district court; etc.

[*See main edition for text of* (*1*) *and* (*2*)]

[(3) Repealed. Pub. L. 98-620, title IV, § 402(28)(D), Nov. 8, 1984, 98 Stat. 3359]

[*See main edition for text of* (*i*)]

(As amended Pub. L. 98-369, div. A, title VII, § 714(i), title IX, § 911(d)(2)(G), July 18, 1984, 98 Stat. 962, 1007; Pub. L. 98-620, title IV, § 402(28)(D), Nov. 8, 1984, 98 Stat. 3359.)

Prior Provisions

A prior section 7609 was renumbered section 7612.

Amendments

1984—Subsec. (c)(1). Pub. L. 98-369, § 714(i), substituted "7602(a)" for "7602".

Pub. L. 98-369, § 911(d)(2)(G), substituted "6427(i)(2)" for "6427(h)(2)".

Subsec. (h)(3). Pub. L. 98-620 struck out par. (3) which had provided that except as to cases the court considered to be of greater importance, proceedings brought for the enforcement of any summons, or proceedings under this section, and appeals, would take precedence on the docket over all other cases and would be assigned for hearing and decided at the earliest practicable date.

Effective Date of 1984 Amendments

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Amendment by section 714(i) of Pub. L. 98-369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, to which such amendment relates, see section 715 of Pub. L. 98-369, set out as a note under section 31 of this title.

Amendment by section 911(d)(2)(G) of Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

Section Referred to in Other Sections

This section is referred to in section 7611 of this title.

§ 7610. Fees and costs for witnesses

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Summons to which section applies

This section applies with respect to any summons authorized under section 6420(e)(2), 6421(f)(2), 6427(i)(2), or 7602.

(As amended Pub. L. 98-369, div. A, title IX, § 911(d)(2)(G), July 18, 1984, 98 Stat. 1007.)

Amendments

1984—Subsec. (c). Pub. L. 98-369 substituted "6427(i)(2)" for "6427(h)(2)".

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

§ 7611. Restrictions on church tax inquiries and examinations

(a) Restrictions on inquiries

(1) In general

The Secretary may begin a church tax inquiry only if—

(A) the reasonable belief requirements of paragraph (2), and

(B) the notice requirements of paragraph (3), have been met.

(2) Reasonable belief requirements

The requirements of this paragraph are met with respect to any church tax inquiry if an appropriate high-level Treasury official reasonably believes (on the basis of facts and circumstances recorded in writing) that the church—

(A) may not be exempt, by reason of its status as a church, from tax under section 501(a), or

(B) may be carrying on an unrelated trade or business (within the meaning of section 513) or otherwise engaged in activities subject to taxation under this title.

(3) Inquiry notice requirements

(A) In general

The requirements of this paragraph are met with respect to any church tax inquiry if, before beginning such inquiry, the Secretary provides written notice to the church of the beginning of such inquiry.

(B) Contents of inquiry notice

The notice required by this paragraph shall include—

(i) an explanation of—

(I) the concerns which gave rise to such inquiry, and

(II) the general subject matter of such inquiry, and

(ii) a general explanation of the applicable—

(I) administrative and constitutional provisions with respect to such inquiry (including the right to a conference with the Secretary before any examination of church records), and

(II) provisions of this title which authorize such inquiry or which may be otherwise involved in such inquiry.

(b) Restrictions on examinations

(1) In general

The Secretary may begin a church tax examination only if the requirements of paragraph (2) have been met and such examination may be made only—

(A) in the case of church records, to the extent necessary to determine the liability for, and the amount of, any tax imposed by this title, and

(B) in the case of religious activities, to the extent necessary to determine whether an organization claiming to be a church is a church for any period.

(2) Notice of examination; opportunity for conference

The requirements of this paragraph are met with respect to any church tax examination if—

(A) at least 15 days before the beginning of such examination, the Secretary provides the notice described in paragraph (3) to both the church and the appropriate regional counsel of the Internal Revenue Service, and

(B) the church has a reasonable time to participate in a conference described in paragraph (3)(A)(iii), but only if the church requests such a conference before the beginning of the examination.

(3) Contents of examination notice, et cetera

(A) In general

The notice described in this paragraph is a written notice which includes—

(i) a copy of the church tax inquiry notice provided to the church under subsection (a),

(ii) a description of the church records and activities which the Secretary seeks to examine,

(iii) an offer to have a conference between the church and the Secretary in order to discuss, and attempt to resolve, concerns relating to such examination, and

(iv) a copy of all documents which were collected or prepared by the Internal Revenue Service for use in such examination and the disclosure of which is required by the Freedom of Information Act (5 U.S.C. 552).

(B) Earliest day examination notice may be provided

The examination notice described in subparagraph (A) shall not be provided to the church before the 15th day after the date on which the church tax inquiry notice was provided to the church under subsection (a).

(C) Opinion of regional counsel with respect to examination

Any regional counsel of the Internal Revenue Service who receives an examination notice under paragraph (1) may, within 15 days after such notice is provided, submit to the regional commissioner for the region an advisory objection to the examination.

(4) Examination of records and activities not specified in notice

Within the course of a church tax examination which (at the time the examination begins) meets the requirements of paragraphs (1) and (2), the Secretary may examine any church records or religious activities which were not specified in the examination notice to the extent such examination meets the requirement of subparagraph (A) or (B) of paragraph (1) (whichever applies).

(c) Limitation on period of inquiries and examinations

(1) Inquiries and examinations must be completed within 2 years

(A) In general

The Secretary shall complete any church tax status inquiry or examination (and make a final determination with respect thereto) not later than the date which is 2 years after the examination notice date.

(B) Inquiries not followed by examinations

In the case of a church tax inquiry with respect to which there is no examination notice under subsection (b), the Secretary shall complete such inquiry (and make a final determination with respect thereto) not later than the date which is 90 days after the inquiry notice date.

(2) Suspension of 2-year period

The running of the 2-year period described in paragraph (1)(A) and the 90-day period in paragraph (1)(B) shall be suspended—

(A) for any period during which—

(i) a judicial proceeding brought by the church against the Secretary with respect to the church tax inquiry or examination is pending or being appealed,

(ii) a judicial proceeding brought by the Secretary against the church (or any official thereof) to compel compliance with any reasonable request of the Secretary in a church tax examination for examination of church records or religious activities is pending or being appealed, or

(iii) the Secretary is unable to take actions with respect to the church tax inquiry or examination by reason of an order issued in any judicial proceeding brought under section 7609,

(B) for any period in excess of 20 days (but not in excess of 6 months) in which the church or its agents fail to comply with any reasonable request of the Secretary for church records or other information, or

(C) for any period mutually agreed upon by the Secretary and the church.

(d) Limitations on revocation of tax-exempt status, etc.

(1) In general

The Secretary may—

(A) determine that an organization is not a church which—

(i) is exempt from taxation by reason of section 501(a), or

(ii) is described in section 170(c), or

(B)(i) send a notice of deficiency of any tax involved in a church tax examination, or

(ii) in the case of any tax with respect to which subchapter B of chapter 63 (relating to deficiency procedures) does not apply, assess any underpayment of such tax involved in a church tax examination,

only if the appropriate regional counsel of the Internal Revenue Service determines in writing that there has been substantial compliance with the requirements of this section and approves in writing of such revocation, notice of deficiency, or assessment.

(2) Limitations on period of assessment

(A) Revocation of tax-exempt status

(i) 3-year statute of limitations generally

In the case of any church tax examination with respect to the revocation of tax-exempt status under section 501(a), any tax imposed by chapter 1 (other than section 511) may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, only for the 3 most recent taxable years ending before the examination notice date.

(ii) 6-year statute of limitations where tax-exempt status revoked

If an organization is not a church exempt from tax under section 501(a) for any of the 3 taxable years described in clause (i), clause (i) shall be applied by substituting "6 most recent taxable years" for "3 most recent taxable years".

(B) Unrelated business tax

In the case of any church tax examination with respect to the tax imposed by section 511 (relating to unrelated business income), such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, only with respect to the 6 most recent taxable years ending before the examination notice date.

(C) Exception where shorter statute of limitations otherwise applicable

Subparagraphs (A) and (B) shall not be construed to increase the period otherwise applicable under subchapter A of chapter 66 (relating to limitations on assessment and collection).

(e) Information not collected in substantial compliance with procedures to stay summons proceeding

(1) In general

If there has not been substantial compliance with—

(A) the notice requirements of subsection (a) or (b),

(B) the conference requirement described in subsection (b)(3)(A)(iii), or

(C) the approval requirement of subsection (d)(1) (if applicable),

with respect to any church tax inquiry or examination, any proceeding to compel compliance with any summons with respect to such inquiry or examination shall be stayed until the court finds that all practicable steps to correct the noncompliance have been taken. The period applicable under paragraph (1) or subsection (c) shall not be suspended during the period of any stay under the preceding sentence.

(2) Remedy to be exclusive

No suit may be maintained, and no defense may be raised in any proceeding (other than as provided in paragraph (1)), by reason of any noncompliance by the Secretary with the requirements of this section.

(f) Limitations on additional inquiries and examinations

(1) In general

If any church tax inquiry or examination with respect to any church is completed and does not result in—

(A) a revocation, notice of deficiency, or assessment described in subsection (d)(1), or

(B) a request by the Secretary for any significant change in the operational practices of the church (including the adequacy of accounting practices),

no other church tax inquiry or examination may begin with respect to such church during the applicable 5-year period unless such inquiry or examination is approved in writing by the Assistant Commissioner for Employee Plans and Exempt Organizations of the Internal Revenue Service or does not involve the same or similar issues involved in the preceding inquiry or examination. For purposes of the preceding sentence, an inquiry or examination shall be treated as completed not later than the expiration of the applicable period under paragraph (1) of subsection (c).

(2) Applicable 5-year period

For purposes of paragraph (1), the term "applicable 5-year period" means the 5-year period beginning on the date the notice taken into account for purposes of subsection (c)(1) was provided. For purposes of the preceding sentence, the rules of subsection (c)(2) shall apply.

(g) Treatment of final report of revenue agent

Any final report of an agent of the Internal Revenue Service shall be treated as a determination of the Secretary under paragraph (1) of section 7428(a), and any church receiving such a report shall be treated for purposes of sections 7428 and 7430 as having exhausted the administrative remedies available to it.

(h) Definitions

For purposes of this section—

(1) Church

The term "church" includes—

(A) any organization claiming to be a church, and

(B) any convention or association of churches.

(2) Church tax inquiry

The term "church tax inquiry" means any inquiry to a church (other than an examination) to serve as a basis for determining whether a church—

(A) is exempt from tax under section 501(a) by reason of its status as a church, or

(B) is carrying on an unrelated trade or business (within the meaning of section 513) or otherwise engaged in activities which may be subject to taxation under this title.

(3) Church tax examination

The term "church tax examination" means any examination for purposes of making a determination described in paragraph (2) of—

(A) church records at the request of the Internal Revenue Service, or

(B) the religious activities of any church.

(4) Church records

(A) In general

The term "church records" means all corporate and financial records regularly kept by a church, including corporate minute books and lists of members and contributors.

(B) Exception

Such term shall not include records acquired—

(i) pursuant to a summons to which section 7609 applies, or

(ii) from any governmental agency.

(5) Inquiry notice date

The term "inquiry notice date" means the date the notice with respect to a church tax inquiry is provided under subsection (a).

(6) Examination notice date

The term "examination notice date" means the date the notice with respect to a church tax examination is provided under subsection (b) to the church.

(7) Appropriate high-level Treasury official

The term "approporiate high-level Treasury official" means the Secretary of the Treasury or any delegate of the Secretary whose rank is no lower than that of a principal Internal Revenue officer for an internal revenue region.

(i) Section not to apply to criminal investigations, etc.

This section shall not apply to—

(A) any criminal investigation,

(B) any inquiry or examination relating to the tax liability of any person other than a church,

(C) any assessment under section 6851 (relating to termination assessments of income tax) or section 6861 (relating to jeopardy assessments of income taxes, etc [1]),

(D) any willful attempt to defeat or evade any tax imposed by this title, or

(E) any knowing failure to file a return of tax imposed by the [2] title.

(Added Pub. L. 98-369, div. A, title X, § 1033(a), July 18, 1984, 98 Stat. 1034.)

PRIOR PROVISIONS

A prior section 7611 was renumbered section 7612.

EFFECTIVE DATE

Section 1033(d) of Pub. L. 98-369 provided that: "The amendments made by this section [enacting this section and amending sections 7428 and 7605 of this title] shall apply with respect to inquiries and examinations beginning after December 31, 1984."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7605 of this title.

§ 7612. Cross references

(a) Inspection of books, papers, records, or other data

For inspection of books, papers, records, or other data in the case of—

(1) Wagering, see section 4423.

(2) Alcohol, tobacco, and firearms taxes, see subtitle E.

(b) Search warrants

For provisions relating to—

(1) Searches and seizures, see Rule 41 of the Federal Rules of Criminal Procedure.

(2) Issuance of search warrants with respect to subtitle E, see section 5557.

(3) Search warrants with respect to property used in violation of the internal revenue laws, see section 7302.

(Aug. 16, 1954, ch. 736, 68A Stat. 903, § 7607; renumbered § 7608, July 18, 1956, ch. 629, title I, § 104(a), 70 Stat. 570; renumbered § 7609, and amended Sept. 2, 1958, Pub. L. 85-859, title II, § 204(14), (15), 72 Stat. 1429, 1430; Oct. 27, 1970, Pub. L. 91-513, title III, § 1102(h), 84 Stat. 1293; renumbered § 7611, and amended Oct. 4, 1976, Pub. L. 94-455, title XII, § 1205(a), title XIX, § 1904(b)(7)(D), (9)(E), 90 Stat. 1699, 1815, 1816; renumbered § 7612, July 18, 1984, Pub. L. 98-369, div. A, title X, § 1033(a), 98 Stat. 1034.)

AMENDMENTS

1976—Subsec. (a). Pub. L. 94-455, § 1904(b)(7)(D), (9)(E), struck out pars. (1) and (2) relating to cross references to wholesale dealers in oleomargarine and wholesale dealers in process or renovated butter or adulterated butter, respectively, and redesignated pars. (5) and (6) as (1) and (2), respectively.

1970—Subsec. (a). Pub. L. 91-513 struck out pars. (3) and (4) which related to opium, opiates, and coca leaves and to marihuana, respectively, and which made reference to sections 4702(a), 4705, 4721, and 4773, and to sections 4742, 4753(b), and 4773, respectively.

1958—Subsec. (a)(6). Pub. L. 85-859, § 204(15), added par. (6).

Subsec. (b)(2). Pub. L. 85-859, § 204(15), substituted "with respect to subtitle E, see section 5557" for "in connection with industrial alcohol, etc., see sections 5314 and 7302".

Subsec. (b)(3). Pub. L. 85-859, § 204(15), added par. (3).

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[1] So in original. Probably should be followed by a period.

[2] So in original. Probably should be "this".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-513 effective on the first day of the seventh calendar month that begins after Oct. 26, 1970, see section 1105(a) of Pub. L. 91-513, set out as an Effective Date note under section 951 of Title 21, Food and Drugs.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-859 effective Sept. 3, 1958, see section 210(a)(1) of Pub. L. 85-859, set out as an Effective Date note under section 5001 of this title.

SAVINGS PROVISION

Prosecutions for any violation of law occurring, and civil seizures or forfeitures and injunctive proceedings commenced, prior to the effective date of amendment of this section by section 1102 of Pub. L. 91-513 not to be affected or abated by reason thereof, see section 1103 of Pub. L. 91-513, set out as a note under sections 171 to 174 of Title 21, Food and Drugs.

Subchapter D—Possessions

§ 7651. Administration and collection of taxes in possessions

Except as otherwise provided in this subchapter, and except as otherwise provided in section 28(a) of the Revised Organic Act of the Virgin Islands and section 30 of the Organic Act of Guam (relating to the covering of the proceeds of certain taxes into the treasuries of the Virgin Islands and Guam, respectively)—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Virgin Islands

[*See main edition for text of* (*A*)]

(B) For purposes of this title (other than section 881(b)(1) or subpart C of part III of subchapter N of chapter 1), section 28(a) of the Revised Organic Act of the Virgin Islands shall be effective as if such section had been enacted subsequent to the enactment of this title.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 130(c), title VIII, § 801(d)(9), 98 Stat. 661, 997.)

AMENDMENTS

1984—Par. (5)(B). Pub. L. 98-369, § 801(d)(9), inserted "or subpart C of part III of subchapter N of chapter 1".

Pub. L. 98-369, § 130(c), inserted "(other than section 881(b)(1))".

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 130(c) of Pub. L. 98-369 applicable to payments made after Mar. 1, 1984, in taxable years ending after such date, see section 130(d) of Pub. L. 98-369, set out as a note under section 881 of this title.

Amendment by section 801(d)(9) of Pub. L. 98-369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98-369, set out as an Effective Date note under section 921 of this title.

§ 7652. Shipments to the United States

[*See main edition for text of* (*a*)]

(b) Virgin Islands

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Disposition of internal revenue collections

Beginning with the calendar quarter ending September 30, 1975, and quarterly thereafter, the Secretary shall determine the amount of all taxes imposed by, and collected during the quarter under, the internal revenue laws of the United States on articles produced in the Virgin Islands and transported to the United States. The amount so determined less 1 percent and less the estimated amount of refunds or credits shall be subject to disposition as follows:

(A) There shall be transferred and paid over, as soon as practicable after the close of the quarter, to the Government of the Virgin Islands from the amounts so determined a sum equal to the total amount of the revenue collected by the Government of the Virgin Islands during the quarter, as certified by the Government Comptroller of the Virgin Islands. The moneys so transferred and paid over shall constitute a separate fund in the treasury of the Virgin Islands and may be expended as the legislature may determine.

(B) Any amounts remaining shall be deposited in the Treasury of the United States as miscellaneous receipts.

If at the end of any fiscal year the total of the Federal contribution made under subparagraph (A) with respect to the four calendar quarters immediately preceding the beginning of that fiscal year has not been obligated or expended for an approved purpose, the balance shall continue available for expenditure during any succeeding fiscal year, but only for emergency relief purposes and essential public projects. The aggregate amount of moneys available for expenditure for emergency relief purposes and essential public projects only shall not exceed the sum of $5,000,000 at the end of any fiscal year. Any unobligated or unexpended balance of the Federal contribution remaining at the end of a fiscal year which would cause the moneys available for emergency relief purposes and essential public projects only to exceed the sum of $5,000,000 shall thereupon be transferred and paid over to the Treasury of the United States as miscellaneous receipts.

(c) Articles containing distilled spirits

For purposes of subsections (a)(3) and (b)(3), any article containing distilled spirits shall in no event be treated as produced in Puerto Rico or the Virgin Islands unless at least 92 percent of the alcoholic content in such article is attributable to rum.

(d) Articles other than articles containing distilled spirits

For purposes of subsections (a)(3) and (b)(3)—

(1) Value added requirement for Puerto Rico

Any article, other than an article containing distilled spirits, shall in no event be treated as produced in Puerto Rico unless the sum of—

(A) the cost or value of the materials produced in Puerto Rico, plus

(B) the direct costs of processing operations performed in Puerto Rico,

equals or exceeds 50 percent of the value of such article as of the time it is brought into the United States.

(2) Prohibition of Federal excise tax subsidies

(A) In general

No amount shall be transferred under subsection (a)(3) or (b)(3) in respect of taxes imposed on any article, other than an article containing distilled spirits, if the Secretary determines that a Federal excise tax subsidy was provided by Puerto Rico or the Virgin Islands (as the case may be) with respect to such article.

(B) Federal excise tax subsidy

For purposes of this paragraph, the term "Federal excise tax subsidy" means any subsidy—

(i) of a kind different from, or

(ii) in an amount per value or volume of production greater than,

the subsidy which Puerto Rico or the Virgin Islands offers generally to industries producing articles not subject to Federal excise taxes.

(3) Direct costs of processing operations

For purposes of this subsection, the term "direct cost of processing operations" has the same meaning as when used in section 213 of the Caribbean Basin Economic Recovery Act.

(e) Shipments of rum to the United States

(1) Excise taxes on rum covered into treasuries of Puerto Rico and Virgin Islands

All taxes collected under section 5001(a)(1) on rum imported into the United States (less the estimated amount necessary for payment of refunds and drawbacks) shall be covered into the treasuries of Puerto Rico and the Virgin Islands.

(2) Secretary prescribes formula

The Secretary shall, from time to time, prescribe by regulation a formula for the division of such tax collections between Puerto Rico and the Virgin Islands and the timing and methods for transferring such tax collections.

(3) Rum defined

For purposes of this subsection, the term "rum" means any article classified under item 169.13 or 169.14 of the Tariff Schedules of the United States (19 U.S.C. 1202).

(4) Coordination with subsections (a) and (b)

Paragraph (1) shall not apply with respect to any rum subject to tax under subsection (a) or (b).

(f) Limitation on cover over of tax on distilled spirits

For purposes of this section, with respect to taxes imposed under section 5001 or this section on distilled spirits, the amount covered into the treasuries of Puerto Rico and the Virgin Islands shall not exceed the lesser of the rate of—

(1) $10.50, or

(2) the tax imposed under section 5001(a)(1), on each proof gallon.

(As amended Aug. 5, 1983, Pub. L. 98-67, title II, § 221(a), 97 Stat. 395; Dec. 8, 1983, Pub. L. 98-213, § 5(c), 97 Stat. 1460; July 18, 1984, Pub. L. 98-369, div. B, title VI, §§ 2681(a), 2682(a), 98 Stat. 1172, 1474.)

REFERENCES IN TEXT

Section 213 of the Caribbean Basin Economic Recovery Act, referred to in subsec. (d)(3), is classified to section 2703 of Title 19, Customs Duties.

The Tariff Schedules of the United States (19 U.S.C. 1202), referred to in subsec. (e)(3), are not set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of Title 19.

AMENDMENTS

1984—Subsecs. (c)-(e). Pub. L. 98-369, § 2681(a), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

Subsec. (f). Pub. L. 98-369, § 2682(a), added subsec. (f).

1983—Subsec. (b)(3). Pub. L. 98-213, § 5(c), amended the language of Pub. L. 94-455, § 1906(a)(55). See 1976 Amendment note below.

Subsec. (c). Pub. L. 98-67 added subsec. (c).

1976—Subsec. (a)(2). Pub. L. 94-455, § 1906(b)(13)(A), struck out "or his delegate" after "Secretary".

Subsec. (b)(3). Pub. L. 94-455, § 1906(b)(13)(A), in provisions following subpar. (B), struck out "or his delegate" after "Secretary".

Pub. L. 94-455, § 1906(a)(55)(B), as amended by Pub. L. 98-213, § 5(c)(1), in provisions following subpar. (B), substituted "emergency relief purposes and essential public projects" for "emergency relief purposes and essential public projects, with the prior approval of the President or his designated representative". Prior to amendment by Pub. L. 98-213, the latter phrase had been substituted for "approved emergency relief purposes and essential public projects as provided in subparagraph (B)".

Pub. L. 94-455, § 1906(a)(55)(C), in provisions following subpar. (B), struck out "including payments under subparagraph (B)" after "public projects only".

Subsec. (b)(3)(A). Pub. L. 94-455, § 1906(a)(55)(D), as added by Pub. L. 98-213, § 5(c)(2), struck out proviso after "determine" requiring the approval of the President or his designated representative before such moneys may be obligated or expended.

Subsec. (b)(3)(B), (C). Pub. L. 94-455, § 1906(a)(55)(A), redesignated subpar. (C) as (B). Former subpar. (B) relating to disposition of internal revenue collections in Virgin Islands for fiscal years ending June 30, 1955 and 1956 was struck out.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 2681(b) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsection (a) [amending this section] shall apply with respect to articles brought into the United States on or after March 1, 1984.

"(2) EXCEPTION FOR PUERTO RICO FOR PERIODS BEFORE JANUARY 1, 1985.—

"(A) IN GENERAL.—Subject to the limitations of subparagraphs (B) and (C), the amendments made by subsection (a) [amending this section] shall not apply with respect to articles containing distilled spirits brought into the United States from Puerto Rico after February 29, 1984, and before January 1, 1985.

"(B) $130,000,000 LIMITATION.—In the case of such articles brought into the United States after February 29, 1984, and before July 1, 1984, the aggregate amount payable to Puerto Rico by reason of subparagraph (A) shall not exceed the excess of—

"(i) $130,000,000, over

"(ii) the aggregate amount payable to Puerto Rico under section 7652(a) of the Internal Revenue Code of 1954 with respect to such articles which were brought into the United States after June 30, 1983, and before March 1, 1984, and which would not meet the requirements of section 7652(c) of such Code.

"(C) $75,000,000 limitation.—The aggregate amount payable to Puerto Rico by reason of subparagraph (A) shall not exceed $75,000,000 in the case of articles—

"(i) brought into the United States after June 30, 1984, and before January 1, 1985,

"(ii) which would not meet the requirements of section 7652(c) of such Code,

"(iii) which have been redistilled in Puerto Rico, and

"(iv) which do not contain distilled spirits derived from cane.

"(3) Limitation on incentive payments to United States distillers.—

"(A) In general.—In the case of articles to which this paragraph applies, the aggregate amount of incentive payments paid to any United States distiller with respect to such articles shall not exceed the limitation described in subparagraph (C).

"(B) Articles to which paragraph applies.—This paragraph shall apply to any article containing distilled spirits described in clauses (i) through (iv) of paragraph (2)(C).

"(C) Limitation.—

"(i) In general.—The limitation described in this subparagraph is $1,500,000.

"(ii) Special rule.—The limitation described in this subparagraph shall be zero with respect to any distiller who was not entitled to or receiving incentive payments as of March 1, 1984.

"(D) Payments in excess of limitation.—If any United States distiller receives any incentive payment with respect to articles to which this paragraph applies in excess of the limitation described in subparagraph (C), such distiller shall pay to the United States the total amount of such incentive payments with respect to such articles in the same manner, and subject to the same penalties, as if such amount were tax due and payable under section 5001 of such Code on the date such payments were received.

"(E) Incentive payments.—

"(i) In general.—For purposes of this paragraph, the term 'incentive payment' means any payment made directly or indirectly by the commonwealth of Puerto Rico to any United States distiller as an incentive to engage in redistillation operations.

"(ii) Transportation payments excluded.—Such term shall not include any payment of a direct cost of transportation to or from Puerto Rico with respect to any article to which this paragraph applies."

Section 2682(b) of Pub. L. 98-369 provided that "The amendment made by this section [enacting subsec. (f) of this section] shall apply to articles containing distilled spirits brought into the United States after September 30, 1985."

Effective Date of 1983 Amendment

Section 221(b) of Pub. L. 98-67 provided that: "The amendment made by subsection (a) [enacting subsec. (c) of this section] shall apply to articles imported into the United States after June 30, 1983."

Section Referred to in Other Sections

This section is referred to in sections 4612, 4662, 5001, 5008, 5010, 5061, 5314, 5702, 5703, 5705, 7809 of this title; title 48 sections 1574a, 1574b, 1574c, 1644.

§ 7654. Coordination of United States and Guam individual income taxes

[*See main edition for text*]

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, § 102(a), 97 Stat. 369.)

Amendments

1983—Subsec. (d). Pub. L. 98-67 repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

CHAPTER 79—DEFINITIONS

Sec.	
7702.	Life insurance contract defined.

Amendments

1984—Pub. L. 98-369, div. A, title II, § 221(c), July 18, 1984, 98 Stat. 772, added item 7702.

§ 7701. Definitions

(a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

[*See main edition for text of* (*1*) *to* (*15*)]

(16) Withholding agent

The term "withholding agent" means any person required to deduct and withhold any tax under the provisions of section 1441, 1442, 1443, or 1461.

(17) Husband and wife

As used in sections 152(b)(4) and 682, if the husband and wife therein referred to are divorced, wherever appropriate to the meaning of such sections, the term "wife" shall be read "former wife" and the term "husband" shall be read "former husband"; and, if the payments described in such sections are made by or on behalf of the wife or former wife to the husband or former husband instead of vice versa, wherever appropriate to the meaning of such sections, the term "husband" shall be read "wife" and the term "wife" shall be read "husband."

[*See main edition for text of* (*18*) *to* (*32*)]

(33) Regulated public utility

The term "regulated public utility" means—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) A corporation engaged in the furnishing or sale of transportation as a common carrier by air, subject to the jurisdiction of the Secretary of Transportation.

[*See main edition for text of* (*F*)]

(G) A railroad corporation subject to subchapter I of chapter 105 of title 49, if (i) substantially all of its railroad properties have been leased to another such railroad corporation or corporations by an agreement or agreements entered into before January 1, 1954, (ii) each lease is for a term of more than 20 years, and (iii) at least 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from such leases and from sources described in subparagraphs (A) through (F), inclusive. For purposes of the preceding sentence, an agreement for lease of railroad properties entered into before January 1, 1954, shall be considered to be a lease including such term as the total number of years of such agreement may, unless sooner terminated, be renewed or continued under the terms of the agreement, and any such renewal or continuance under such agreement shall be considered part of the lease entered into before January 1, 1954.

[*See main edition for text of* (*H*)]

The term "regulated public utility" does not (except as provided in subparagraphs (G) and (H)) include a corporation described in subparagraphs (A) through (F), inclusive, unless 80 percent or more of its gross income (computed without regard to dividends and capital gains and losses) for the taxable year is derived from sources described in subparagraphs (A) through (F), inclusive. If the taxpayer establishes to the satisfaction of the Secretary that (i) its revenue from regulated rates described in subparagraph (A) or (D) and its revenue derived from unregulated rates are derived from the operation of a single interconnected and coordinated system or from the operation of more than one such system, and (ii) the unregulated rates have been and are substantially as favorable to users and consumers as are the regulated rates, then such revenue from such unregulated rates shall be considered, for purposes of the preceding sentence, as income derived from sources described in subparagraph (A) or (D).

[(34) Repealed. Pub. L. 98-369, div. A, title IV, § 4112(b)(11), July 18, 1984, 98 Stat. 792]

[*See main edition for text of* (*35*) *and* (*36*)]

(37) Individual retirement plan

The term "individual retirement plan" means—

(A) an individual retirement account described in section 408(a), and

(B) an individual retirement annuity described in section 408(b).

[(C) Repealed. Pub. L. 98-369, div. A, title IV, § 491(d)(53), July 18, 1984, 98 Stat. 852.]

[*See main edition for text of* (*38*) *to* (*40*)]

(41) TIN

The term "TIN" means the identifying number assigned to a person under section 6109.

(42) Substituted basis property

The term "substituted basis property" means property which is—

(A) transferred basis property, or

(B) exchanged basis property.

(43) Transferred basis property

The term "transferred basis property" means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to the basis in the hands of the donor, grantor, or other transferor.

(44) Exchanged basis property

The term "exchanged basis property" means property having a basis determined under any provision of subtitle A (or under any corresponding provision of prior income tax law) providing that the basis shall be determined in whole or in part by reference to other property held at any time by the person for whom the basis is to be determined.

(45) Nonrecognition transaction

The term "nonrecognition transaction" means any disposition of property in a transaction in which gain or loss is not recognized in whole or in part for purposes of subtitle A.

(46) Determination of whether there is a collective bargaining agreement

In determining whether there is a collective bargaining agreement between employee representatives and 1 or more employers, the term "employee representatives" shall not include any organization more than one-half of the members of which are employees who are owners, officers, or executives of the employer.

(b) Definition of resident alien and nonresident alien

(1) In general

For purposes of this title (other than subtitle B)—

(A) Resident alien

An alien individual shall be treated as a resident of the United States with respect to any calendar year if (and only if) such individual meets the requirements of clause (i) or (ii):

(i) Lawfully admitted for permanent residence

Such individual is a lawful permanent resident of the United States at any time during such calendar year.

(ii) Substantial presence test

Such individual meets the substantial presence test of paragraph (3).

(B) Nonresident alien

An individual is a nonresident alien if such individual is neither a citizen of the United States nor a resident of the United States (within the meaning of subparagraph (A)).

(2) Special rules for first and last year of residency

(A) First year of residency

(i) In general

If an alien individual is a resident of the United States under paragraph (1)(A) with respect to any calendar year, but was not a resident of the United States at any time during the preceding calendar year, such alien individual shall be treated as a resident of the United States only for the portion of such calendar year which begins on the residency starting date.

(ii) Residency starting date for individuals lawfully admitted for permanent residence

In the case of an individual who is a lawfully permanent resident of the United States at any time during the calendar year, but does not meet the substantial presence test of paragraph (3), the residency starting date shall be the first day in such calendar year on which he was present in the United States while a lawful permanent resident of the United States.

(iii) Residency starting date for individuals meeting substantial presence test

In the case of an individual who meets the substantial presence test of paragraph (3) with respect to any calendar year, the residency starting date shall be the first day during such calendar year on which the individual is present in the United States.

(B) Last year of residency

An alien individual shall not be treated as a resident of the United States during a portion of any calendar year if—

(i) such portion is after the last day in such calendar year on which the individual was present in the United States (or, in the case of an individual described in paragraph (1)(A)(i), the last day on which he was so described),

(ii) during such portion the individual has a closer connection to a foreign country than to the United States, and

(iii) the individual is not a resident of the United States at any time during the next calendar year.

(C) Certain nominal presence disregarded

(i) In general

For purposes of subparagraphs (A)(iii) and (B), an individual shall not be treated as present in the United States during any period for which the individual establishes that he has a closer connection to a foreign country than to the United States.

(ii) Not more than 10 days disregarded

Clause (i) shall not apply to more than 10 days on which the individual is present in the United States.

(3) Substantial presence test

(A) In general

Except as otherwise provided in this paragraph, an individual meets the substantial presence test of this paragraph with respect to any calendar year (hereinafter in this subsection referred to as the "current year") if—

(i) such individual was present in the United States on at least 31 days during the calendar year, and

(ii) the sum of the number of days on which such individual was present in the United States during the current year and the 2 preceding calendar years (when multiplied by the applicable multiplier determined under the following table) equals or exceeds 183 days:

In the case of days in:	The applicable multiplier is:
Current year	1
1st preceding year	⅓
2nd preceding year	⅙

(B) Exception where individual is present in the United States during less than one-half of current year and closer connection to foreign country is established

An individual shall not be treated as meeting the substantial presence test of this paragraph with respect to any current year if—

(i) such individual is present in the United States on fewer than 183 days during the current year, and

(ii) it is established that for the current year such individual has a tax home (as defined in section 911(d)(3) without regard to the second sentence thereof) in a foreign country and has a closer connection to such foreign country than to the United States.

(C) Subparagraph (B) not to apply in certain cases

Subparagraph (B) shall not apply to any individual with respect to any current year if at any time during such year—

(i) such individual had an application for adjustment of status pending, or

(ii) such individual took other steps to apply for status as a lawful permanent resident of the United States.

(D) Exception for exempt individuals or for certain medical conditions

An individual shall not be treated as being present in the United States on any day if—

(i) such individual is an exempt individual for such day, or

(ii) such individual was unable to leave the United States on such day because of a medical condition which arose while such individual was present in the United States.

(4) Exempt individual defined

For purposes of this subsection—

(A) In general

An individual is an exempt individual for any day if, for such day, such individual is—

(i) a foreign government-related individual,

(ii) a teacher or trainee, or

(iii) a student.

(B) Foreign government-related individual

The term "foreign government-related individual" means any individual temporarily present in the United States by reason of—

(i) diplomatic status, or a visa which the Secretary (after consultation with the Secretary of State) determines represents full-time diplomatic or consular status for purposes of this subsection,

(ii) being a full-time employee of an international organization, or

(iii) being a member of the immediate family of an individual described in clause (i) or (ii).

(C) Teacher or trainee

The term "teacher or trainee" means any individual—

(i) who is temporarily present in the United States under subparagraph (J) of section 101(15) of the Immigration and Nationality Act (other than as a student), and

(ii) who substantially complies with the requirements for being so present.

(D) Student

The term "student" means any individual—

(i) who is temporarily present in the United States—

(I) under subparagraph (F) of section 101(15) of the Immigration and Nationality Act, or

(II) as a student under subparagraph (J) of such section 101(15), and

(ii) who substantially complies with the requirements for being so present.

(E) Special rules for teachers, trainees, and students

(i) Limitation on teachers and trainees

An individual shall not be treated as an exempt individual by reason of clause (ii) of subparagraph (A) for the current year if, for any 2 calendar years during the preceeding[1] 6 calendar years, such person was an exempt person under clause (ii) or (iii) of subparagraph (A).

(ii) Limitation on students

For any calendar year after the 5th calendar year for which an individual was an exempt individual under clause (ii) or (iii) of subparagraph (A), such individual shall not be treated as an exempt individual by reason of clause (iii) of subparagraph (A), unless such individual establishes to the satisfaction of the Secretary that such individual does not intend to permanently reside in the United States and that such individual meets the requirements of subparagraph (D)(ii).

(5) Lawful permanent resident

For purposes of this subsection, an individual is a lawful permanent resident of the United States at any time if—

(A) such individual has the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, and

(B) such status has not been revoked (and has not been administratively or judicially determined to have been abandoned).

(6) Presence in the United States

For purposes of this subsection—

(A) In general

Except as provided in subparagraph (B) or (C), an individual shall be treated as present in the United States on any day if such individual is physically present in the United States at any time during such day.

(B) Commuters from Canada or Mexico

If an individual regularly commutes to employment (or self-employment) in the United States from a place of residence in Canada or Mexico, such individual shall not be treated as present in the United States on any day during which he so commutes.

(C) Transit between 2 foreign points

If an individual, who is in transit between 2 points outside the United States, is physically present in the United States for less than 24 hours, such individual shall not be treated as present in the United States on any day during such transit.

(7) Annual statements

The Secretary may prescribe regulations under which an individual who (but for subparagraph (B) or (D) of paragraph (3)) would meet the substantial presence test of paragraph (3) is required to submit an annual statement setting forth the basis on which such individual claims the benefits of subparagraph (B) or (D) of paragraph (3), as the case may be.

(8) Taxable year

(A) In general

For purposes of this title, an alien individual who has not established a taxable year for any prior period shall be treated as having a taxable year which is the calendar year.

(B) Fiscal year taxpayer

If—

(i) an individual is treated under paragraph (1) as a resident of the United States for any calendar year, and

(ii) after the application of subparagraph (A), such individual has a taxable year other than a calendar year,

he shall be treated as a resident of the United States with respect to any portion of a taxable year which is within such calendar year.

(9) Coordination with section 877

If—

(A) an alien individual was treated as a resident of the United States during any period which includes at least 3 consecutive calendar years (hereinafter referred to as the "initial residency period"), and

(B) such individual ceases to be treated as a resident of the United States but subsequently becomes a resident of the United States before the close of the 3rd calendar year beginning after the close of the initial residency period,

such individual shall be taxable for the period after the close of the initial residency period and before the day on which he subsequently became a resident of the United States in the manner provided in section 877(b). The preceding sentence shall apply only if the tax imposed pursuant to section 877(b) exceeds the tax which, without regard to this paragraph, is imposed pursuant to section 871.

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[1] So in original. Probably should be "preceding".

(10) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection.

(c) Includes and including

The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(d) Commonwealth of Puerto Rico

Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(e) Treatment of certain contracts for providing services, etc.

For purposes of chapter 1—

(1) In general

A contract which purports to be a service contract shall be treated as a lease of property if such contract is properly treated as a lease of property, taking into account all relevant factors including whether or not—

(A) the service recipient is in physical possession of the property,

(B) the service recipient controls the property,

(C) the service recipient has a significant economic or possessory interest in the property,

(D) the service provider does not bear any risk of substantially diminished receipts or substantially increased expenditures if there is nonperformance under the contract,

(E) the service provider does not use the property concurrently to provide significant services to entities unrelated to the service recipient, and

(F) the total contract price does not substantially exceed the rental value of the property for the contract period.

(2) Other arrangements

An arrangement (including a partnership or other pass-thru entity) which is not described in paragraph (1) shall be treated as a lease if such arrangement is properly treated as a lease, taking into account all relevant factors including factors similar to those set forth in paragraph (1).

(3) Special rules for contracts or arrangements involving solid waste disposal, energy, and clean water facilities

(A) In general

Notwithstanding paragraphs (1) and (2), and except as provided in paragraph (4), any contract or arrangement between a service provider and a service recipient—

(i) with respect to—

(I) the operation of a qualified solid waste disposal facility,

(II) the sale to the service recipient of electrical or thermal energy produced at a cogeneration or alternative energy facility, or

(III) the operation of a water treatment works facility, and

(ii) which purports to be a service contract,

shall be treated as a service contract.

(B) Qualified solid waste disposal facility

For purposes of subparagraph (A), the term "qualified solid waste disposal facility" means any facility if such facility provides solid waste disposal services for residents of part or all of 1 or more governmental units and substantially all of the solid waste processed at such facility is collected from the general public.

(C) Cogeneration facility

For purposes of subparagraph (A), the term "cogeneration facility" means a facility which uses the same energy source for the sequential generation of electrical or mechanical power in combination with steam, heat, or other forms of useful energy.

(D) Alternative energy facility

For purposes of subparagraph (A), the term "alternative energy facility" means a facility for producing electrical or thermal energy if the primary energy source for the facility is not oil, natural gas, coal, or nuclear power.

(E) Water treatment works facility

For purposes of subparagraph (A), the term "water treatment works facility" means any treatment works within the meaning of section 212(2) of the Federal Water Pollution Control Act.

(4) Paragraph (3) not to apply in certain cases

(A) In general

Paragraph (3) shall not apply to any qualified solid waste disposal facility, cogeneration facility, alternative energy facility, or water treatment works facility used under a contract or arrangement if—

(i) the service recipient (or a related entity) operates such facility,

(ii) the service recipient (or a related entity) bears any significant financial burden if there is nonperformance under the contract or arrangement (other than for reasons beyond the control of the service provider),

(iii) the service recipient (or a related entity) receives any significant financial benefit if the operating costs of such facility are less than the standards of performance or operation under the contract or arrangement, or

(iv) the service recipient (or a related entity) has an option to purchase, or may be required to purchase, all or a part of such facility at a fixed and determinable price (other than for fair market value).

(B) Special rules for application of subparagraph (A) with respect to certain rights and allocations under the contract

For purposes of subparagraph (A), there shall not be taken into account—

(i) any right of a service recipient to inspect any facility, to exercise any sovereign power the service recipient may possess, or to act in the event of a breach of contract by the service provider, or

(ii) any allocation of any financial burden or benefits in the event of any change in any law.

(C) Special rules for application of subparagraph (A) in the case of certain events

(i) Temporary shut-downs, etc.

For purposes of clause (ii) of subparagraph (A), there shall not be taken into account any temporary shut-down of the facility for repairs, maintenance, or capital improvements, or any financial burden caused by the bankruptcy or similar financial difficulty of the service provider.

(ii) Reduced costs

For purposes of clause (iii) of subparagraph (A), there shall not be taken into account any significant financial benefit merely because payments by the service recipient under the contract or arrangement are decreased by reason of increased production or efficiency or the recovery of energy or other products.

(5) Exception for certain low-income housing

This subsection shall not apply to any low-income housing (within the meaning of section 168(C)(2)(F)) [1] if—

(A) such property is operated by or for an organization described in paragraph (3) or (4) of section 501(c), and

(B) at least 80 percent of the units in such property are leased to low-income tenants (within the meaning of section 167(k)(3)(B)).

(6) Regulations

The Secretary may prescribe such regulations as may be necessary or appropriate to carry out the provisions of this subsection.

(f) Use of related persons or pass-thru entities

The Secretary shall prescribe such regulations as may be necessary or appropriate to prevent the avoidance of those provisions of this title which deal with—

(1) the linking of borrowing to investment, or

(2) diminishing risks,

through the use of related persons, pass-thru entities, or other intermediaries.

(g) Clarification of fair market value in the case of nonrecourse indebtedness

For purposes of subtitle A, in determining the amount of gain or loss (or deemed gain or loss) with respect to any property, the fair market value of such property shall be treated as being not less than the amount of any nonrecourse indebtedness to which such property is subject.

(h) Cross references

(1) Other definitions

For other definitions, see the following sections of Title 1 of the United States Code:

(1) Singular as including plural, section 1.

(2) Plural as including singular, section 1.

(3) Masculine as including feminine, section 1.

(4) Officer, section 1.

(5) Oath as including affirmation, section 1.

(6) County as including parish, section 2.

(7) Vessel as including all means of water transportation, section 3.

(8) Vehicle as including all means of land transportation, section 4.

(9) Company or association as including successors and assigns, section 5.

(2) Effect of cross references

For effect of cross references in this title, see section 7806(a).

(As amended Aug. 5, 1983, Pub. L. 98-67, title I, §§ 102(a), 104(d)(1), 97 Stat. 369, 379; Feb. 14, 1984, Pub. L. 98-216, § 3(c)(2), 98 Stat. 6; July 18, 1984, Pub. L. 98-369, div. A, title I, §§ 31(e), 43(a)(1), 53(c), 75(c), 138(a), title IV, §§ 412(b)(11), 422(d)(3), 474(r)(29)(K), 491(d)(53), title V, § 526(c)(1), 98 Stat. 518, 558, 567, 595, 672, 792, 798, 845, 852, 874; Oct. 4, 1984, Pub. L. 98-443, § 9(q), 98 Stat. 1708.)

REFERENCES IN TEXT

The Intercoastal Shipping Act, 1933, referred to in subsec. (a)(33)(F), is act Mar. 3, 1933, ch. 199, 47 Stat. 1425, as amended, which is classified generally to chapter 23A (§ 843 et seq.) of Title 46, Appendix, Shipping. For complete classification of this Act to the Code, see section 848 of Title 46, Appendix, and Tables.

Section 101(15) of the Immigration and Nationality Act, referred to in subsec. (b)(4)(C)(i), (D)(i), probably means section 101(a)(15) of that Act, which is classified to section 1101(a)(15) of Title 8, Aliens and Nationality.

Section 212(2) of the Federal Water Pollution Control Act, referred to in subsec. (e)(3)(E), is classified to section 1292(2) of Title 33, Navigation and Navigable Waters.

AMENDMENTS

1984—Subsec. (a)(16). Pub. L. 98-369, § 474(r)(29)(K), struck out "1451," after "1443".

Subsec. (a)(17). Pub. L. 98-369, § 422(d)(3), deleted reference to sections 71 and 215.

Subsec. (a)(33)(E). Pub. L. 98-443 substituted "Secretary of Transportation" for "Civil Aeronautics Board".

Subsec. (a)(33)(G). Pub. L. 98-216 substituted "subchapter I of chapter 105 of title 49" for "part I of the Interstate Commerce Act".

Subsec. (a)(34). Pub. L. 98-369, § 412(b)(11), repealed par. (34) which defined estimated income tax in the case of an individual or a corporation as the estimated tax defined in section 6015(d) or 6154(c), respectively.

Subsec. (a)(37)(C). Pub. L. 98-369, § 491(d)(53), struck out subpar. (C) which included a retirement bond described in section 409 within the term "individual plan".

Subsec. (a)(42) to (45). Pub. L. 98-369, § 43(a)(1), added pars. (42) to (45).

Subsec. (a)(46). Pub. L. 98-369, § 526(c)(1), added par. (46).

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[1] So in original. Should be "section 168(c)(2)(F))".

Subsec. (b). Pub. L. 98-369, § 138(a), added subsec. (b). Former subsec. (b), relating to includes and including, redesignated (c).

Subsec. (c). Pub. L. 98-369, § 138(a), redesignated former subsec. (b), relating to includes and including, as (c). Former subsec. (c), relating to Commonwealth of Puerto Rico, redesignated (d).

Subsec. (d). Pub. L. 98-369, § 138(a), redesignated former subsec. (c), relating to Commonwealth of Puerto Rico, as (d). Former subsec. (d), relating to cross references, redesignated (e).

Subsec. (e). Pub. L. 98-369, § 31(e), added subsec. (e). Former subsec. (e), relating to cross references, redesignated (f).

Pub. L. 98-369, § 138(a), redesignated former subsec. (d), relating to cross references, as (e).

Subsec. (f). Pub. L. 98-369, § 53(c), added subsec. (f). Former subsec. (f), relating to cross references, redesignated (g).

Pub. L. 98-369, § 31(e), redesignated former subsec. (e), relating to cross references, as (f).

Subsec. (g). Pub. L. 98-369, § 75(c), added subsec. (g). Former subsec. (g), relating to cross references, redesignated (h).

Pub. L. 98-369, § 53(c), redesignated former subsec. (f), relating to cross references, as (g).

Subsec. (h). Pub. L. 98 369, § 75(c), redesignated former subsec. (g), relating to cross references, as (h).

1983—Subsec. (a)(16). Pub. L. 98-67, § 102(a), repealed amendments made by Pub. L. 97-248. See 1982 Amendment note below.

Subsec. (a)(33)(F). Pub. L. 97-449, § 5(e)(1), substituted "subchapter III of chapter 105 of title 49" for "part III of the Interstate Commerce Act".

Subsec. (a)(33)(H). Pub. L. 97-449, § 5(e)(2), substituted "subchapter I of chapter 105 of title 49" for "part I of the Interstate Commerce Act".

Subsec. (a)(38), (39). Pub. L. 97-448, § 306(b)(3), redesignated par. (38), as added by Pub. L. 97-248, § 336(a), relating to persons residing outside the United States, as (39).

Subsec. (a)(40). Pub. L. 97-473 added par. (40).

Subsec. (a)(41). Pub. L. 98-67, § 104(d)(1), added par. (41).

EFFECTIVE DATE OF 1984 AMENDMENTS

Amendment by Pub. L. 98-443 effective Jan. 1, 1985, see section 9(v) of Pub. L. 98-443, set out as a note under section 5314 of Title 5, Government Organization and Employees.

Enactment of subsec. (e) by section 31(e) of Pub. L. 98-369 effective, except as otherwise provided in section 31(g) of Pub. L. 98-369, as to property placed in service by the taxpayer after May 23, 1983, in taxable years ending after such date and to property placed in service by the taxpayer on or before May 23, 1983, if the lease to the tax-exempt entity is entered into after May 23, 1983, except that in the case of a service contract or other arrangement described in subsec. (e) with respect to which no party is a tax-exempt entity, subsec. (e) shall not apply to (A) such contract or other arrangement if such contract or other arrangement was entered into before Nov. 5, 1983, or (B) any renewal or other extension of such contract or other arrangement pursuant to an option contained in such contract or other arrangement on Nov. 5, 1983, see section 31(g)(1), (13) of Pub. L. 98-369, set out as a note under section 168 of this title.

Amendment by section 43(a)(1) of Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

Enactment of subsec. (f) by section 53(c) of Pub. L. 98-369 effective July 18, 1984, see section 53(e)(3) of Pub. L. 98-369, set out as an Effective Date note under section 1059 of this title.

Amendment by section 75(c) of Pub. L. 98-369 applicable to distributions, sales, and exchanges made after Mar. 31, 1984, in taxable years ending after such date, see section 75(e) of Pub. L. 98-369, set out as an Effective Date note under section 386 of this title.

Section 138(b) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendment made by subsection (a) [amending this section] shall apply to taxable years beginning after December 31, 1984.

"(2) TRANSITIONAL RULE FOR APPLYING SUBSTANTIAL PRESENCE TEST.—

"(A) If an alien individual was not a resident of the United States as of the close of calendar year 1984, the determination of whether such individual meets the substantial presence test of section 7701(b)(3) of the Internal Revenue Code of 1954 (as added by this section) shall be made by only taking into account presence after 1984.

"(B) If an alien individual was a resident of the United States as of the close of calendar year 1984, but was not a resident of the United States as of the close of calendar year 1983, the determination of whether such individual meets such substantial presence test shall be made by only taking into account presence in the United States after 1983.

"(3) TRANSITIONAL RULE FOR APPLYING LAWFUL RESIDENCE TEST.—In the case of any individual who—

"(A) was a lawful permanent resident of the United States (within the meaning of section 7701(b)(5) of the Internal Revenue Code of 1954, as added by this section) throughout calendar year 1984, or

"(B) was present in the United States at any time during 1984 while such individual was a lawful permanent resident of the United States (within the meaning of such section 7701(b)(5)),

for purposes of section 7701(b)(2)(A) of such Code (as so added), such individual shall be treated as a resident of the United States during 1984."

Amendment by section 412(b)(11) of Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

Amendment by section 422(d)(3) of Pub. L. 98-369 applicable with respect to divorce or separation instruments executed after Dec. 31, 1984, or executed before Jan. 1, 1985, but modified on or after Jan. 1, 1985, with express provision for application of amendment to modification, see section 422(e)(1), (2) of Pub. L. 98-369, set out as a note under section 71 of this title.

Amendment by section 474(r)(29)(K) of Pub. L. 98-369 not applicable with respect to obligations issued before Jan. 1, 1984, see section 475(b) of Pub. L. 98-369, set out as a note under section 33 of this title.

Amendment by section 491(d)(53) of Pub. L. 98-369 applicable to obligations issued after Dec. 31, 1983, see section 491(f)(1) of Pub. L. 98-369, set out as a note under section 55 of this title.

Section 526(c)(2) of Pub. L. 98-369 provided that: "The amendment made by this subsection [enacting subsec. (a)(46) of this section] shall take effect on April 1, 1984."

EFFECTIVE DATE OF 1983 AMENDMENTS

Amendment by section 104(d)(1) of Pub. L. 98-67 applicable with respect to payments made after Dec. 31, 1983, see section 110(a) of Pub. L. 98-67, set out as a note under section 31 of this title.

For effective date of amendment by Pub. L. 97-473, see section 204 of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48, 55, 118, 172, 221, 246A, 312, 542, 593, 682, 853, 881, 904, 958, 993, 1246, 1247, 1249, 1313, 1341, 3405, 6038, 6038A, 6046, 6059, 6694, 7213 of this title; title 12 sections 1464, 1730a; title 18 section 3613; title 22 sections 2314, 2755.

§ 7702. Life insurance contract defined

(a) General rule

For purposes of this title, the term "life insurance contract" means any contract which is a life insurance contract under the applicable law, but only if such contract—

(1) meets the cash value accumulation test of subsection (b), or

(2)(A) meets the guideline premium requirements of subsection (c), and

(B) falls within the cash value corridor of subsection (d).

(b) Cash value accumulation test for subsection (a)(1)

(1) In general

A contract meets the cash value accumulation test of this subsection if, by the terms of the contract, the cash surrender value of such contract may not at any time exceed the net single premium which would have to be paid at such time to fund future benefits under the contract.

(2) Rules for applying paragraph (1)

Determinations under paragraph (1) shall be made—

(A) on the basis of interest at the greater of an annual effective rate of 4 percent or the rate or rates guaranteed on issuance of the contract,

(B) on the basis of the rules of subparagraph (B)(i) (and, in the case of qualified additional benefits, subparagraph (B)(ii)) of subsection (c)(3), and

(C) by taking into account under subparagraphs (A) and (C) of subsection (e)(1) only current and future death benefits and qualified additional benefits.

(c) Guideline premium requirements

For purposes of this section—

(1) In general

A contract meets the guideline premium requirements of this subsection if the sum of the premiums paid under such contract does not at any time exceed the guideline premium limitation as of such time.

(2) Guideline premium limitation

The term "guideline premium limitation" means, as of any date, the greater of—

(A) the guideline single premium, or

(B) the sum of the guideline level premiums to such date.

(3) Guideline single premium

(A) In general

The term "guideline single premium" means the premium at issue with respect to future benefits under the contract.

(B) Basis on which determination is made

The determination under subparagraph (A) shall be based on—

(i) the mortality charges specified in the contract (or, if none is specified, the mortality charges used in determining the statutory reserves for such contract),

(ii) any charges (not taken into account under clause (i)) specified in the contract (the amount of any charge not so specified shall be treated as zero), and

(iii) interest at the greater of an annual effective rate of 6 percent or the rate or rates guaranteed on issuance of the contract.

(C) When determination made

Except as provided in subsection (f)(7), the determination under subparagraph (A) shall be made as of the time the contract is issued.

(4) Guideline level premium

The term "guideline level premium" means the level annual amount, payable over a period not ending before the insured attains age 95, computed on the same basis as the guideline single premium, except that paragraph (3)(B)(iii) shall be applied by substituting "4 percent" for "6 percent".

(d) Cash value corridor for purposes of subsection (a)(2)(B)

For purposes of this section—

(1) In general

A contract falls within the cash value corridor of this subsection if the death benefit under the contract at any time is not less than the applicable percentage of the cash surrender value.

(2) Applicable percentage

In the case of an insured with an attained age as of the beginning of the contract year of:		The applicable percentage shall decrease by a ratable portion for each full year:	
More than:	But not more than:	From:	To:
0	40	250	250
40	45	250	215
45	50	215	185
50	55	185	150
55	60	150	130
60	65	130	120
65	70	120	115
70	75	115	105
75	90	105	105
90	95	105	100.

(e) Computational rules

(1) In general

For purposes of this section—

(A) the death benefit (and any qualified additional benefit) shall be deemed not to increase,

(B) the maturity date, including the date on which any benefit described in subparagraph (C) is payable, shall be no earlier than the day on which the insured attains age 95, and no later than the day on which the insured attains age 100, and

(C) the amount of any endowment benefit (or sum of endowment benefits, including any cash surrender value on the maturity date described in subparagraph (B)) shall be deemed not to exceed the least amount payable as a death benefit at any time under the contract.

(2) Limited increases in death benefit permitted

Notwithstanding paragraph (1)(A)—

(A) for purposes of computing the guideline level premium, an increase in the death benefit which is provided in the contract may be taken into account but only to the extent necessary to prevent a decrease in the excess of the death benefit over the cash surrender value of the contract, and

(B) for purposes of the cash value accumulation test, the increase described in subparagraph (A) may be taken into account if the contract will meet such test at all times assuming that the net level reserve (determined as if level annual premiums were paid for the contract over a period not ending before the insured attains age 95) is substituted for the net single premium.

(f) Other definitions and special rules

For purposes of this section—

(1) Premiums paid

(A) In general

The term "premiums paid" means the premiums paid under the contract less amounts (other than amounts includible in gross income) to which section 72(e) applies and less any other amounts received with respect to the contract which are specified in regulations.

(B) Treatment of certain premiums returned to policyholder

If, in order to comply with the requirements of subsection (a)(2)(A), any portion of any premium paid during any contract year is returned by the insurance company (with interest) within 60 days after the end of a contract year, the amount so returned (excluding interest) shall be deemed to reduce the sum of the premiums paid under the contract during such year.

(C) Interest returned includible in gross income

Notwithstanding the provisions of section 72(e), the amount of any interest returned as provided in subparagraph (B) shall be includible in the gross income of the recipient.

(2) Cash values

(A) Cash surrender value

The cash surrender value of any contract shall be its cash value determined without regard to any surrender charge, policy loan, or reasonable termination dividends.

(B) Net surrender value

The net surrender value of any contract shall be determined with regard to surrender charges but without regard to any policy loan.

(3) Death benefit

The term "death benefit" means the amount payable by reason of the death of the insured (determined without regard to any qualified additional benefits).

(4) Future benefits

The term "future benefits" means death benefits and endowment benefits.

(5) Qualified additional benefits

(A) In general

The term "qualified additional benefits" means any—

(i) guaranteed insurability,

(ii) accidental death or disability benefit,

(iii) family term coverage,

(iv) disability waiver benefit, or

(v) other benefit prescribed under regulations.

(B) Treatment of qualified additional benefits

For purposes of this section, qualified additional benefits shall not be treated as future benefits under the contract, but the charges for such benefits shall be treated as future benefits.

(C) Treatment of other additional benefits

In the case of any additional benefit which is not a qualified additional benefit—

(i) such benefit shall not be treated as a future benefit, and

(ii) any charge for such benefit which is not prefunded shall not be treated as a premium.

(6) Premium payments not disqualifying contract

The payment of a premium which would result in the sum of the premiums paid exceeding the guideline premium limitation shall be disregarded for purposes of subsection (a)(2) if the amount of such premium does not exceed the amount necessary to prevent the termination of the contract on or before the end of the contract year (but only if the contract will have no cash surrender value at the end of such extension period).

(7) Adjustments

(A) In general

In the event of a change in the future benefits or any qualified additional benefit (or in any other terms) under the contract which was not reflected in any previous determination made under this section, under regulations prescribed by the Secretary, there shall be proper adjustments in future determinations made under this section.

(B) Certain changes treated as exchange

In the case of any change which reduces the future benefits under the contract, such change shall be treated as an exchange of the contract for another contract.

(8) Correction of errors

If the taxpayer establishes to the satisfaction of the Secretary that—

(A) the requirements described in subsection (a) for any contract year were not satisfied due to reasonable error, and

(B) reasonable steps are being taken to remedy the error,

the Secretary may waive the failure to satisfy such requirements.

(9) Special rule for variable life insurance contracts

In the case of any contract which is a variable contract (as defined in section 817), the determination of whether such contract meets the requirements of subsection (a) shall be made whenever the death benefits under such contract change but not less frequently than once during each 12-month period.

(g) Treatment of contracts which do not meet subsection (a) test

(1) Income inclusion

(A) In general

If at any time any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the policyholder during such year.

(B) Income on the contract

For purposes of this paragraph, the term "income on the contract" means, with respect to any taxable year of the policyholder, the excess of—

(i) the sum of—

(I) the increase in the net surrender value of the contract during the taxable year, and

(II) the cost of life insurance protection provided under the contract during the taxable year, over

(ii) the amount of premiums paid under the contract during the taxable year reduced by any policyholder dividends received during such taxable year.

(C) Contracts which cease to meet definition

If, during any taxable year of the policyholder, a contract which is a life insurance contract under the applicable law ceases to meet the definition of life insurance contract under subsection (a), the income on the contract for all prior taxable years shall be treated as received or accrued during the taxable year in which such cessation occurs.

(D) Cost of life insurance protection

For purposes of this paragraph, the cost of life insurance protection provided under the contract shall be the lesser of—

(i) the cost of individual insurance on the life of the insured as determined on the basis of uniform premiums (computed on the basis of 5-year age brackets) prescribed by the Secretary by regulations, or

(ii) the mortality charge (if any) stated in the contract.

(2) Treatment of amount paid on death of insured

If any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), the excess of the amount paid by the reason of the death of the insured over the net surrender value of the contract shall be deemed to be paid under a life insurance contract for purposes of section 101 and subtitle B.

(3) Contract continues to be treated as insurance contract

If any contract which is a life insurance contract under the applicable law does not meet the definition of life insurance contract under subsection (a), such contract shall, notwithstanding such failure, be treated as an insurance contract for purposes of this title.

(h) Endowment contracts receive same treatment

(1) In general

References in subsections (a) and (g) to a life insurance contract shall be treated as including references to a contract which is an endowment contract under the applicable law.

(2) Definition of endowment contract

For purposes of this title (other than paragraph (1)), the term "endowment contract" means a contract which is an endowment contract under the applicable law and which meets the requirements of subsection (a).

(i) Transitional rule for certain 20-pay contracts

(1) In general

In the case of a qualified 20-pay contract, this section shall be applied by substituting "3 percent" for "4 percent" in subsection (b)(2).

(2) Qualified 20-pay contract

For purposes of paragraph (1), the term "qualified 20-pay contract" means any contract which—

(A) requires at least 20 nondecreasing annual premium payments, and

(B) is issued pursuant to an existing plan of insurance.

(3) Existing plan of insurance

For purposes of this subsection, the term "existing plan of insurance" means, with respect to any contract, any plan of insurance which was filed by the company issuing such contract in 1 or more States before September 28, 1983, and is on file in the appropriate State for such contract.

(j) Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 98-369, div. A, title II, § 221(a), July 18, 1984, 98 Stat. 767.)

EFFECTIVE DATE

Section 221(d) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as otherwise provided in this subsection, the amendments made by this section [enacting this section and amending section 101 of this title and provisions set out as a note under section 101 of this title] shall apply to contracts issued after December 31, 1984, in taxable years ending after such date.

"(2) SPECIAL RULE FOR CERTAIN CONTRACTS ISSUED AFTER JUNE 30, 1984.—

"(A) GENERAL RULE.—Except as otherwise provided in this paragraph, the amendments made by this section shall apply also to any contract issued after June 30, 1984, which provides an increasing death benefit and has premium funding more rapid that [than] 10-year level premium payments.

"(B) EXCEPTION FOR CERTAIN CONTRACTS.—Subparagraph (A) shall not apply to any contract if—

"(i) such contract (whether or not a flexible premium contract) would meet the requirements of section 101(f) of the Internal Revenue Code of 1954.

"(ii) such contract is not a flexible premium life insurance contract (within the meaning of section 101(f) of such Code) and would meet the requirements of section 7702 of such Code determined by—

"(I) substituting '3 percent' for '4 percent' in section 7702(b)(2) of such Code, and

"(II) treating subparagraph (B) of section 7702(e)(1) of such Code as if it read as follows: 'the maturity date shall be the latest maturity date permitted under the contract, but not less than 20 years after the date of issue or (if earlier) age 95', or

"(iii) under such contract—

"(I) the premiums (including any policy fees) will be adjusted from time-to-time to reflect the level amount necessary (but not less than zero) at the time of such adjustment to provide a level death benefit assuming interest crediting and an annual effective interest rate of not less than 3 percent, or

"(II) at the option of the insured, in lieu of an adjustment under subclause (I) there will be a comparable adjustment in the amount of the death benefit.

"(C) CERTAIN CONTRACTS ISSUED BEFORE OCTOBER 1, 1984.—

"(i) IN GENERAL.—Subparagraph (A) shall be applied by substituting 'September 30, 1984' for 'June 30, 1984' in clause (i) thereof in the case of a contract—

"(I) which would meet the requirements of section 7702 of such Code if '3 percent' were substituted for '4 percent' in section 7702(b)(2) of such Code, and the rate or rates guaranteed on issuance of the contract were determined without regard to any mortality charges, and

"(II) the cash surrender value of which does not at any time exceed the net single premium which would have to be paid at such time to fund future benefits under the contract.

"(ii) DEFINITIONS.—For purposes of clause (i)—

"(I) IN GENERAL.—Except as provided in subclause (II), terms used in clause (i) shall have the same meanings as when used in section 7702 of such Code.

"(II) NET SINGLE PREMIUM.—The term 'net single premium' shall be determined by substituting '3 percent' for '4 percent' in section 7702(b)(2) of such Code, by using the 1958 standard ordinary mortality and morbidity tables of the National Association of Insurance Commissioners, and by assuming a level death benefit.

"(3) TRANSITIONAL RULE FOR CERTAIN EXISTING PLANS OF INSURANCE.—A plan of insurance on file in 1 or more States before September 28, 1983, shall be treated for purposes of section 7702(i)(3) of such Code as a plan of insurance on file in 1 or more States before September 28, 1983, without regard to whether such plan of insurance is modified after September 28, 1983, to permit the crediting of excess interest or similar amounts annually and not monthly under contracts issued pursuant to such plan of insurance.

"(4) EXTENSION OF FLEXIBLE PREMIUM CONTRACT PROVISIONS.—The amendments made by subsection (b) [amending section 101 of this title and provisions set out as a note under section 101 of this title] shall take effect on January 1, 1984.

"(5) SPECIAL RULE FOR MASTER CONTRACT.—For purposes of this subsection, in the case of a master contract, the date taken into account with respect to any insured shall be the first date on which such insured is covered under such contract."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 817 of this title.

CHAPTER 80—GENERAL RULES

Subchapter A—Application of Internal Revenue Laws

§ 7805. Rules and regulations

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Manner of making elections prescribed by Secretary

Except to the extent otherwise provided by this title, any election under this title shall be made at such time and in such manner as the Secretary shall by regulations or forms prescribe.

(As amended July 18, 1984, Pub. L. 98-369, div. A, title I, § 43(b), 98 Stat. 558.)

AMENDMENTS

1984—Pub. L. 98-369 added subsec. (d).

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to taxable years ending after July 18, 1984, see section 44 of Pub. L. 98-369, set out as an Effective Date note under section 1271 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 section 3613.

§ 7810. Revolving fund for redemption of real property

(a) Establishment of fund

There is established a revolving fund, under the control of the Secretary, which shall be available without fiscal year limitation for all expenses necessary for the redemption (by the Secretary) of real property as provided in section 7425(d) and section 2410 of title 28 of the United States Code. There are authorized to be appropriated from time to time such sums (not to exceed $10,000,000 in the aggregate) as may be necessary to carry out the purposes of this section.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 98-369, div. A, title IV, § 443, July 18, 1984, 98 Stat. 816.)

AMENDMENTS

1984—Subsec. (a). Pub. L. 98-369 substituted "$10,000,000" for "$1,000,000".

Subchapter B—Effective Date and Related Provisions

§ 7851. Applicability of revenue laws

REFERENCES IN TEXT

Section 6416(b)(2)(H), referred to in subsec. (a)(4), was repealed by Pub. L. 98-369, div. A, title VII, § 735(c)(13)(B), July 18, 1984, 98 Stat. 984.

§ 7852. Other applicable rules

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 269B of this title; title 42 section 1307.

Subchapter C—Provisions Affecting More Than One Subtitle

Sec.
7872. Treatment of loans with below-market interest rates.

Amendments

1984—Pub. L. 98-369, div. A, title I, § 172(b), July 18, 1984, 98 Stat. 703, added item 7872.

§ 7871. Indian tribal governments treated as States for certain purposes

(a) General rule

An Indian tribal government shall be treated as a State—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) for purposes of—

(A) section 24(c)(4) (defining State for purposes of credit for contribution to candidates for public offices),

(B) section 105(e) (relating to accident and health plans),

(C) section 117(b)(2)(A) (relating to scholarships and fellowship grants),

(D) section 162(e) (relating to appearances, etc., with respect to legislation),

(E) section 403(b)(1)(A)(ii) (relating to the taxation of contributions of certain employers for employee annuities), and

(F) section 454(b)(2) (relating to discount obligations).[1]

(7) for purposes of—

(A) chapter 41 (relating to tax on excess expenditures to influence legislation), and

(B) subchapter A of chapter 42 (relating to private foundations).

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 98-21, title I, § 122(c)(6), Apr. 20, 1983, 97 Stat. 87; Pub. L. 98-369, div. A, title IV, § 474(r)(41), title X, § 1065(b), July 18, 1984, 98 Stat. 847, 1048.)

Amendments

1984—Subsec. (a)(6)(A). Pub. L. 98-369, § 474(r)(41), substituted "section 24(c)(4)" for "section 41(c)(4)".

Subsec. (a)(6)(B) to (F). Pub. L. 98-369, § 1065(b), which directed the amendment of par. (6) by adding subpars. (B), (D), and (F), and redesignating former subpars. (B) and (C), as (C) and (E), respectively, was executed to par. (6) of subsec. (a) to reflect the probable intent of Congress.

1983—Subsec. (a)(6). Pub. L. 98-21 redesignated subpars. (B) to (D) as (A) to (C), respectively, and struck out former subpar. (A), which had referred to section 37(e)(9)(A) (relating to certain public retirement systems).

Effective Date of 1984 Amendment

Amendment by section 474(r)(41) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Section 1065(c) of Pub. L. 98-369 provided that: "The amendment made by subsection (b) [amending this section] shall apply to taxable years beginning after December 31, 1984."

Effective Date of 1983 Amendment

Amendment by Pub. L. 98-21 applicable to taxable years beginning after Dec. 31, 1983, except that if an individual's annuity starting date was deferred under section 105(d)(6) of this title as in effect on the day before Apr. 20, 1983, such deferral shall end on the first day of such individual's first taxable year beginning after Dec. 31, 1983, see section 122(d) of Pub. L. 98-21, set out as a note under section 22 of this title.

Effective Date

Section 204 of title II of Pub. L. 97-473, as amended by Pub. L. 98-369, div. A, title X, § 1065(a), July 18, 1984, 98 Stat. 1048, provided that: "The amendments made by this title [enacting this section, amending sections 41, 103, 164, 170, 2055, 2106, 2522, 4227, 4484, 6420, 6421, 6424, 6427, and 7701 of this title, and enacting provisions set out as a note under section 1 of this title]—

"(1) insofar as they relate to chapter 1 of the Internal Revenue Code of 1954 [26 U.S.C. 1 et seq.] (other than section 103 thereof), shall apply to taxable years beginning after December 31, 1982,

"(2) insofar as they relate to section 103 of such Code, shall apply to obligations issued after December 31, 1982,

"(3) insofar as they relate to chapter 11 of such Code [26 U.S.C. 2001 et seq.], shall apply to estates of decedents dying after December 31, 1982,

"(4) insofar as they relate to chapter 12 of such Code [26 U.S.C. 2501 et seq.], shall apply to gifts made after December 31, 1982, and

"(5) insofar as they relate to taxes imposed by subtitle D of such Code [26 U.S.C. 4041 et seq.], shall take effect on January 1, 1983."

Section Referred to in Other Sections

This section is referred to in sections 24, 103, 164, 170, 2055, 2106, 2522, 4227, 4484, 6420, 6421, 6427, 7701 of this title.

§ 7872. Treatment of loans with below-market interest rates

(a) Treatment of gift loans and demand loans

(1) In general

For purposes of this title, in the case of any below-market loan to which this section applies and which is a gift loan or a demand loan, the foregone interest shall be treated as—

(A) transferred from the lender to the borrower, and

(B) retransferred by the borrower to the lender as interest.

(2) Time when transfers made

Except as otherwise provided in regulations prescribed by the Secretary, any foregone interest attributable to periods during any calendar year shall be treated as transferred (and retransferred) under paragraph (1) on the last day of such calendar year.

(b) Treatment of other below-market loans

(1) In general

For purposes of this title, in the case of any below-market loan to which this section applies and to which subsection (a)(1) does not apply, the lender shall be treated as having transferred on the date the loan was made (or, if later, on the first day on which this section applies to such loan), and the borrower shall be treated as having received on such date, cash in an amount equal to the excess of—

---

[1] So in original. The period probably should be "; and".

(A) the amount loaned, over

(B) the present value of all payments which are required to be made under the terms of the loan.

(2) Obligation treated as having original issue discount

For purposes of this title—

(A) In general

Any below-market loan to which paragraph (1) applies shall be treated as having original issue discount in an amount equal to the excess described in paragraph (1).

(B) Amount in addition to other original issue discount

Any original issue discount which a loan is treated as having by reason of subparagraph (A) shall be in addition to any other original issue discount on such loan (determined without regard to subparagraph (A)).

(c) Below-market loans to which section applies

(1) In general

Except as otherwise provided in this subsection, this section shall apply to—

(A) Gifts

Any below-market loan which is a gift loan.

(B) Compensation-related loans

Any below-market loan directly or indirectly between—

(i) an employer and an employee, or

(ii) an independent contractor and a person for whom such independent contractor provides services.

(C) Corporation-shareholder loans

Any below-market loan directly or indirectly between a corporation and any shareholder of such corporation.

(D) Tax avoidance loans

Any below-market loan 1 of the principal purposes of the interest arrangements of which is the avoidance of any Federal tax.

(E) Other below-market loans

To the extent provided in regulations, any below-market loan which is not described in subparagraph (A), (B), or (C) if the interest arrangements of such loan have a significant effect on any Federal tax liability of the lender or the borrower.

(2) $10,000 de minimis exception for gift loans between individuals

(A) In general

In the case of any gift loan directly between individuals, this section shall not apply to any day on which the aggregate outstanding amount of loans between such individuals does not exceed $10,000.

(B) De minimis exception not to apply to loans attributable to acquisition of income-producing assets

Subparagraph (A) shall not apply to any gift loan directly attributable to the purchase or carrying of income-producing assets.

(C) Cross reference

For limitation on amount treated as interest where loans do not exceed $100,000, see subsection (d)(1).

(3) $10,000 de minimis exception for compensation-related and corporate-shareholder loans

(A) In general

In the case of any loan described in subparagraph (B) or (C) of paragraph (1), this section shall not apply to any day on which the aggregate outstanding amount of loans between the borrower and lender does not exceed $10,000.

(B) Exception not to apply where 1 of principal purposes is tax avoidance

Subparagraph (A) shall not apply to any loan the interest arrangements of which have as 1 of their principal purposes the avoidance of any Federal tax.

(d) Special rules for gift loans

(1) Limitation on interest accrual for purposes of income taxes where loans do not exceed $100,000

(A) In general

For purposes of subtitle A, in the case of a gift loan directly between individuals, the amount treated as retransferred by the borrower to the lender as of the close of any year shall not exceed the borrower's net investment income for such year.

(B) Limitation not to apply where 1 of principal purposes is tax avoidance

Subparagraph (A) shall not apply to any loan the interest arrangements of which have as 1 of their principal purposes the avoidance of any Federal tax.

(C) Special rule where more than 1 gift loan outstanding

For purposes of subparagraph (A), in any case in which a borrower has outstanding more than 1 gift loan, the net investment income of such borrower shall be allocated among such loans in proportion to the respective amounts which would be treated as retransferred by the borrower without regard to this paragraph.

(D) Limitation not to apply where aggregate amount of loans exceed $100,000

This paragraph shall not apply to any loan made by a lender to a borrower for any day on which the aggregate outstanding amount of loans between the borrower and lender exceeds $100,000.

(E) Net investment income

For purposes of this paragraph—

(i) In general

The term "net investment income" has the meaning given such term by section 163(d)(3).

(ii) De minimis rule

If the net investment income of any borrower for any year does not exceed

$1,000, the net investment income of such borrower for such year shall be treated as zero.

(iii) Additional amounts treated as interest

In determining the net investment income of a person for any year, any amount which would be included in the gross income of such person for such year by reason of section 1272 if such section applied to all deferred payment obligations shall be treated as interest received by such person for such year.

(iv) Deferred payment obligations

The term "deferred payment obligation" includes any market discount bond, short-term obligation, United States savings bond, annuity, or similar obligation.

(2) Special rule for gift tax

In the case of any gift loan which is a term loan, subsection (b)(1) (and not subsection (a)) shall apply for purposes of chapter 12.

(e) Definitions of below-market loan and foregone interest

For purposes of this section—

(1) Below-market loan

The term "below-market loan" means any loan if—

(A) in the case of a demand loan, interest is payable on the loan at a rate less than the applicable Federal rate, or

(B) in the case of a term loan, the amount loaned exceeds the present value of all payments due under the loan.

(2) Foregone interest

The term "foregone interest" means, with respect to any period during which the loan is outstanding, the excess of—

(A) the amount of interest which would have been payable on the loan for the period if interest accrued on the loan at the applicable Federal rate and were payable annually on the day referred to in subsection (a)(2), over

(B) any interest payable on the loan properly allocable to such period.

(f) Other definitions and special rules

For purposes of this section—

(1) Present value

The present value of any payment shall be determined in the manner provided by regulations prescribed by the Secretary—

(A) as of the date of the loan, and

(B) by using a discount rate equal to the applicable Federal rate.

(2) Applicable Federal rate

(A) Term loans

In the case of any term loan, the applicable Federal rate shall be the applicable Federal rate in effect under section 1274(d) (as of the day on which the loan was made), compounded semiannually.

(B) Demand loans

In the case of a demand loan, the applicable Federal rate shall be the Federal short-term rate in effect under section 1274(d) for the period for which the amount of foregone interest is being determined.

(3) Gift loan

The term "gift loan" means any below-market loan where the foregoing of interest is in the nature of a gift.

(4) Amount loaned

The term "amount loaned" means the amount received by the borrower.

(5) Demand loan

The term "demand loan" means any loan which is payable in full at any time on the demand of the lender. Such term also includes (for purposes other than determining the applicable Federal rate under paragraph (2)) any loan which is not transferable and the benefits of the interest arrangements of which is conditioned on the future performance of substantial services by an individual.

(6) Term loan

The term "term loan" means any loan which is not a demand loan.

(7) Husband and wife treated as 1 person

A husband and wife shall be treated as 1 person.

(8) Loans to which section 483 or 1274 applies

This section shall not apply to any loan to which section 483 or 1274 applies.

(9) No withholding

No amount shall be withheld under chapter 24 with respect to any amount treated as transferred or retransferred under subsection (a).

(10) Special rule for term loans

If this section applies to any term loan on any day, this section shall continue to apply to such loan notwithstanding paragraphs (2) and (3) of subsection (c). In the case of a gift loan, the preceding sentence shall only apply for purposes of chapter 12.

(g) Regulations

(1) In general

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section, including—

(A) regulations providing that where, by reason of varying rates of interest, conditional interest payments, waivers of interest, disposition of the lender's or borrower's interest in the loan, or other circumstances, the provisions of this section do not carry out the purposes of this section, adjustments to the provisions of this section will be made to the extent necessary to carry out the purposes of this section,

(B) regulations for the purpose of assuring that the positions of the borrower and lender are consistent as to the application (or nonapplication) of this section, and

(C) regulations exempting from the application of this section any class of transactions the interest arrangements of which have no significant effect on any Federal tax liability of the lender or the borrower.

(2) Estate tax coordination

Under regulations prescribed by the Secretary, any loan which is made with donative intent and which is a term loan shall be taken into account for purposes of chapter 11 in a manner consistent with the provisions of subsection (b).

(Added Pub. L. 98-369, div. A, title I, § 172(a), July 18, 1984, 98 Stat. 699.)

EFFECTIVE DATE

Section 172(c) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this section] shall apply to—

"(A) term loans made after June 6, 1984, and

"(B) demand loans outstanding after June 6, 1984.

"(2) EXCEPTION FOR DEMAND LOANS OUTSTANDING ON JUNE 6, 1984, AND REPAID WITHIN 60 DAYS AFTER DATE OF ENACTMENT.—The amendments made by this section shall not apply to any demand loan which—

"(A) was outstanding on June 6, 1984, and

"(B) was repaid before the date 60 days after the date of the enactment of this Act [July 18, 1984].

"(3) EXCEPTION FOR CERTAIN EXISTING LOANS TO CONTINUING CARE FACILITIES.—Nothing in this subsection shall be construed to apply the amendments made by this section to any loan made before June 6, 1984, to a continuing care facility by a resident of such facility which is contingent on continued residence at such facility.

"(4) APPLICABLE FEDERAL RATE FOR PERIODS BEFORE JANUARY 1, 1985.—For periods before January 1, 1985, the applicable Federal rate under paragraph (2) of section 7872(f) of the Internal Revenue Code of 1954, as added by this section, shall be 10 percent, compounded semiannually.

"(5) TREATMENT OF RENEGOTIATIONS, ETC.—For purposes of this subsection, any loan renegotiated, extended, or revised after June 6, 1984, shall be treated as a loan made after such date.

"(6) DEFINITION OF TERM AND DEMAND LOANS.—For purposes of this subsection, the terms 'demand loan' and 'term loan' have the respective meanings given such terms by paragraphs (5) and (6) of section 7872(f) of the Internal Revenue Code of 1954, as added by this section, but the second sentence of such paragraph (5) shall not apply."

Subtitle H—Financing of Presidential Election Campaigns

CHAPTER 95—PRESIDENTIAL ELECTION CAMPAIGN FUND

§ 9008. Payments for presidential nominating conventions

[See main edition for text of (a)]

(b) Entitlement to payments from the fund

(1) Major parties

Subject to the provisions of this section, the national committee of a major party shall be entitled to payments under paragraph (3), with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed $4,000,000.

[See main edition for text of (2) to (4)]

(5) Adjustment of entitlements

The entitlements established by this subsection shall be adjusted in the same manner as expenditure limitations established by section 315(b) and section 315(d) of the Federal Election Campaign Act of 1971 are adjusted pursuant to the provisions of section 315(c) of such Act.

[See main edition for text of (c) to (h)]

(As amended Pub. L. 98-355, § 1(a), (b), July 11, 1984, 98 Stat. 394.)

REFERENCES IN TEXT

Sections 303 and 315 of the Federal Election Campaign Act of 1971, referred to in subsecs. (b)(5) and (g), are classified to sections 433 and 441a, respectively, of Title 2, The Congress.

AMENDMENTS

1984—Subsec. (b)(1). Pub. L. 98-355, § 1(a), substituted "$4,000,000" for "$3,000,000".

Subsec. (b)(5). Pub. L. 98-355, § 1(b), substituted "section 315(b) and section 315(d)" for "section 320(b) and section 320(d)" and "section 315(c)" for "section 320(c)".

EFFECTIVE DATE OF 1984 AMENDMENT

Section 1(c) of Pub. L. 98-355 provided that: "The amendments made by this section [amending this section] shall take effect on January 1, 1984."

§ 9010. Participation by Commission in judicial proceedings

[See main edition for text of (a) and (b)]

(c) Declaratory and injunctive relief

The Commission is authorized through attorneys and counsel described in subsection (a) to petition the courts of the United States for declaratory or injunctive relief concerning any civil matter covered by the provisions of this subtitle or section 6096. Upon application of the Commission an action brought pursuant to this subsection shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court.

[See main edition for text of (d)]

(As amended Pub. L. 98-620, title IV, § 402(28)(E), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Subsec. (c). Pub. L. 98-620 struck out provision requiring the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 9011. Judicial review

[See main edition for text of (a)]

(b) Suits to implement chapter

[See main edition for text of (1)]

(2) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection and shall exercise the same without regard to whether a person asserting rights under provisions of this subsection shall have exhausted any administrative or other remedies that may be provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court.

(As amended Pub. L. 98-620, title IV, § 402(28)(F), Nov. 8, 1984, 98 Stat. 3359.)

Amendments

1984—Subsec. (b)(2). Pub. L. 98-620 struck out provision requiring the judges designated to hear the case to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98-620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

Subtitle I—Trust Fund Code

CHAPTER 98—TRUST FUND CODE

Subchapter A—Establishment of Trust Funds

Sec.	
9504.	Aquatic Resources Trust Fund.

Amendments

1984—Pub. L. 98-369, div. A, title X, § 1016(d), July 18, 1984, 98 Stat. 1020, added item 9504.

§ 9502. Airport and Airway Trust Fund

[See main edition for text of (a)]

(b) Transfer to Airport and Airway Trust Fund of amounts equivalent to certain taxes

There is hereby appropriated to the Airport and Airway Trust Fund—

[See main edition for text of (1) and (2)]

(3) amounts determined by the Secretary of the Treasury to be equivalent to the taxes received in the Treasury after August 31, 1982, and before January 1, 1988, under section 4071, with respect to tires of the types used on aircraft.

[See main edition for text of (c)]

(d) Expenditures from Airport and Airway Trust Fund

[See main edition for text of (1) and (2)]

(3) Transfers from the Airport and Airway Trust Fund on account of certain section 34 credits

The Secretary of the Treasury shall pay from time to time from the Airport and Airway Trust Fund into the general fund of the Treasury amounts equivalent to the credits allowed under section 34 with respect to fuel used after August 31, 1982. Such amounts shall be transferred on the basis of estimates by the Secretary of the Treasury, and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the credits allowed.

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(42), title VII, § 735(c)(15), July 18, 1984, 98 Stat. 847, 984.)

Amendments

1984—Subsec. (b)(3). Pub. L. 98-369, § 735(c)(15), substituted "under section 4071 with respect to tires of the types used on aircraft" for "under paragraphs (2) and (3) of section 4071(a), with respect to tires and tubes of types used on aircraft".

Subsec. (d)(3). Pub. L. 98-369, § 474(r)(42), substituted references to section 34 for references to section 39 in heading and text.

Effective Date of 1984 Amendment

Amendment by section 474(r)(42) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 735(c)(15) of Pub. L. 98-369 effective, except as otherwise provided, as if included in the provisions of the Highway Revenue Act of 1982, title V of Pub. L. 97-424, to which such amendment relates, see section 736 of Pub. L. 98-369, set out as a note under section 4051 of this title.

Section Referred to in Other Sections

This section is referred to in section 9503 of this title; title 49 App. section 2202.

§ 9503. Highway Trust Fund

[See main edition for text of (a) and (b)]

(c) Expenditures from Highway Trust Fund

[See main edition for text of (1)]

(2) Transfers from Highway Trust Fund for certain repayments and credits

(A) In general

The Secretary shall pay from time to time from the Highway Trust Fund into the general fund of the Treasury amounts equivalent to—

[See main edition for text of (i)]

(ii) the credits allowed under section 34 (relating to credit for certain uses of gasoline, special fuels, and lubricating oil) with respect to gasoline, special fuels, and lubricating oil used before October 1, 1988 (or with respect to qualified diesel-powered highway vehicles purchased before January 1, 1988).

[See main edition for text of (B) and (C), (3)]

(4) Transfers from the trust fund for motorboat fuel taxes

(A) Transfer to Boat Safety Account

(i) In general

The Secretary shall pay from time to time from the Highway Trust Fund into the Boat Safety Account in the Aquatic Resources Trust Fund amounts (as determined by him) equivalent to the motorboat fuel taxes received on or after October 1, 1980, and before October 1, 1988.

(ii) Limitations

(I) Limit on transfers during any fiscal year

The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $45,000,000.

(II) Limit on amount in fund

No amount shall be transferred under this subparagraph if the Secretary determines that such transfer would result in increasing the amount in the Boat Safety Account to a sum in excess of $45,000,000.

(B) $1,000,000 per year of excess transferred to land and water conservation fund

(i) In general

Any amount received in the Highway Trust Fund—

(I) which is attributable to motorboat fuel taxes, and

(II) which is not transferred from the Highway Trust Fund under subparagraph (A),

shall be transferred (subject to the limitation of clause (ii)) by the Secretary from the Highway Trust Fund into the land and water conservation fund provided for in title I of the Land and Water Conservation Fund Act of 1965.

(ii) Limitation

The aggregate amount transferred under this subparagraph during any fiscal year shall not exceed $1,000,000.

(C) Excess funds transferred to Sport Fish Restoration Account

Any amount received in the Highway Trust Fund—

(i) which is attributable to motorboat fuel taxes, and

(ii) which is not transferred from the Highway Trust Fund under subparagraph (A) or (B),

shall be transferred by the Secretary from the Highway Trust Fund into the Sport Fish Restoration Account in the Aquatic Resources Trust Fund.

(D) Motorboat fuel taxes

For purposes of this paragraph, the term "motorboat fuel taxes" means the taxes under section 4041(a)(2) with respect to special motor fuels used as fuel in motorboats and under section 4081 with respect to gasoline used as fuel in motorboats.

[*See main edition for text of* (*d*)]

(e) Establishment of Mass Transit Account

[*See main edition for text of* (*1*)]

(2) Transfers to Mass Transit Account

The Secretary of the Treasury shall transfer to the Mass Transit Account the mass transit portion of the amounts appropriated to the Highway Trust Fund under subsection (b) which are attributable to taxes under sections 4041 and 4081 imposed after March 31, 1983. For purposes of the preceding sentence, the term "mass transit portion" means an amount determined at the rate of 1 cent for each gallon with respect to which tax was imposed under section 4041 or 4081.

[*See main edition for text of* (*3*) *and* (*4*)]

(As amended Pub. L. 98-369, div. A, title IV, § 474(r)(43), title IX, § 911(d)(1), title X, § 1016(b), July 18, 1984, 98 Stat. 847, 1006, 1020.)

REFERENCES IN TEXT

Section 4061, referred to in subsec. (b)(1)(C), was repealed by Pub. L. 98-369, div. A, title VII, § 735(a)(1), July 18, 1984, 98 Stat. 980.

AMENDMENTS

1984—Subsec. (c)(2)(A)(ii). Pub. L. 98-369, § 474(r)(43), substituted "section 34" for "section 39".

Pub. L. 98-369, § 911(d)(1)(B), inserted "(or with respect to qualified diesel-powered highway vehicles purchased before January 1, 1988)".

Subsec. (c)(4)(A). Pub. L. 98-369, § 1016(b)(1)(C), substituted "Boat Safety Account" for "National Recreational Boating Safety and Facilities Improvement Fund" in heading.

Subsec. (c)(4)(A)(i). Pub. L. 98-369, § 1016(b)(1)(A), substituted "the Boat Safety Account in the Aquatic Resources Trust Fund" for "the National Recreational Boating Safety and Facilities Improvement Fund established by section 202 of the Recreational Boating Fund Act".

Subsec. (c)(4)(A)(ii)(II). Pub. L. 98-369, § 1016(b)(1)(B), substituted "the amount in the Boat Safety Account" for "the amount in the National Recreational Boating and Facilities Improvement Fund".

Subsec. (c)(4)(B) to (D). Pub. L. 98-369, § 1016(b)(2), added subpars. (B) and (C), redesignated former subpar. (C) as (D), and struck out former subpar. (B) which provided for the transfer of excess funds to the Land and Water Conservation Fund.

Subsec. (e)(2). Pub. L. 98-369, § 911(d)(1)(A), amended par. (2) generally, substituting "the mass transit portion" for "one-ninth", and adding provision defining the term mass transit portion as an amount determined at the rate of 1 cent for each gallon with respect to which tax was imposed under section 4041 or 4081.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 474(r)(43) of Pub. L. 98-369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98-369, set out as a note under section 21 of this title.

Amendment by section 911(d)(1) of Pub. L. 98-369 effective Aug. 1, 1984, see section 911(e) of Pub. L. 98-369, set out as a note under section 6427 of this title.

Amendment by section 1016 of Pub. L. 98-369 effective Oct. 1, 1984, see section 1016(e) of Pub. L. 98-369, set out as an Effective Date note under section 9504 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9504 of this title; title 46 section 13106.

§ 9504. Aquatic Resources Trust Fund

(a) Creation of trust fund

(1) In general

There is hereby established in the Treasury of the United States a trust fund to be known as the "Aquatic Resources Trust Fund".

(2) Accounts in trust fund

The Aquatic Resources Trust Fund shall consist of—

(A) a Sport Fish Restoration Account, and

(B) a Boat Safety Account.

Each such Account shall consist of such amounts as may be appropriated, credited, or paid to it as provided in this section, section 9503(c)(4), or section 9602(b).

(b) Sport Fish Restoration Account

(1) Transfer of certain taxes to account

There is hereby appropriated to the Sport Fish Restoration Account amounts equivalent to the following amounts received in the Treasury on or after October 1, 1984—

(A) the taxes imposed by section 4161(a) (relating to sport fishing equipment), and

(B) the import duties imposed on fishing tackle under subpart B of part 5 of schedule 7 of the Tariff Schedules of the United States (19 U.S.C. 1202) and on yachts and pleasure craft under subpart D of part 6 of schedule 6 of such Schedules.

(2) Expenditures from account

Amounts in the Sport Fish Restoration Account shall be available, as provided by appropriation Acts, to carry out the purposes of the Act entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes", approved August 9, 1950 (as in effect on June 1, 1984).

(c) Expenditures from Boat Safety Account

Amounts in the Boat Safety Account shall be available, as provided by appropriation Acts, for making expenditures before April 1, 1989, to carry out the purposes of section 13106 of title 46, United States Code (as in effect on June 1, 1984).

(d) Cross reference

For provision transferring motorboat fuels taxes to Boat Safety Account and Sport Fish Restoration Account, see section 9503(c)(4).

(Added Pub. L. 98-369, div. A, title X, § 1016(a), July 18, 1984, 98 Stat. 1019.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in subsec. (b)(1)(B), are not set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of Title 19, Customs Duties.

The Act entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes", approved August 9, 1950, referred to in subsec. (b)(2), is act Aug. 9, 1950, ch. 658, 64 Stat. 430, as amended, popularly known as the Federal Aid in Fish Restoration Act and also as the Fish Restoration and Management Projects Act, which is classified generally to chapter 10B (§ 777 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 777 of Title 16 and Tables.

EFFECTIVE DATE

Section 1016(e) of Pub. L. 98-369 provided that:

"(1) IN GENERAL.—The amendments made by this section [enacting this section, amending section 9503 of this title, and repealing section 13107 of Title 46, Shipping] shall take effect on October 1, 1984.

"(2) BOAT SAFETY ACCOUNT TREATED AS CONTINUATION OF NATIONAL RECREATIONAL BOATING SAFETY AND FACILITIES IMPROVEMENT FUND.—The Boat Safety Account in the Aquatic Resources Trust Fund established by the amendments made by this section shall be treated for all purposes of law as the continuation of the National Recreational Boating Safety and Facilities Improvement Fund established by section 13107 of title 46, United States Code. Any reference in any law to the National Recreational Boating Safety and Facilities Improvement Fund established by such section shall be deemed to include (wherever appropriate) a reference to such Boat Safety Account."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 777b.

Subchapter B—General Provisions

§ 9602. Management of trust funds

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9502, 9503, 9504 of this title.

TITLE 26—APPENDIX

RULES OF PRACTICE AND PROCEDURE OF THE UNITED STATES TAX COURT

(As amended to January 1, 1985)

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TITLE I—SCOPE OF RULES; CONSTRUCTION; EFFECTIVE DATE; DEFINITIONS

Rule 1. Scope of Rules and construction

(a) Scope: These Rules govern the practice and procedure in all cases and proceedings in the United States Tax Court. Where in any instance there is no applicable rule of procedure, the Court or the Judge before whom the matter is pending may prescribe the procedure, giving particular weight to the Federal Rules of Civil Procedure to the extent that they are suitably adaptable to govern the matter at hand.

(b) Construction: These Rules shall be construed to secure the just, speedy, and inexpensive determination of every case.

Rule 2. Effective Date

(a) Adoption: These Rules, except as otherwise provided, will take effect on January 16, 1984. They govern all proceedings and cases commenced after they take effect, and also all further proceedings in cases then pending, except to the extent that in the opinion of the Court their application, in a particular case pending when the Rules take effect, would not be feasible or would work injustice, in which event the former procedure applies.

(b) Amendments: Amendments to these Rules shall state their effective date. Amendments shall likewise govern all proceedings both in cases pending on or commenced after their effective date, except to the extent otherwise provided, and subject to the further exception provided in paragraph (a) of this Rule.

Rule 3. Definitions

(a) Division: The Chief Judge may from time to time divide the Court into Divisions of one or more Judges and, in case of a Division of more than one Judge, designate the chief thereof.

(b) Clerk: Reference to the Clerk in these Rules means the Clerk of the United States Tax Court.

(c) Commissioner: Reference to Commissioner in these Rules means the Commissioner of Internal Revenue.

(d) Special Trial Judge: The term Special Trial Judge as used in these Rules refers to a commissioner of the Court appointed pursuant to Section 7456(c) of the Code. See Rule 180.

(e) Time: As provided in these Rules and in orders and notices of the Court, time means standard time in the location mentioned, except when advanced time is substituted therefor by law. For computation of time, see Rule 25.

(f) Business Hours: As to the Court's business hours, see Rule 10(d).

(g) Filing: For requirements as to filing with the Court, see Rule 22.

(h) Code: Any reference or citation to the Code relates to the Internal Revenue Code of 1954, as amended.

TITLE II—THE COURT

Rule 10. Name, office, and sessions

(a) Name: The name of the Court is the United States Tax Court.

(b) Office of Court: The principal office of the Court shall be in the District of Columbia, but the Court or any of its Divisions may sit at any place within the United States.

(c) Sessions: The time and place of sessions of the Court shall be prescribed by the Chief Judge.

(d) Business Hours: The office of the Clerk at Washington, D.C., shall be open during business hours on all days, except Saturdays, Sundays, and legal holidays, for the purpose of receiving petitions, pleadings, motions, and other papers. Business hours are from 8:30 a.m. to 5:00 p.m. For legal holidays, see Rule 25(b).

(e) Mailing Address: Mail to the Court should be addressed to the United States Tax Court, 400 Second Street, N.W., Washington, D.C. 20217. Other addresses, such as locations at which the Court may be in session, should not be used.

Rule 11. Payments to Court

All payments to the Court for fees or charges of the Court shall be made either in cash or in checks, money orders, or other drafts made payable to the order of "Clerk, United States Tax Court," and shall be mailed or delivered to the Clerk of the Court at Washington, D.C. For particular payments, see Rules 12(c) (copies of Court records), 20(b) (filing of petition), 175(a)(2) (small tax cases), and 200(e) (application to practice before Court).

Rule 12. Court records

(a) Removal of Records: No original record, paper, document, or exhibit filed with the Court shall be taken from the courtroom or from the offices of the Court or from the custody of a Judge or employee of the Court, except as authorized by a Judge of the Court or except as may be necessary for the Clerk to furnish copies or to transmit the same to other courts for appeal or other official purposes. With respect to return of exhibits after a decision of the Court becomes final, see Rule 143(d)(2).

(b) Copies of Records: After the Court renders its decision in a case, a plain or certified copy of any document, record, entry, or other paper, pertaining to the case and still in the custody of the Court, may be obtained upon application to the Clerk and payment of the required fee. Unless otherwise permitted by the Court, no copy of any exhibit or original document in the files of the Court shall be furnished to other than the parties until the Court renders its decision.

(c) Fees: The fees to be charged and collected for any copies will be determined in accordance with Code Section 7474. See Appendix III.

Rule 13. Jurisdiction

(a) Notice of Deficiency or of Transferee or Fiduciary Liability Required: Except in actions for declaratory judgment or for disclosure (see Titles XXI and XXII), the jurisdiction of the Court depends (1) in a case commenced in the Court by a taxpayer, upon the issuance by the Commissioner of a notice of deficiency in income, gift, or estate tax or, in the taxes under Chapter 41, 42, 43, or 44 of the Code (relating to the excise taxes on certain organizations and persons dealing with them), or in the tax under Chapter 45 of the Code (relating to the windfall profit tax), or in any other taxes which are the subject of the issuance of a notice of deficiency by the Commissioner; and (2) in a case commenced in the Court by a transferee or fiduciary, upon the issuance by the Commissioner of a notice of liability to the transferee or fiduciary. See Code Sections 6212, 6213, and 6901.

(b) Declaratory Judgment or Disclosure Actions: For the jurisdictional requirements in an action for declaratory judgment or for disclosure, see Rules 210(c) and 220(c).

(c) Timely Petition Required: In all cases, the jurisdiction of the Court also depends on the timely filing of a petition. See Code Sections 6213, 7502; with respect to declaratory judgment actions, see Code Sections 7428, 7476, 7477, and 7478; and with respect to disclosure actions, see Code Section 6110.

(d) Contempt of Court: Contempt of the Court may be punished by fine or imprisonment within the scope of Code Section 7456(d).

(e) Bankruptcy: With respect to the filing of a petition or the continuation of proceedings in this Court after the filing of a bankruptcy petition, see 11 U.S.C. section 362(a)(8) and Code Section 6213(f)(1).

TITLE III—COMMENCEMENT OF CASE; SERVICE AND FILING OF PAPERS; FORM AND STYLE OF PAPERS; APPEARANCE AND REPRESENTATION; COMPUTATION OF TIME

Rule 20. Commencement of case

(a) General: A case is commenced in the Court by filing a petition with the Court to redetermine a deficiency set forth in a notice of deficiency issued by the Commissioner, or to redetermine the liability of a transferee or fiduciary set forth in a notice of liability issued by the Commissioner to the transferee or fiduciary, or to obtain a declaratory judgment or a disclosure. See Rule 13, Jurisdiction.

(b) Filing Fee: At the time of filing a petition, a fee of $60 shall be paid, unless the petitioner elects in accordance with Rule 172 to have the case treated as a "small tax case" as defined in Rule 171. If the petitioner makes such an election, a fee of $10 shall be paid. If such election was made but, on motion of the petitioner, the Court orders that the case shall not be tried under the "small tax case" rules, an additional fee of $50 shall be paid at the time of such order. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit containing specific financial information that he is unable to make such payment.

Rule 21. Service of papers

(a) When Required: Except as otherwise required by these Rules or directed by the Court, all pleadings, motions, orders, decisions, notices, demands, briefs, appearances, or other similar documents or papers relating to a case, including a disciplinary matter under Rule 202, also referred to as the papers in a case, shall be served on each of the parties or other persons involved in the matter to which the paper relates other than the party who filed the paper.

(b) Manner of Service: (1) *General:* All petitions shall be served by the Clerk. All other papers required to be served on a party shall also be served by the Clerk unless otherwise provided in these Rules or directed by the Court, or unless the original paper is filed with a certificate by a party or his counsel that service of that paper has been made on the party to be served or his counsel. For the form of such certificate of service, see Form 13, Appendix I. Such service may be made by mail directed to the party or his counsel at his last known address. Service by mail is complete upon mailing, and the date of such mailing shall be the date of such service. As an alternative to service by mail, service may be made by delivery to a party, or his counsel or authorized representative in the case of a party other than an individual (see Rule 24(b)). Service shall be made on the Commissioner by service on, or directed to, his counsel at the office address shown in his answer filed in the case or, if no answer has been filed, on the Chief Counsel, Internal Revenue Service, Washington, D.C. 20224. Service on a person other than a party shall be made in the same manner as service on a party, except as otherwise provided in these Rules or directed by the Court. In cases consolidated pursuant to Rule 141, a party making direct service of a paper shall serve each of the other parties or his counsel, and the original and copies thereof required to be filed with the Court shall each have a certificate of service attached.

(2) *Counsel of Record:* Whenever under these Rules service is required or permitted to be made upon a party represented by counsel who has entered an appearance, service shall be made upon such counsel unless service upon the party himself is directed by the Court. Where more than one counsel appear for a party, service will be made only on that counsel whose appearance was first entered of record, unless that counsel notifies the Court, by a designation of counsel to receive service filed with the Court, that other counsel of record is to receive service, in which event service will be made only on the person so designated.

(3) *Writs and Process:* Service and execution of writs, process, or similar directives of the Court may be made by a United States marshal, by his deputy, or by a person specially appointed by the Court for that purpose, except that a subpoena may be served as provided in Rule 147(c). The person making service shall make proof thereof to the Court promptly and in any event within the time in which the person served must respond. Failure to make proof of service does not affect the validity of the service.

(4) *Change of Address:* The Court shall be promptly notified, by a notice of change of address filed with the Court, of the change of mailing address of any party, his counsel or duly authorized representative in the case of a party other than an individual (See Rule 24(a)(2), (3), and (b)). A separate notice of change of address shall be filed for each docket number.

Rule 22. Filing

Any pleadings or other papers to be filed with the Court must be filed with the Clerk in Washington, D.C., during business hours, except that the Judge presiding at any trial or hearing may permit or require documents pertaining thereto to be filed at that particular session of the Court, or except as otherwise directed by the Court.

Rule 23. Form and style of papers

(a) Caption, Date, and Signature Required: All papers filed with the Court shall have a caption, shall be dated, and shall be signed as follows:

(1) *Caption:* A proper caption shall be placed on all papers filed with the Court, and the requirements provided in Rule 32(a) shall be satisfied with respect to all such papers. All prefixes and titles, such as "Mrs." or "Dr.", shall be omitted from the caption. The full name and surname of each individual petitioner shall be set forth in the caption. The name of an estate or trust or other person for whom a fiduciary acts shall precede the fiduciary's name and title, as for example "Estate of John Doe, deceased, Richard Roe, Executor."

(2) *Date:* The date of signature shall be placed on all papers filed with the Court.

(3) *Signature:* The original signature, either of the party or his counsel, shall be subscribed in writing to the original of every paper filed by or for that party with the Court, except as otherwise provided by these Rules. An individual rather than a firm name shall be used, except that the signature of a petitioner corporation or unincorporated association shall be in the name of the corporation or association by one of its active and authorized officers or members, as for example "John Doe, Inc., by Richard Roe, President." The name, mailing address, and telephone number of the party or his counsel shall be typed or printed immediately beneath the written signature. The mailing address of a signatory shall include a firm name if it is an essential part of the accurate mailing address.

(b) Number Filed: For each paper filed in Court, there shall be filed four conformed copies together with the signed original thereof, except as otherwise provided in these Rules. Where filing is in more than one case (as a motion to consolidate, or in cases already consolidated), the number filed shall include one additional copy for each docket number in excess of one. As to stipulations, see Rule 91(b).

(c) **Legible Copies Required:** Papers filed with the Court may be prepared by any process, provided that all papers, including copies, filed with the Court are clear and legible.

(d) **Size and Style:** Typewritten papers shall be typed on only one side, unless produced by offset, mimeograph, multilith, photocopy, or similar process, and shall be on plain white paper, 8½ inches wide by 11 inches long, and weighing not less than 16 pounds to the ream, except that copies other than the original may be made on any weight paper. Printed papers shall be printed in 10-point or 12-point type, on good quality unglazed paper, 5½ inches wide by 9 inches long, and with double-leaded text and single-leaded quotations. All papers, whether typed or printed, shall have an inside margin not less than 1½ inches wide.

(e) **Binding and Covers:** All papers shall be bound together on the upper left-hand side only and shall have no backs or covers.

(f) **Citations:** All citations shall be underscored when typewritten, and shall be in italics when printed.

(g) **Return of Papers for Failure to Conform to Rule:** The Clerk may return without filing any paper that does not conform to the requirements of this Rule.

Rule 24. Appearance and representation

(a) **Appearance:** (1) *General:* Counsel may enter an appearance either by subscribing the petition or other initial pleading or document in accordance with subparagraph (2) hereof, or thereafter by filing an entry of appearance in accordance with subparagraph (3) hereof.

(2) *Appearance in Initial Pleading:* If the petition or other paper initiating the participation of a party in a case is subscribed by counsel admitted to practice before the Court, that counsel shall be recognized as representing that party and no separate entry of appearance by him shall be necessary, provided that such initial paper shall also contain the mailing address of counsel and other information required for entry of appearance (see subparagraph (3) hereof). Thereafter counsel shall be required to notify the Clerk of any changes in applicable information to the same extent as if he had filed a separate entry of appearance.

(3) *Subsequent Appearance:* Where counsel has not previously appeared, he shall file an entry of appearance in duplicate, signed by counsel individually, containing the name and docket number of the case, the name, mailing address, and telephone number of counsel so appearing, and a statement that counsel is admitted to practice before the Court. A separate entry of appearance, in duplicate, shall be filed for each additional docket number in which counsel shall appear. The entry of appearance shall be substantially in the form set forth in Appendix I. The Clerk shall be given prompt written notice, filed in duplicate for each docket number, of any change in the foregoing information. An entry of appearance shall not be joined to or made part of a motion to withdraw as counsel.

(4) *Counsel Not Admitted to Practice:* No entry of appearance by counsel not admitted to practice before this Court will be effective until he shall have been admitted, but he may be recognized as counsel in a pending case to the extent permitted by the Court and then only where it appears that he can and will be promptly admitted. For the procedure for admission to practice before the Court, see Rule 200.

(b) **Personal Representation Without Counsel:** In the absence of appearance by counsel, a party will be deemed to appear for himself. An individual party may represent himself. A corporation or an unincorporated association may be represented by an authorized officer of the corporation or by an authorized member of the association. An estate or trust may be represented by a fiduciary thereof. Any such person shall state, in the initial pleading or other paper filed by or for the party, his name, address, and telephone number, and thereafter shall promptly notify the Clerk in writing, in duplicate for each docket number involving that party, of any change in that information.

(c) **Withdrawal of Counsel:** Counsel of record desiring to withdraw his appearance, or any party desiring to withdraw the appearance of counsel of record for him, must file a motion with the Court requesting leave therefor, showing that prior notice of the motion has been given by him to his client, or his counsel, as the case may be, and to each of the other parties to the case or their counsel, and stating whether there is any objection to the motion. A motion to withdraw as counsel shall not be joined to or made part of an entry of appearance. The Court may, in its discretion, deny such motion.

(d) **Death of Counsel:** If counsel of record dies, the Court shall be so notified, and other counsel may enter an appearance in accordance with this Rule.

(e) **Change in Party or Authorized Representative or Fiduciary:** Where (i) a party other than an individual participates in a case through an authorized representative (such as an officer of a corporation or a member of an association) or through a fiduciary, and there is a change in such representative or fiduciary, or (ii) there is a substitution of parties in a pending case, counsel subscribing the motion resulting in the Court's approval of the change or substitution shall thereafter be deemed first counsel of record for the new representative or party.

Rule 25. Computation of time

(a) **Computation:** In computing any period of time prescribed or allowed by these Rules or by direction of the Court or by any applicable statute which does not provide otherwise, the day of the act, event, or default from which a designated period of time begins to run shall not be included. In the event of service made by mail, a period of time computed with respect to the service shall begin on the day after the date of mailing. Saturdays, Sundays, and all legal holidays shall be counted; provided, however, that, when the period prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays in the *District of Columbia* shall be excluded in the computation; and, provided further, that the last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a legal holiday in the *District of Columbia*, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or such a legal holiday. When such legal holiday falls on a Sunday, the next day shall be considered a holiday; and, when such a legal holiday falls on a Saturday, the preceding day shall be considered a holiday. For computation of the period within which to file a petition with the Court to redetermine a deficiency or liability, see Code Section 6213; for the period within which to file a petition in a declaratory judgment action, see Code Sections 7428, 7476, 7477, and 7478; and for the period within which to file a petition in a disclosure action, see Code Section 6110. See also Code Section 7502.

(b) District of Columbia Legal Holidays: The legal holidays within the District of Columbia, in addition to any other day appointed as a holiday by the President or the Congress of the United States, are as follows:

New Year's Day—January 1
Martin Luther King Day—January 15
Inauguration Day—Every fourth year
Washington's Birthday—Third Monday in February
Memorial Day—Last Monday in May
Independence Day—July 4
Labor Day—First Monday in September
Columbus Day—Second Monday in October
Veterans' Day—November 11
Thanksgiving Day—Fourth Thursday in November
Christmas Day—December 25

(c) Enlargement or Reduction of Time: Unless precluded by statute, the Court in its discretion may make longer or shorter any period provided by these Rules. As to continuances, see Rule 134. Where a motion is made concerning jurisdiction or the sufficiency of a pleading, the time for filing a response to that pleading shall begin to run from the date of service of the order disposing of the motion by the Court, unless the Court shall direct otherwise. Where the dates for filing briefs are fixed, an extension of time for filing a brief or the granting of leave to file a brief after the due date shall correspondingly extend the time for filing any other brief due at the same time and for filing succeeding briefs, unless the Court shall order otherwise. The period fixed by statute, within which to file a petition with the Court to redetermine a deficiency or liability, cannot be extended by the Court.

(d) Miscellaneous: With respect to computation of time, see also Rule 3(e) (definition), Rule 10(d) (business hours of the Court), Rule 13(c) (filing of petition), and Rule 134 (continuances).

TITLE IV—PLEADINGS

Rule 30. Pleadings allowed

There shall be a petition and an answer, and, where required under these Rules, a reply. No other pleading shall be allowed, except that the Court may permit or direct some other responsive pleading.

Rule 31. General rules of pleading

(a) Purpose: The purpose of the pleadings is to give the parties and the Court fair notice of the matters in controversy and the basis for their respective positions.

(b) Pleading to Be Concise and Direct: Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading are required.

(c) Consistency: A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them would be sufficient if made independently, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may state as many separate claims or defenses as he has regardless of consistency or the grounds on which based. All statements shall be made subject to the signature requirements of Rules 23(a)(3) and 33.

(d) Construction of Pleadings: All pleadings shall be so construed as to do substantial justice.

Rule 32. Form of pleadings

(a) Caption; Names of Parties: Every pleading shall contain a caption setting forth the name of the Court (United States Tax Court), the title of the case, the docket number after it becomes available (see Rule 35), and a designation to show the nature of the pleading. In the petition, the title of the case shall include the names of all parties, but shall not include as a party-petitioner the name of any person other than the person or persons by or on whose behalf the petition is filed. In other pleadings it is sufficient to state the name of the first party with an appropriate indication of other parties.

(b) Separate Statement: All averments of claim or defense, and all statements in support thereof, shall be made in separately designated paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single item or a single set of circumstances. Such paragraph may be referred to by that designation in all succeeding pleadings. Each claim and defense shall be stated separately whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits: Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

(d) Other Provisions: With respect to other provisions relating to the form and style of papers filed with the Court, see Rules 23, 210(d), and 220(d).

Rule 33. Signing of pleadings

(a) Signature: Each pleading shall be signed in the manner provided in Rule 23. Where there is more than one attorney of record, the signature of only one is required. Except when otherwise specifically directed by the Court, pleadings need not be verified or accompanied by affidavit.

(b) Effect of Signature: The signature of counsel or a party constitutes a certificate by him that he has read the pleading; that, to the best of his knowledge, information, or belief, there is good ground to support it; that it is not frivolous, and that it is not interposed for delay. The signature of counsel also constitutes a representation by him that he is authorized to represent the party or parties on whose behalf the pleading is filed. If a pleading is not signed, or is signed with intent to defeat the purpose of this Rule, it may be stricken, and the action may proceed as though the pleading had not been filed. Similar action may be taken if scandalous or indecent matter is inserted. For a willful violation of this Rule, counsel may be subjected to appropriate disciplinary action.

Rule 34. Petition

(a) General: (1) *Deficiency or Liability Actions:* The petition with respect to a notice of deficiency or a notice of liability shall be substantially in accordance with Form 1 shown in Appendix I, and shall comply with the requirements of these Rules relating to pleadings. Ordinarily, a separate petition shall be filed with respect to each notice of deficiency or each notice of liability. However, a single petition may be filed seeking a redetermination with respect to all notices of deficiency or liability directed to one person alone or to him and one or more other persons, except that the Court may require a severance and a separate case to be maintained with respect to one or more of such notices. Where the notice of deficiency or liability is directed to more than one person, each such person desiring to contest it shall file a petition on his own behalf, either separately or jointly with any such other person, and each such person must satisfy all the requirements of this Rule with respect to himself in order for the petition to be treated as filed by or for him. The petition shall be complete, so as to enable ascertainment of the issues intended to be presented. No telegram, cablegram, radiogram, telephone call, or similar communication will be recognized as a petition. Failure of the petition to satisfy applicable requirements may be ground for dismissal of the case. As to the joinder of parties, see Rule 61; and as to the effect of misjoinder of parties, see Rule 62.

(2) *Other Actions:* For the requirements relating to the petition in declaratory judgment actions or in disclosure actions, see Rules 211(b) and 221(b), respectively. As to joinder of parties in such actions, see Rules 215 and 226, respectively.

(b) Content of Petition in Deficiency or Liability Actions: The petition in a deficiency or liability action shall contain (see Form 1, Appendix I):

(1) The petitioner's name and legal residence, in the case of a petitioner other than a corporation; in the case of a corporate petitioner, its name and principal place of business or principal office or agency; and, in all cases, the petitioner's identification number (e.g., Social Security number or employer identification number) and the office of the Internal Revenue Service with which the tax return for the period in controversy was filed. The legal residence, principal place of business, or principal office or agency shall be stated as of the date of filing the petition. In the event of a variance between the name set forth in the notice of deficiency or liability and the correct name, a statement of the reasons for such variance shall be set forth in the petition.

(2) The date of the notice of deficiency or liability, or other proper allegations showing jurisdiction in the Court, and the City and State of the office of the Internal Revenue Service which issued the notice.

(3) The amount of the deficiency or liability, as the case may be, determined by the Commissioner; the nature of the tax; the year or years or other periods for which the determination was made; and, if different from the Commissioner's determination, the approximate amount of taxes in controversy.

(4) Clear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issue not raised in the assignment of errors shall be deemed to be conceded. Each assignment of error shall be separately lettered.

(5) Clear and concise lettered statements of the facts on which petitioner bases the assignments of error, except with respect to those assignments of error as to which the burden of proof is on the Commissioner.

(6) A prayer setting forth relief sought by the petitioner.

(7) The signature, mailing address, and telephone number of each petitioner or his counsel.

(8) A copy of the notice of deficiency or liability, as the case may be, which shall be appended to the petition, and with which there shall be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of deficiency or liability or accompanying statement incorporates by reference any prior notices or other material furnished by the Internal Revenue Service, such parts thereof as are material to the issues raised by the assignments of error likewise shall be appended to the petition.

A claim for reasonable litigation costs shall not be included in the petition in a deficiency or liability action. For the requirements as to claims for reasonable litigation costs, see Rule 231.

(c) Content of Petition in Other Actions: For the requirements as to the content of the petition in other actions, see Rule 211(c), (d), (e), and (f) and Rule 221(c), (d), and (e).

(d) Number Filed: For each petition filed, there shall be a signed original together with two conformed copies.

Rule 35. Entry on docket

Upon receipt of the petition by the Clerk, the case will be entered upon the docket and assigned a number, and the parties will be notified thereof by the Clerk. The docket number shall be placed by the parties on all papers thereafter filed in the case, and shall be referred to in all correspondence with the Court.

Rule 36. Answer

(a) Time to Answer or Move: The Commissioner shall have 60 days from the date of service of the petition within which to file an answer, or 45 days from that date within which to move with respect to the petition. With respect to an amended petition or amendments to the petition, the Commissioner shall have like periods from the date of service of those papers within which to answer or move in response thereto, except as the Court may otherwise direct.

(b) Form and Content: The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation in the petition; however, if the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state, and such statements shall have the effect of a denial. If the Commissioner intends to qualify or to deny only a part of an allegation, he shall specify so much of it as is true and shall qualify or deny only the remainder. In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof. Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate.

(c) Effect of Answer: Every material allegation set out in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted.

(d) Declaratory Judgment and Disclosure Actions: For the requirements applicable to the answer in declaratory judgment actions and in disclosure actions, see Rules 213(a) and 223(a), respectively.

Rule 37. Reply

(a) Time to Reply or Move: The petitioner shall have 45 days from the date of service of the answer within which to file a reply, or 30 days from that date within which to move with respect to the answer. With respect to an amended answer or amendments to the answer, the petitioner shall have like periods from the date of service of those papers within which to reply or move in response thereto, except as the Court may otherwise direct.

(b) Form and Content: In response to each material allegation in the answer and the facts in support thereof on which the Commissioner has the burden of proof, the reply shall contain a specific admission or denial; however, if the petitioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state, and such statement shall have the effect of a denial. In addition, the reply shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the petitioner relies affirmatively or in avoidance of any matter in the answer on which the Commissioner has the burden of proof. In other respects the requirements of pleading applicable to the answer provided in Rule 36(b) shall apply to the reply. The paragraphs of the reply shall be designated to correspond to those of the answer to which they relate.

(c) Effect of Reply or Failure Thereof: Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply, shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed denied unless the Commissioner, within 45 days after expiration of the time for filing the reply, files a motion that specified allegations in the answer be deemed admitted. That motion will be served on the petitioner and may be granted unless the required reply is filed within the time directed by the Court.

(d) New Material: Any new material contained in the reply shall be deemed to be denied.

(e) Declaratory Judgment and Disclosure Actions: For the requirements applicable to the reply in declaratory judgment actions and in disclosure actions, see Rules 213(b) and 223(b), respectively.

Rule 38. Joinder of issue

A case shall be deemed at issue upon the filing of the answer, unless a reply is required under Rule 37, in which event it shall be deemed at issue upon the filing of a reply or the entry of an order disposing of a motion under Rule 37(c) or the expiration of the period specified in Rule 37(c) in case the Commissioner fails to move. With respect to declaratory judgment actions and disclosure actions, see Rules 214 and 224, respectively.

Rule 39. Pleading special matters

A party shall set forth in his pleading any matter constituting an avoidance or affirmative defense, including res judicata, collateral estoppel, estoppel, waiver, duress, fraud, and the statute of limitations. A mere denial in a responsive pleading will not be sufficient to raise any such issue.

Rule 40. Defenses and objections made by pleading or motion

Every defense, in law or fact, to a claim for relief in any pleading shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may, at the option of the pleader, be made by motion: (a) lack of jurisdiction; and (b) failure to state a claim upon which relief can be granted. If a pleading sets forth a claim for relief to which the adverse party is not required to file a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting failure to state a claim on which relief can be granted, matters outside the pleading are to be presented, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 121, and the parties shall be given an opportunity to present all material made pertinent to a motion under Rule 121.

Rule 41. Amended and supplemental pleadings

(a) Amendments: A party may amend his pleading once as a matter of course at any time before a responsive pleading is served. If the pleading is one to which no responsive pleading is permitted and the case has not been placed on a trial calendar, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be given freely when justice so requires. No amendment shall be allowed after expiration of the time for filing the petition, however, which would involve conferring jurisdiction on the Court over a matter which otherwise would not come within its jurisdiction under the petition as then on file. A motion for leave to amend a pleading shall state the reasons for the amendment and shall be accompanied by the proposed amendment. See Rules 36(a) and 37(a) for time for responding to amended pleadings.

(b) Amendments to Conform to the Evidence: (1) *Issues Tried by Consent:* When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. The Court, upon motion of any party at any time, may allow such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues; but failure to amend does not affect the result of the trial of these issues.

(2) *Other Evidence:* If evidence is objected to at the trial on the ground that it is not within the issues raised by pleadings, the Court may receive the evidence and at any time allow the pleadings to be amended to conform to the proof, and shall do so freely when justice so requires and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his position on the merits.

(3) *Filing:* The amendment or amended pleadings permitted under this paragraph (b) shall be filed with the Court at the trial or shall be filed with the Clerk at Washington, D.C., within such time as the Court may fix.

(c) Supplemental Pleadings: Upon motion of a party, the Court may, upon such terms as are just, permit him to file a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. Permission may be granted even though the original pleading is defective in its statements of a claim for relief or defense. If the Court deems it advisable that the adverse party plead to the supplemental pleading, it shall so direct, specifying the time therefor.

(d) Relation Back of Amendments: When an amendment of a pleading is permitted, it shall relate back to the time of filing of that pleading, unless the Court shall order otherwise either on motion of a party or on its own initiative.

TITLE V—MOTIONS

Rule 50. General requirements

(a) Form and Content of Motion: An application to the Court for an order shall be by motion in writing, which shall state with particularity the grounds therefor and shall set forth the relief or order sought. The motion shall show that prior notice thereof has been given to each other party or his counsel and shall state whether there is any objection to the motion. If a motion does not include such a statement, the Court will assume that there is an objection to the motion. Unless the Court directs otherwise, motions made during a hearing or trial need not be in writing. The rules applicable to captions, signing, and other matters of form and style of pleadings apply to all motions. See Rules 23, 32, and 33.

(b) Disposition of Motions: A motion may be disposed of in one or more of the following ways, in the discretion of the Court:

(1) The Court may take action after directing that a written response be filed. In that event, the motion shall be served upon the opposing party, who shall file such response within such period as the Court may direct. Written response to a motion shall conform to the same requirements of form and style as apply to motions.

(2) The Court may take action after directing a hearing, which normally will be held in Washington, D.C. The Court may, on its own motion or upon the written request of any party to the motion, direct that the hearing be held at some other location which serves the convenience of the parties and the Court.

(3) The Court may take such action as the Court in its discretion deems appropriate, on such prior notice, if any, which the Court may consider reasonable. The action of the Court may be taken with or without written response, hearing, or attendance of a party to the motion at the hearing.

(c) Attendance at Hearings: If a motion is noticed for hearing, a party to the motion may, prior to or at the time for such hearing, submit a written statement of his position together with any supporting documents. Such statement may be submitted in lieu of or in addition to attendance at the hearing.

(d) Defects in Pleading: Where the motion or order is directed to defects in a pleading, prompt filing of a proper pleading correcting the defects may obviate the necessity of a hearing thereon.

(e) Postponement of Trial: The filing of a motion shall not constitute cause for postponement of a trial. With respect to motions for continuance, see Rule 134.

(f) Service of Motions: The rules applicable to service of pleadings apply to service of motions. See Rule 21.

Rule 51. Motion for more definite statement

(a) General: If a pleading to which a responsive pleading is permitted or required is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. See Rules 70 and 90 for procedures available to narrow the issues or to elicit further information as to the facts involved or the positions of the parties.

(b) Penalty for Failure of Response: The Court may strike the pleading to which the motion is directed or may make such other order as it deems just, if the required response is not made within such period as the Court may direct.

Rule 52. Motion to strike

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within 30 days after the service of the pleading, or upon the Court's own initiative at any time, the Court may order stricken from any pleading any insufficient claim or defense or any redundant, immaterial, impertinent, frivolous, or scandalous matter. In like manner and procedure, the Court may order stricken any such objectionable matter from briefs, documents, or any other papers or responses filed with the Court.

Rule 53. Motion to dismiss

A case may be dismissed for cause upon motion of a party or upon the Court's initiative.

Rule 54. Timely filing and joinder of motions

Motions must be made timely, unless the Court shall permit otherwise. Motions shall be separately stated and not joined together, except that motions under Rules 51 and 52 directed to the same pleading or other paper may be joined.

Rule 55. Miscellaneous

For reference in the Rules to other motions, see Rules 25(c) (extension of time), 40 (defenses made by motion), 41 (amendment of pleadings), 63 (substitution of parties), 71(c) (answers to interrogatories), 81(b) (depositions), 90(d) (requests for admissions), 91(f) (stipulations), 121(a) (summary judgment), 123(c) (setting aside default or dismissal), 134 (continuances), 140(c) (place of trial), 141 (consolidation and separation), 151(c) (delinquent briefs), 161 (reconsideration), 162 (vacating or revising decision), and 231 (reasonable litigation costs).

TITLE VI—PARTIES

Rule 60. Proper parties; capacity

(a) Petitioner: (1) *Deficiency or Liability Actions:* A case shall be brought by and in the name of the person against whom the Commissioner determined the deficiency (in the case of a notice of deficiency) or liability (in the case of a notice of liability), or by and with the full descriptive name of the fiduciary entitled to institute a case on behalf of such person. See Rule 23(a)(1). A case timely brought shall not be dismissed on the ground that it is not properly brought on behalf of a party until a reasonable time has been allowed after objection for ratification by such party of the bringing of the case; and such ratification shall have the same effect as if the case had been properly brought by such party. Where the deficiency or liability is determined against more than one person in the notice by the Commissioner, only such of those persons who shall duly act to bring a case shall be deemed a party or parties.

(2) *Other Actions:* For the person who may bring a case as a petitioner in a declaratory judgment action, see Rules 210(b)(12), 211, and 216. For the person who may bring a case as a petitioner in a disclosure action, see Rules 220(b)(5), 221, and 225.

(b) Respondent: The Commissioner shall be named the respondent.

(c) Capacity: The capacity of an individual, other than one acting in a fiduciary or other representative capacity, to engage in litigation in the Court shall be determined by the law of his domicile. The capacity of a corporation to engage in such litigation shall be determined by the law under which it was organized. The capacity of a fiduciary or other representative to litigate in the Court shall be determined in accordance with the law of the jurisdiction from which he derives his authority.

(d) Infants or Incompetent Persons: Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may bring a case or defend in the Court on behalf of the infant or incompetent person. If an infant or incompetent person does not have a duly appointed representative, he may act by his next friend or by a guardian ad litem. Where a party attempts to represent himself and, in the opinion of the Court, there is a serious question as to his competence to do so, the Court, if it deems justice so requires, may continue the case until appropriate steps have been taken to obtain an adjudication of the question by a court having jurisdiction so to do, or may take such other action as it deems proper.

Rule 61. Permissive joinder of parties

(a) Permissive Joinder: Any person, to whom a notice of deficiency or notice of liability has been issued, may join with any other such person in filing a petition in the Court which is timely with respect to the notice issued to each joining party. Joinder is permitted only where all or part of each participating party's tax liability arises out of the same transaction, occurrence, or series of transactions and occurrences and, in addition, there is a common question of law or fact relating to those parties. As to the filing of a joint petition, see also Rule 34. With respect to the joinder of parties in declaratory judgment actions and in disclosure actions, see Rules 215 and 226, respectively.

(b) Severance or Other Orders: The Court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party; or may order separate trials or make other orders to prevent delay or prejudice; or may limit the trial to the claims of one or more parties, either dropping other parties from the case on such terms as are just or holding in abeyance the proceedings with respect to them. Any claim by or against a party may be severed and proceeded with separately. See also Rule 141(b).

Rule 62. Misjoinder of parties

Misjoinder of parties is not ground for dismissal of a case. The Court may order a severance on such terms as are just. See Rule 61(b).

Rule 63. Substitution of parties; change or correction in name

(a) Death: If a petitioner dies, the Court, on motion of a party or the decedent's successor or representative or on its own initiative, may order substitution of the proper parties.

(b) Incompetency: If a party becomes incompetent, the Court, on motion of a party or the incompetent's representative or on its own initiative, may order his representative to proceed with the case.

(c) Successor Fiduciaries or Representatives: On motion made where a fiduciary or representative is changed, the Court may order substitution of the proper successors.

(d) Other Cause: The Court, on motion of a party or on its own initiative, may order the substitution of proper parties for other cause.

(e) Change or Correction in Name: On motion of a party or on its own initiative, the Court may order a change of or correction in the name or title of a party.

TITLE VII—DISCOVERY

Rule 70. General provisions

(a) General: (1) *Methods and Limitations of Discovery:* In conformity with these Rules, a party may obtain discovery by written interrogatories (Rule 71), by production of documents or things (Rules 72 and 73), by depositions upon consent of the parties (Rule 74), or by depositions without consent of the parties in certain cases (Rule 75). However, the Court expects the parties to attempt to attain the objectives of discovery through informal consultation or communication before utilizing the discovery procedures provided in these Rules. Discovery is not available under these Rules through depositions except to the limited extent provided in Rules 74 and 75. See Rules 91(a) and 100 regarding relationship of discovery to stipulations.

(2) *Time for Discovery:* Discovery shall not be commenced, without leave of Court, before the expiration of 30 days after joinder of issue (see Rule 38), and shall be completed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for call of the case from a trial calendar. Discovery by a deposition under Rule 75 may not be commenced before a notice of trial has been issued or the case has been assigned to a Judge or Special Trial Judge and shall be completed within the time provided by the preceding sentence. See Rule 75(a). Discovery of matters which are relevant only to the issue of a party's entitlement to reasonable litigation costs shall not be commenced, without leave of Court, before a motion for reasonable litigation costs has been noticed for a hearing, and shall be completed, unless otherwise authorized by the Court, no later than 45 days prior to the date set for hearing.

(3) *Cases Consolidated for Trial:* With respect to a common matter in cases consolidated for trial, discovery may be had by any party to such a case to the extent provided by these Rules, and, for that purpose, the reference to a "party" in this Title VII, and Title VIII, or in Title X, shall mean any party to any of the consolidated cases involving such common matter.

(b) Scope of Discovery: The information or response sought through discovery may concern any matter not privileged and which is relevant to the subject matter involved in the pending case. It is not ground for objection that the information or response sought will be inadmissible at the trial, if that information or response appears reasonably calculated to lead to discovery of admissible evidence, regardless of the burden of proof involved. If the information or response sought is otherwise proper, it is not objectionable merely because the information or response involves an opinion or contention that relates to fact or to the application of law to fact. But the Court may order that the information or response sought need not be furnished or made until some designated time or a particular stage has been reached in the case or until a specified step has been taken by a party.

(c) Party's Statements: Upon request to the other party and without any showing except the assertion in writing that he lacks and has no convenient means of obtaining a copy of a statement made by him, a party shall be entitled to obtain a copy of any such statement which has a bearing on the subject matter of the case and is in the possession or control of another party to the case.

(d) Use in Case: The answers to interrogatories, things produced in response to a request, or other information or responses obtained under Rules 71, 72, 73, 74, and 75, may be used at trial or in any proceeding in the case prior or subsequent to trial, to the extent permitted by the rules of evidence. Such answers or information or responses will not be considered as evidence until offered and received as evidence. No objections to interrogatories or the answers thereto, or to a request to produce or the response thereto, will be considered unless made within the time prescribed, except that the objection that an interrogatory or answer would be inadmissible at trial is preserved even though not made prior to trial.

(e) Other Applicable Rules: For Rules concerned with the frequency and timing of discovery in relation to other procedures, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.

Rule 71. Interrogatories

(a) Availability: Any party may, without leave of Court, serve upon any other party written interrogatories to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or governmental agency, by an officer or agent who shall furnish such information as is available to the party.

(b) Answers: All answers shall be made in good faith and as completely as the answering party's information shall permit. However, the answering party is required to make reasonable inquiry and ascertain readily obtainable information. An answering party may not give lack of information or knowledge as an answer or as a reason for failure to answer, unless he states that he has made reasonable inquiry and that information known or readily obtainable by him is insufficient to enable him to answer the substance of the interrogatory.

(c) Procedure: Each interrogatory shall be answered separately and fully under oath, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of the answer. The answers are to be signed by the person making them, and the objections shall be signed by the party or his counsel. The party, on whom the interrogatories have been served, shall serve a copy of his answers, and objections if any, upon the propounding party within 45 days after service of the interrogatories upon him. The Court may allow a shorter or longer time. The burden shall be on the party submitting the interrogatories to move for an order with respect to any objection or other failure to answer an interrogatory, and in that connection the moving party shall annex to his motion the interrogatories, with proof of service on the other party, together with the answers and objections if any. Prior to moving for such an order, neither the interrogatories nor the response shall be filed with the Court.

(d) Experts: (1) By means of written interrogatories in conformity with this Rule, a party may require any other party (i) to identify each person whom the other party expects to call as an expert witness at the trial of the case, giving his name, address, vocation or occupation, and a statement of his qualifications, and (ii) to state the subject matter and the substance of the facts and opinions to which the expert is expected to testify, and give a summary of the grounds for each such opinion, or, in lieu of such statement to furnish a copy of a report of such expert presenting the foregoing information.

(2) If not furnished earlier, each party who expects to call an expert witness shall furnish each other party and shall submit to the Court, not later than 15 days prior to the call of the trial calendar on which the case shall appear, a copy of all reports intended to be used in conjunction with the testimony of the witness at the trial of the case.

(e) Option to Produce Business Records: Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served, or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Rule 72. Production of documents and things

(a) Scope: Any party may, without leave of Court, serve on any other party a request to:

(1) Produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the responding party through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things, to the extent that any of the foregoing items are in the possession, custody or control of the party on whom the request is served; or

(2) Permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon.

(b) Procedure: The request shall set forth the items to be inspected, either by individual item or by category, and describe each item and category with reasonable particularity. It shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 30 days after service of the request. The Court may allow a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to in whole or in part, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, that part shall be specified. To obtain a ruling on an objection by the responding party, on a failure to respond, or on a failure to produce or permit inspection, the requesting party shall file an appropriate motion with the Court and shall annex thereto his request, with proof of service on the other party, together with the response and objections if any. Prior to moving for such a ruling, neither the request nor the response shall be filed with the Court.

(c) Foreign Petitioners: For production of records by foreign petitioners, see Code Section 7456(b).

Rule 73. Examination by transferees

(a) General: Upon application to the Court and subject to these Rules, a transferee of property of a taxpayer shall be entitled to examine before trial the books, papers, documents, correspondence, and other evidence of the taxpayer or of a preceding transferee of the taxpayer's property, provided that the transferee making the application is a petitioner seeking redetermination of his liability in respect of the taxpayer's tax liability (including interest, additional amounts, and additions provided by law). Such books, papers, documents, correspondence, and other evidence may be made available to the extent that the same shall be within the United States, will not result in undue hardship to the taxpayer or preceding transferee, and in the opinion of the Court is necessary in order to enable the transferee to ascertain the liability of the taxpayer or preceding transferee.

(b) **Procedure:** A petitioner desiring an examination permitted under paragraph (a), shall file an application with the Court, showing that he is entitled to such an examination, describing the documents and other materials sought to be examined, giving the names and addresses of the persons to produce the same, and stating a reasonable time and place where the examination is to be made. If the Court shall determine that the applicable requirements are satisfied, it shall issue a subpoena, signed by a Judge, directed to the appropriate person and ordering the production at a designated time and place of the documents and other materials involved. If the person to whom the subpoena is directed shall object thereto or to the production involved, he shall file his objections and the reasons therefor in writing with the Court, and serve a copy thereof upon the applicant, within 10 days after service of the subpoena or on or before such earlier time as may be specified in the subpoena for compliance. To obtain a ruling on such objections, the applicant for the subpoena shall file an appropriate motion with the Court. In all respects not inconsistent with the provisions of this Rule, the provisions of Rule 72(b) shall apply where appropriate.

(c) **Scope of Examination:** The scope of the examination authorized under this Rule shall be as broad as is authorized under Rule 72(a), including, for example, the copying of such documents and materials.

Rule 74. Depositions for discovery purposes—upon consent of parties

(a) **Depositions in Pending Cases:** Upon consent of all the parties to a case, and within the time limits provided in Rule 70(a)(2), a deposition for discovery purposes may be taken either of a party or a non-party witness. Such consent shall be set forth in a stipulation filed in duplicate with the Court, which shall contain the information required in Rule 81(d) and which otherwise shall be subject to the procedure provided in Rule 81(d). Unless the Court shall determine otherwise for good cause shown, the taking of such a deposition will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set.

(b) **Notice to Non-Party Witness:** A notice of deposition shall be served on a non-party witness. The notice shall state that the deposition is to be taken under Rule 74 and shall set forth the name of the party or parties seeking the deposition, the time and place proposed for the deposition, and the name of the officer before whom the deposition is to be taken. If the deposition is to be taken on written questions, a copy of the questions shall be annexed to the notice. With respect to the deposition of an organization described in Rule 81(c), the notice shall also set forth the information required under that Rule, and the organization shall make the designation authorized by that Rule.

(c) **Objection by Non-Party Witness:** Within 15 days after service of the notice of deposition, a non-party witness shall serve on the parties seeking the deposition any objections to the deposition. The burden shall be upon a party seeking the deposition to move for an order with respect to such objection or other failure of the non-party witness, and such party shall annex to his motion the notice of deposition with proof of service thereof, together with a copy of the response and objections if any.

(d) **Transcript:** A transcript shall be made of every deposition taken under this Rule, but the transcript and exhibits introduced in connection with the deposition shall not be filed with the Court. See Rule 81(h)(3).

(e) **Depositions Upon Written Questions:** Depositions under this Rule may be taken upon written questions rather than upon oral examination. The use of such written questions is not favored, and the deposition should not be taken in this manner in the absence of a special reason. See Rule 84(a). There shall be an opportunity for cross-questions and redirect questions to the same extent and within the same time periods as are provided in Rule 84(b) (starting with service of the notice of deposition rather than service of an application). With respect to taking the deposition, the procedure of Rule 84(c) shall apply.

(f) **Other Applicable Rules:** Depositions for discovery purposes under this Rule shall be governed by the provisions of the following Rules with respect to the matters to which they apply: Rule 81(e) (persons before whom deposition taken), 81(f) (taking of deposition), 81(g) (expenses), 81(h) (execution, form and return of deposition), 81(i) (use of deposition), and 85(b), (c), (d), and (e) (objections and irregularities). For Rules concerned with the timing and frequency of depositions, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.

Rule 75. Depositions for discovery purposes—without consent of parties in certain cases

(a) **When Depositions May Be Taken:** After a notice of trial has been issued or after a case has been assigned to a Judge or Special Trial Judge of the Court, and within the time for completion of discovery under Rule 70(a)(2), any party may, without leave of Court, take a deposition for discovery purposes of a non-party witness in the circumstances described in paragraph (b) of this Rule. Unless the Court shall determine otherwise for good cause shown, the taking of such a deposition will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set.

(b) **Availability:** The taking of a deposition of a non-party witness under this Rule is an extraordinary method of discovery and may be used only where a non-party witness can give testimony or possesses documents or things which are discoverable within the meaning of Rule 70(b) and where such testimony, documents, or things practicably cannot be obtained through informal consultation or communication (Rule 70(a)(1)) or by a deposition taken with consent of the parties (Rule 74). If such requirements are satisfied, a deposition may be taken under this Rule, for example, where a party is a member of a partnership and an issue in the case involves an adjustment with respect to such partnership, or a party is a shareholder of an electing small business corporation (as defined in Code Section 1371(b) prior to the enactment of the Subchapter S Revision Act of 1982) and an issue in the case involves an adjustment with respect to such corporation.

(c) Notice: A party desiring to take a deposition under this Rule shall give notice in writing to every other party to the case and to the non-party witness to be deposed. The notice shall state that the deposition is to be taken under Rule 75 and shall set forth the name of the party seeking the deposition, the name and address of the person to be deposed, the time and place proposed for the deposition, and the officer before whom the deposition is to be taken. If the deposition is to be taken on written questions, a copy of the questions shall be annexed to the notice.

(d) Objections: Within 15 days after service of the notice of deposition, a party or a non-party witness shall serve on the party seeking the deposition any objections to the deposition. The burden shall be upon the party seeking the deposition to move for an order with respect to any such objections or any failure of the non-party witness, and such party shall annex to his motion the notice of deposition with proof of service thereof, together with a copy of any responses and objections. Prior to moving for such an order, neither the notice nor the responses shall be filed with the Court.

(e) Other Applicable Rules: Depositions for discovery purposes under this Rule shall be governed by the provisions of the following Rules with respect to the matters to which they apply: Rule 74(d) (transcript), 74(e) (depositions upon written questions), Rule 81(c) (designation of person to testify), 81(e) (person before whom deposition taken), 81(f) (taking of deposition), 81(g) (expenses), 81(h) (execution, form, and return of deposition), 81(i) (use of deposition); and Rule 85(a), (b), (c), (d), and (e) (objections and irregularities). For Rules concerned with the timing and frequency of depositions, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.

References in Text

The enactment of the Subchapter S Revision Act of 1982, referred to in subsec. (b), is the enactment of Pub. L. 97-354, which was approved Oct. 19, 1982.

TITLE VIII—DEPOSITIONS

Rule 80. General provisions

(a) General: On complying with the applicable requirements, depositions to perpetuate evidence may be taken in a pending case before trial (Rule 81), or in anticipation of commencing a case in this Court (Rule 82), or in connection with the trial (Rule 83). Depositions under this Title may be taken only for the purpose of making testimony or any document or thing available as evidence in the circumstances herein authorized by the applicable Rules. Depositions for discovery purposes may be taken only in accordance with Rules 74 and 75.

(b) Other Applicable Rules: For Rules concerned with the timing and frequency of depositions, supplementation of answers, protective orders, effect of evasive or incomplete answers or responses, and sanctions and enforcement action, see Title X.

Rule 81. Depositions in pending case

(a) Depositions to Perpetuate Testimony: A party to a case pending in the Court, who desires to perpetuate his own testimony or that of any other person or to preserve any document or thing, shall file an application pursuant to these Rules for an order of the Court authorizing such party to take a deposition for such purpose. Such depositions shall be taken only where there is a substantial risk that the person or document or thing involved will not be available at the trial of the case, and shall relate only to testimony or document or thing which is not privileged and is material to a matter in controversy.

(b) The Application: (1) *Content of Application:* The application to take a deposition pursuant to paragraph (a) of this Rule shall be signed by the party seeking the deposition or his counsel, and shall show the following:

(i) the names and addresses of the persons to be examined;

(ii) the reasons for deposing those persons rather than waiting to call them as witnesses at the trial;

(iii) the substance of the testimony which the party expects to elicit from each of those persons;

(iv) a statement showing how the proposed testimony or document or thing is material to a matter in controversy;

(v) a statement describing any books, papers, documents, or tangible things to be produced at the deposition by the persons to be examined;

(vi) the time and place proposed for the deposition;

(vii) the officer before whom the deposition is to be taken;

(viii) the date on which the petition was filed with the Court, and whether the pleadings have been closed and the case placed on a trial calendar;

(ix) any provision desired with respect to payment of expenses, fees, and charges relating to the deposition (see paragraph (g) of this Rule, and Rule 103); and

(x) if the applicant proposes to videotape the deposition, the application shall so state, and shall show the name and address of the videotape operator and of his employer. (The videotape operator and the officer before whom the deposition is to be taken may be the same person. See subparagraph (2) of paragraph (j) of this Rule.)

The application shall also have annexed to it a copy of the questions to be propounded, if the deposition is to be taken on written questions. For the form of application to take a deposition, see Appendix I.

(2) *Filing and Disposition of Application:* The application may be filed with the Court at any time after the case is docketed in the Court, but must be filed at least 45 days prior to the date set for the trial of the case. The deposition must be completed and filed with the Court at least 10 days prior to the trial date. The application and a conformed copy thereof, together with an additional conformed copy for each additional docket number involved, shall be filed with the Clerk of the Court. The applicant shall serve a copy of the application on each of the other parties to the case, as well as on such other persons who are to be examined pursuant to the application, and shall file with the Clerk a certificate showing such service. Such other parties or persons shall file their objections or other response, with the same number of copies and with a certificate of service thereof on the other parties and such other persons, within 15 days after such service of the application. A hearing on the application will be held only if directed by the Court. Unless the Court shall determine otherwise for good cause shown, an application to take a deposition will not be regarded as sufficient ground for granting a continuance from a date or place of trial theretofore set. If the Court approves the taking of a deposition, it will issue an order which will include in its terms the name of the person to be examined, the time and place of the deposition, and the officer before whom it is to be taken. If the deposition is to be videotaped, the Court's order will so state.

(c) Designation of Person to Testify: The party seeking to take a deposition may name, as the deponent in his application, a public or private corporation or a partnership or association or governmental agency, and shall designate with reasonable particularity the matters on which examination is requested. The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which he will testify. The persons so designated shall testify as to matters known or reasonably available to the organization.

(d) Use of Stipulation: The parties or their counsel may execute and file a stipulation to take a deposition by agreement instead of filing an application as hereinabove provided. Such a stipulation shall be filed with the Court in duplicate, and shall contain the same information as is required in items (i), (vi), (vii), (ix), and (x) of Rule 81(b)(1), but shall not require the approval or an order of the Court unless the effect is to delay the trial of the case. A deposition taken pursuant to a stipulation shall in all respects conform to the requirements of these Rules.

(e) Person Before Whom Deposition Taken: (1) *Domestic Depositions:* Within the United States or a territory or insular possession subject to the dominion of the United States, depositions shall be taken before an officer authorized to administer oaths by the laws of the United States (see Code Section 7622) or of the place where the examination is held, or before a person appointed by the Court. A person so appointed has power to administer oaths and to take such testimony.

(2) *Foreign Depositions:* In a foreign country, depositions may be taken (i) before a person authorized to administer oaths or affirmations in the place in which the examination is held, either by the law thereof or by the law of the United States, or (ii) before a person commissioned by the Court, and a person so commissioned shall have the power, by virtue of his commission, to administer any necessary oath and take testimony, or (iii) pursuant to a letter rogatory. A commission or a letter rogatory shall be issued on application and notice and on terms that are just and appropriate. The party seeking the commission or letter rogatory shall contact the United States Department of State to ascertain any requirements imposed by it or by the foreign country in which the deposition is to be taken, including any required foreign language translations and any fees or costs, and shall submit to the Court, along with the application, any such foreign language translations, fees, costs, or other materials required. It is not requisite to the issuance of a commission or a letter rogatory that the taking of the deposition in any other manner is impracticable or inconvenient; and both a commission and a letter rogatory may be issued in proper cases. A notice or commission may designate the person before whom the deposition is to be taken either by name or descriptive title. A letter rogatory may be addressed "To The Appropriate Authority in [here name the country]." Evidence obtained by deposition or in response to a letter rogatory need not be excluded merely for the reason that it is not a verbatim transcript or that the testimony was not taken under oath or for any similar departure from the requirements for depositions within the United States under these Rules.

(3) *Disqualification for Interest:* No deposition shall be taken before a person who is a relative or employee or counsel of any party, or is a relative or employee or associate of such counsel, or is financially interested in the action. However, on consent of all the parties or their counsel, a deposition may be taken before such person, provided that the relationship of that person and the waiver shall be set forth in the certificate of return to the Court.

(f) Taking of Deposition: (1) *Arrangements:* All arrangements necessary for taking of the deposition shall be made by the party filing the application or, in the case of a stipulation, by such other persons as may be agreed upon by the parties.

(2) *Procedure:* Attendance by the persons to be examined may be compelled by the issuance of a subpoena, and production likewise may be compelled of exhibits required in connection with the testimony being taken. The officer before whom the deposition is taken shall first put the witness on oath (or affirmation) and shall personally, or by someone acting under his direction and in his presence, record accurately and verbatim the questions asked, the answers given, the objections made, and all matters transpiring at the taking of the deposition which bear on the testimony involved. Examination and cross-examination of witnesses, and the marking of exhibits, shall proceed as permitted at trial. All objections made at the time of examination shall be noted by the officer upon the deposition. Evidence objected to, unless privileged, shall be taken subject to the objections made. If an answer is improperly refused and as a result a further deposition is taken by the interrogating party, the objecting party or deponent may be required to pay all costs, charges, and expenses of that deposition to the same extent as is provided in paragraph (g) of this Rule where a party seeking to take a deposition fails to appear at the taking of the deposition. At the request of either party, a prospective witness at the deposition, other than a person acting in an expert or advisory capacity for a party, shall be excluded from the room in which, and during the time that, the testimony of another witness is being taken; and if such person remains in the room or within hearing of the examination after such request has been made, he shall not thereafter be permitted to testify, except by the consent of the party who requested his exclusion or by permission of the Court.

(g) Expenses: (1) *General:* The party taking the deposition shall pay all the expenses, fees, and charges of the witness whose deposition is taken by him, any charges of the officer presiding at or recording the deposition other than for copies of the deposition, and any expenses involved in providing a place for the deposition. The party taking the deposition shall pay for the original of the deposition; and, upon payment of reasonable charges therefor, the officer shall also furnish a copy of the deposition to any party or the deponent. By stipulation between the parties or on order of the Court, provision may be made for any costs, charges, or expenses relating to the deposition.

(2) *Failure to Attend or to Serve Subpoena:* If the party authorized to take a deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the arrangements made, the Court may order the former party to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney's fees. If the party authorized to take a deposition of a witness fails to serve a subpoena upon him and the witness because of such failure does not attend, and if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the Court may order the former party to pay to such other party the reasonable expenses incurred by him and his attorney attending, including reasonable attorney's fees.

(h) Execution and Return of Deposition: (1) *Submission to Witness; Changes; Signing:* When the testimony is fully transcribed, the deposition shall be submitted to the witness for examination and shall be read to or by him, unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance, which the witness desires to make, shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless the Court determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part. As to correction of errors see Rules 85 and 143(c).

(2) *Form:* The deposition shall show the docket number and caption of the case as they appear in the Court's records, the place and date of taking the deposition, the name of the witness, the party by whom called, the names of counsel present and whom they represent. The pages of the deposition shall be securely fastened. Exhibits shall be carefully marked, and when practicable annexed to, and in any event returned with, the deposition, unless, upon motion to the Court, a copy shall be permitted as a substitute after an opportunity is given to all interested parties to examine and compare the original and the copy. The officer shall execute and attach to the deposition a certificate in accordance with Form 7 shown in Appendix I.

(3) *Return of Deposition:* The deposition and exhibits shall not be filed with the Court. Unless otherwise directed by the Court, the officer shall deliver the original deposition and exhibits to the party taking the deposition or his counsel, who shall take custody of and be responsible for the safeguarding of the original deposition and exhibits. Upon payment of reasonable charges therefor, the officer also shall deliver a copy of the deposition and exhibits to any party or the deponent, or to counsel for any party or for the deponent. As to use of a deposition at the trial or in any other proceeding in the case, see paragraph (i) of this Rule. As to introduction of a deposition in evidence, see Rule 143(c).

(i) Use of Deposition: At the trial or in any other proceeding in the case, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) The deposition may be used by any party for the purpose of contradicting or im-

peaching the testimony of deponent as a witness.

(2) The deposition of a party may be used by an adverse party for any purpose.

(3) The deposition may be used for any purpose if the Court finds: (A) that the witness is dead; or (B) that the witness is at such distance from the place of trial that it is not practicable for him to attend, unless it appears that the absence of the witness was procured by the party seeking to use the deposition; or (C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or (D) that the party offering the deposition has been unable to obtain attendance of the witness at the trial, as to make it desirable in the interests of justice, to allow the deposition to be used; or (E) that such exceptional circumstances exist, in regard to the absence of the witness at the trial, as to make it desirable in the interests of justice, to allow the deposition to be used.

(4) If only part of a deposition is offered in evidence by a party, an adverse party may require him to introduce any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

As to introduction of deposition in evidence, see Rule 143(c).

(j) Videotape Depositions: (1) *General:* By stipulation of the parties or upon order of the Court, a deposition to perpetuate testimony to be taken upon oral examination may be recorded by videotape. Except as otherwise provided by this paragraph, all other provisions of these Rules governing the practice and procedure in depositions shall apply.

(2) *Procedure:* The deposition shall begin by the operator stating on camera (i) his name and address, (ii) the name and address of his employer, (iii) the date, time, and place of the deposition, (iv) the caption and docket number of the case, (v) the name of the witness, and (vi) the party on whose behalf the deposition is being taken. The officer before whom the deposition is taken shall then identify himself and swear the witness on camera. At the conclusion of the deposition, the operator shall state on camera that the deposition is concluded. The officer before whom the deposition is taken and the operator may be the same person. When the length of the deposition requires the use of more than one tape, the end of each tape and the beginning of each succeeding tape shall be announced on camera by the operator. The deposition shall be timed by a digital clock on camera which shall show continually each hour, minute, and second of each tape of the deposition.

(3) *Transcript:* If requested by one of the parties, the testimony shall be transcribed at the cost of such party; but no signature of the witness shall be required, and the transcript shall not be filed with the Court.

(4) *Custody:* The party taking the deposition or his counsel shall take custody of and be responsible for the safeguarding of the videotape together with any exhibits, and such party shall permit the viewing of or shall provide a copy of the videotape and any exhibits upon the request and at the cost of any other party.

(5) *Use:* A videotape deposition may be used at a trial or hearing in the manner and to the extent provided in paragraph (i) of this Rule. The party who offers the videotape in evidence shall provide all necessary equipment for viewing the videotape and personnel to operate such equipment. At a trial or hearing, that part of the audio portion of a videotape deposition which is offered in evidence and admitted, or which is excluded on objection, shall be transcribed in the same manner as the testimony of other witnesses. The videotape shall be marked as an exhibit and, subject to the provisions of Rule 143(d)(2), shall remain in the custody of the Court.

Rule 82. Depositions before commencement of case

A person, who desires to perpetuate his own testimony or that of another person or to preserve any document or thing regarding any matter that may be cognizable in this Court, may file an application with the Court to take a deposition for such purpose. The application shall be entitled in the name of the applicant, shall otherwise be in the same style and form as apply to a motion filed with the Court, and shall show the following: (1) The facts showing that the applicant expects to be a party to a case cognizable in this Court but is at present unable to bring it or cause it to be brought. (2) The subject matter of the expected action and his interest therein. (3) All matters required to be shown in an application under paragraph (b)(1) of Rule 81 except item (viii) thereof. Such an application will be entered upon a special docket, and service thereof and pleading with respect thereto will proceed subject to the requirements otherwise applicable to a motion. A hearing on the application may be required by the Court. If the Court is satisfied that the perpetuation of the testimony or the preservation of the document or thing may prevent a failure or delay of justice, it will make an order authorizing the deposition and including such other terms and conditions as it may deem appropriate consistently with these Rules. If the deposition is taken, and if thereafter the expected case is commenced in this Court, the deposition may be used in that case subject to the Rules which would apply if the deposition had been taken after commencement of the case.

Rule 83. Depositions after commencement of trial

Nothing in these Rules shall preclude the taking of a deposition after trial has commenced in a case, upon approval or direction of the Court. The Court may impose such conditions to the taking of the deposition as it may find appropriate and, with respect to any aspect not provided for by the Court, Rule 81 shall govern to the extent applicable.

Rule 84. Depositions upon written questions

(a) Use of Written Questions: A party may make an application to the Court to take a deposition, otherwise authorized under Rules 81, 82, or 83, upon written questions rather than oral examination. The provisions of those Rules shall apply in all respects to such a deposition except to the extent clearly inapplicable or otherwise provided in this Rule. Unless there is special reason for taking the deposition on written questions rather than oral examination, the Court will deny the application, without prejudice to seeking approval of the deposition upon oral examination. The taking of depositions upon written questions is not favored, except when the deposition is to be taken in a foreign country, in which event the deposition must be taken on written questions unless otherwise directed by the Court for good cause shown.

(b) Procedure: An application under paragraph (a) hereof shall have the written questions annexed thereto. With respect to such application, the 15-day period for filing objections prescribed by paragraph (b)(2) of Rule 81 is extended to 20 days, and within that 20-day period the objecting or responding party shall also file with the Court any cross-questions which he may desire to be asked at the taking of the deposition. The applicant shall then file any objections to the cross-questions, as well as any redirect questions, within 15 days after service on him of the cross-questions. Within 15 days after service of the redirect questions on the other party, he shall file with the Court any objections to the redirect questions, as well as any recross questions which he may desire to be asked. No objection to a written question will be considered unless it is filed with the Court within such applicable time. An original and five copies of all questions and objections shall be filed with the Clerk of the Court, who will make service thereof on the opposite party. The Court for good cause shown may enlarge or shorten the time in any respect.

(c) Taking of Deposition: The officer taking the deposition shall propound all questions to the witness in their proper order. The parties and their counsel may attend the taking of the deposition but shall not participate in the deposition proceeding in any manner.

(d) Execution and Return: The execution and return of the deposition shall conform to the requirements of paragraph (h) of Rule 81.

Rule 85. Objections, errors, and irregularities

(a) As to Initiating Deposition: All errors and irregularities in the procedure for obtaining approval for the taking of a deposition are waived, unless made in writing within the time for making objections or promptly where no time is prescribed.

(b) As to Disqualification of Officer: Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived, unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

(c) As to Use: In general, an objection may be made at the trial or hearing to use of a deposition, in whole or in part as evidence, for any reason which would require the exclusion of the testimony as evidence if the witness were then present and testifying. However, objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are waived by failure to make them before or during the taking of the deposition, if the ground of the objection is one which might have been obviated or removed if presented at that time.

(d) As to Manner and Form: Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might have been obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(e) As to Errors by Officer: Errors or irregularities in the manner in which testimony is transcribed or the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the presiding officer, are waived unless a motion to correct or suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained. See also Rule 143(c).

TITLE IX—ADMISSIONS AND STIPULATIONS

Rule 90. Requests for admission

(a) Scope and Time of Request: A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters which are not privileged and are relevant to the subject matter involved in the pending action, provided such matters are set forth in the request and relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. However, the Court expects the parties to attempt to attain the objectives of such a request through informal consultation or communication before utilizing the procedures provided in this Rule. Requests for admission must be commenced and completed within the same period provided in Rule 70(a)(2) for commencement and completion of discovery.

(b) The Request: The request may, without leave of Court, be served by any party to a pending case. Each matter of which an admission is requested shall be separately set forth. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The party making the request shall serve a copy thereof on the other party, and shall file the original with proof of service with the Court.

(c) Response to Request: Each matter is deemed admitted unless, within 30 days after service of the request or within such shorter or longer time as the Court may allow, the party to whom the request is directed serves upon the requesting party (i) a written answer specifically admitting or denying the matter involved in whole or in part, or asserting that it cannot be truthfully admitted or denied and setting forth in detail the reasons why this is so, or (ii) an objection, stating in detail the reasons therefor.

The response shall be signed by the party or his counsel, and the original thereof, with proof of service on the other party, shall be filed with the Court. A denial shall fairly meet the substance of the requested admission; and, when good faith requires that a party qualify his answer or deny only a part of a matter, he shall specify so much of it as is true and deny or qualify the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or readily obtainable by him is insufficient to enable him to admit or deny. A party who considers that a matter, of which an admission has been requested, presents a genuine issue for trial may not, on that ground alone, object to the request; he may, subject to the provisions of paragraph (f) of this Rule, deny the matter or set forth reasons why he cannot admit or deny it. An objection on the ground of relevance may be noted by any party but is not to be regarded as just cause for refusal to admit or deny.

(d) **Motion to Review:** The party who has requested the admissions may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this Rule, it may order either that the matter is admitted or that an amended answer be served. In lieu of any such order, the Court may determine that final disposition of the request shall be made at some later time which may be more appropriate for disposing of the question involved.

(e) **Effect of Admission:** Any matter admitted under this Rule is conclusively established unless the Court on motion permits withdrawal or modification of the admission. Subject to any other orders made in the case by the Court, withdrawal or modification may be permitted when the presentation of the merits of the case will be subserved thereby, and the party who obtained the admission fails to satisfy the Court that the withdrawal or modification will prejudice him in prosecuting his case or defense on the merits. Any admission made by a party under this Rule is for the purpose of the pending action only and is not an admission by him for any other purpose, nor may it be used against him in any other proceeding.

(f) **Sanctions:** If any party unjustifiably fails to admit the genuineness of any document or the truth of any matter as requested in accordance with this Rule, the party requesting the admission may apply to the Court for an order imposing such sanction on the other party or his counsel as the Court may find appropriate in the circumstances, including but not limited to the sanctions provided in Title X. The failure to admit may be found unjustifiable unless the Court finds that (1) the request was held objectionable pursuant to this Rule, or (2) the admission sought was of no substantial importance, or (3) the party failing to admit had reasonable ground to doubt the truth of the matter or the genuineness of the document in respect of which the admission was sought, or (4) there was other good reason for failure to admit.

(g) **Other Applicable Rules:** For Rules concerned with frequency and timing of requests for admissions in relation to other procedures, supplementation of answers, effect of evasive or incomplete answers or responses, protective orders, and sanctions and enforcements, see Title X.

Rule 91. Stipulations for trial

(a) **Stipulations Required:** (1) *General:* The parties are required to stipulate, to the fullest extent to which complete or qualified agreement can or fairly should be reached, all matters not privileged which are relevant to the pending case, regardless of whether such matters involve fact or opinion or the application of law to fact. Included in matters required to be stipulated are all facts, all documents and papers or contents or aspects thereof, and all evidence which fairly should not be in dispute. Where the truth or authenticity of facts or evidence claimed to be relevant by one party is not disputed, an objection on the ground of materiality or relevance may be noted by any other party but is not to be regarded as just cause for refusal to stipulate. The requirement of stipulation applies under this Rule without regard to where the burden of proof may lie with respect to the matters involved. Documents or papers or other exhibits annexed to or filed with the stipulation shall be considered to be part of the stipulation.

(2) *Stipulations To Be Comprehensive:* The fact that any matter may have been obtained through discovery or requests for admission or through any other authorized procedure is not ground for omitting such matter from the stipulation. Such other procedures should be regarded as aids to stipulation, and matter obtained through them which is within the scope of paragraph (1), must be set forth comprehensively in the stipulation, in logical order in the context of all other provisions of the stipulation.

(b) **Form:** Stipulations required under this Rule shall be in writing, signed by the parties thereto or by their counsel, and shall observe the requirements of Rule 23 as to form and style of papers, except that the stipulation shall be filed with the Court in duplicate and only one set of exhibits shall be required. Documents or other papers, which are the subject of stipulation in any respect and which the parties intend to place before the Court, shall be annexed to or filed with the stipulation. The stipulation shall be clear and concise. Separate items shall be stated in separate paragraphs, and shall be appropriately lettered or numbered. Exhibits attached to a stipulation shall be numbered serially, i.e., 1, 2, 3, etc., if offered by the petitioner; shall be lettered serially, i.e., A, B, C, etc., if offered by the respondent; and shall be marked serially, i.e., 1-A, 2-B, 3-C, etc., if offered as joint exhibits.

(c) **Filing:** Executed stipulations prepared pursuant to this Rule, and related exhibits, shall be filed by the parties at or before commencement of the trial of the case, unless the Court in the particular case shall otherwise specify. A stipulation when filed need not be offered formally to be considered in evidence.

(d) Objections: Any objection to all or any part of a stipulation should be noted in the stipulation, but the Court will consider any objection to a stipulated matter made at the commencement of the trial or for good cause shown made during the trial.

(e) Binding Effect: A stipulation shall be treated, to the extent of its terms, as a conclusive admission by the parties to the stipulation, unless otherwise permitted by the Court or agreed upon by those parties. The Court will not permit a party to a stipulation to qualify, change, or contradict a stipulation in whole or in part, except that it may do so where justice requires. A stipulation and the admissions therein shall be binding and have effect only in the pending case and not for any other purpose, and cannot be used against any of the parties thereto in any other case or proceeding.

(f) Noncompliance by a Party: (1) *Motion to Compel Stipulation:* If, after the date of issuance of trial notice in a case, a party has refused or failed to confer with his adversary with respect to entering into a stipulation in accordance with this Rule, or he has refused or failed to make such a stipulation of any matter within the terms of this Rule, the party proposing to stipulate may, at a time not later than 45 days prior to the date set for call of the case from a trial calendar, file a motion with the Court for an order directing the delinquent party to show cause why the matters covered in the motion should not be deemed admitted for the purposes of the case. The motion shall (i) show with particularity and by separately numbered paragraphs each matter which is claimed for stipulation; (ii) set forth in express language the specific stipulation which the moving party proposes with respect to each such matter and annex thereto or make available to the Court and the other parties each document or other paper as to which the moving party desires a stipulation; (iii) set forth the sources, reasons, and basis for claiming, with respect to each such matter, that it should be stipulated; (iv) show that opposing counsel or the other parties have had reasonable access to those sources or basis for stipulation and have been informed of the reasons for stipulation; and (v) show proof of service of a copy of the motion on opposing counsel or the other parties.

(2) *Procedure:* Upon the filing of such a motion, an order to show cause as moved shall be issued forthwith, unless the Court shall direct otherwise. The order to show cause will be served by the Clerk of the Court, with a copy thereof sent to the moving party. Within 20 days of the service of the order to show cause, the party to whom the order is directed shall file a response with the Court, with proof of service of a copy thereof on opposing counsel or the other parties, showing why the matters set forth in the motion papers should not be deemed admitted for purposes of the pending case. The response shall list each matter involved on which there is no dispute, referring specifically to the numbered paragraphs in the motion to which the admissions relate. Where a matter is disputed only in part, the response shall show the part admitted and the part disputed. Where the responding party is willing to stipulate in whole or in part with respect to any matter in the motion by varying or qualifying a matter in the proposed stipulation, the response shall set forth the variance or qualification and the admission which the responding party is willing to make. Where the response claims that there is a dispute as to any matter in part or in whole, or where the response presents a variance or qualification with respect to any matter in the motion, the response shall show the sources, reasons and basis on which the responding party relies for that purpose. The Court, where it is found appropriate, may set the order to show cause for a hearing or conference at such time as the Court shall determine.

(3) *Failure of Response:* If no response is filed within the period specified with respect to any matter or portion thereof, or if the response is evasive or not fairly directed to the proposed stipulation or portion thereof, that matter or portion thereof will be deemed stipulated for purposes of the pending case, and an order will be entered accordingly.

(4) *Matters Considered:* Opposing claims of evidence will not be weighed under this Rule unless such evidence is patently incredible. Nor will a genuinely controverted or doubtful issue of fact be determined in advance of trial. The Court will determine whether a genuine dispute exists, or whether in the interests of justice a matter ought not be deemed stipulated.

Rule 92. Cases consolidated for trial

With respect to a common matter in cases consolidated for trial, the reference to a "party" in this Title IX or in Title X shall mean any party to any of the consolidated cases involving such common matter.

TITLE X—GENERAL PROVISIONS GOVERNING DISCOVERY, DEPOSITIONS, AND REQUESTS FOR ADMISSION

Rule 100. Applicability

The Rules in this Title apply according to their terms to written interrogatories (Rule 71), production of documents or things (Rule 72), examination by transferees (Rule 73), depositions (Rules 74, 75, 81, 82, 83, and 84), and requests for admissions (Rule 90). Such procedures may be used in anticipation of the stipulation of facts required by Rule 91, but the existence of such procedures or their use does not excuse failure to comply with the requirements of that Rule. See Rule 91(a)(2).

Rule 101. Sequence, timing, and frequency

Unless the Court orders otherwise for the convenience of the parties and witnesses and in the interests of justice, and subject to the provisions of the Rules herein which apply more specifically, the procedures set forth in Rule 100 may be used in any sequence, and the fact that a party is engaged in any such method or procedure shall not operate to delay the use of any such method or procedure by any other party. However, none of these methods or procedures shall be used in a manner or at a time which shall delay or impede the progress of the case toward trial status or the trial of the case on the date for which it is noticed, unless in the interests of justice the Court shall order otherwise. Unless the Court orders otherwise under Rule 103, the frequency of use of these methods or procedures is not limited.

Rule 102. Supplementation of responses

A party who has responded to a request for discovery (under Rules 71, 72, 73, 74, or 75) or to a request for admission (under Rule 90) in a manner which was complete when made, is under no duty to supplement his response to include information thereafter acquired, except as follows:

(1) A party is under a duty seasonably to supplement his response with respect to any matter directly addressed to (A) the identity and location of persons having knowledge of discoverable matters, and (B) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony. In respect of the requirement to furnish reports of expert witnesses, see Rule 71(d)(2).

(2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which he knows that (A) the response was incorrect when made, or (B) the response, though correct when made, is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the Court, agreement of the parties, or at any time prior to trial through new requests for supplementation of prior responses.

Rule 103. Protective orders

(a) Authorized Orders: Upon motion by a party or any other affected person, and for good cause shown, the Court may make any order which justice requires to protect a party or other person from annoyance, embarrassment, oppression, or undue burden or expense, including but not limited to one or more of the following:

(1) That the particular method or procedure not be used.

(2) That the method or procedure be used only on specified terms and conditions, including a designation of the time or place.

(3) That a method or procedure be used other than the one selected by the party.

(4) That certain matters not be inquired into, or that the method be limited to certain matters or to any other extent.

(5) That the method or procedure be conducted with no one present except persons designated by the Court.

(6) That a deposition or other written materials, after being sealed, be opened only by order of the Court.

(7) That a trade secret or other information not be disclosed or be disclosed only in a designated way.

(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

(9) That expense involved in a method or procedure be borne in a particular manner or by specified person or persons.

(10) That documents or records be impounded by the Court to insure their availability for purpose of review by the parties prior to trial and use at the trial.

(b) Denials: If a motion for a protective order is denied in whole or in part, the Court may, on such terms or conditions it deems just, order any party or person to comply or to respond in accordance with the procedure involved.

Rule 104. Enforcement action and sanctions

(a) Failure to Attend Deposition or to Answer Interrogatories or Respond to Request for Inspection or Production: If a party or an officer, director or managing agent of a party or a person designated in accordance with Rule 74(b), 75(c), or 81(c) to testify on behalf of a party fails (1) to appear before the officer who is to take his deposition pursuant to Rule 74, 75, 81, 82, 83, or 84, or (2) to serve answers or objections to interrogatories submitted under Rule 71, after proper service thereof, or (3) to serve a written response to a request for production or inspection submitted under Rule 72 or 73 after proper service of the request, the Court on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under paragraph (b) or (c) of this Rule. If any person, after being served with a subpoena or having waived such service, willfully fails to appear before the officer who is to take his deposition or refuses to be sworn, or if any person willfully fails to obey an order requiring him to answer designated interrogatories or questions, such failure may be considered contempt of court. The failure to act described in this paragraph (a) may not be excused on the ground that the deposition sought, or the interrogatory submitted, or the production or inspection sought, is objectionable, unless the party failing to act has theretofore raised the objection, or has applied for a protective order under Rule 103, with respect thereto at the proper time and in the proper manner, and the Court has either sustained or granted or not yet ruled on the objection or the application for the order.

(b) Failure to Answer: If a person fails to answer a question or interrogatory propounded or submitted in accordance with Rule 71, 74, 75, 81, 82, 83, or 84, or fails to respond to a request to produce or inspect or fails to produce or permit the inspection in accordance with Rule 72 or 73, or fails to make a designation in accordance with Rule 74(b), 75(e), or 81(c), the aggrieved party may, within the time for completion of discovery under Rule 70(a)(2), move the Court for an order compelling an answer, response, or compliance with the request, as the case may be. When taking a deposition on oral examination, the examination may be completed on other matters or the examination adjourned, as the proponent of the question may prefer, before he applies for such order.

(c) Sanctions: If a party or an officer, director, or managing agent of a party or a person designated in accordance with Rule 74(b), 75(c), or 81(c) fails to obey an order made by the Court with respect to the provisions of Rule 71, 72, 73, 74, 75, 81, 82, 83, 84, or 90, the Court may make such orders as to the failure as are just, and among others the following:

(1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the case in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence.

(3) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the case or any part thereof, or rendering a judgment by default against the disobedient party.

(4) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of the Court the failure to obey any such order.

(d) Evasive or Incomplete Answer or Response: For purposes of this Rule and Rules 71, 72, 73, 74, 75, 81, 82, 83, 84, and 90, an evasive or incomplete answer or response is to be treated as a failure to answer or respond.

TITLE XI—PRETRIAL CONFERENCES

Rule 110. Pretrial conferences

(a) General: In appropriate cases, the Court will undertake to confer with the parties in pretrial conferences with a view to narrowing issues, stipulating facts, simplifying the presentation of evidence, or otherwise assisting in the preparation for trial or possible disposition of the case in whole or in part without trial.

(b) Cases Calendared: Either party in a case listed on any trial calendar may request of the Court, or the Court on its own motion may order, a pretrial conference. The Court may, in its discretion, set the case for a pretrial conference during the trial session. If sufficient reason appears therefor, a pretrial conference will be scheduled prior to the call of the calendar at such time and place as may be practicable and appropriate.

(c) Cases Not Calendared: If a case is not listed on a trial calendar, the Chief Judge, in his discretion, upon motion of either party or upon his own motion, may list such case for a pretrial conference upon a calendar in the place designated for trial, or may assign the case for a pretrial conference either in Washington, D.C., or in any other convenient place.

(d) Conditions: A request or motion for a pretrial conference shall include a statement of the reasons therefor. Pretrial conferences will in no circumstances be held as a substitute for the conferences required between the parties in order to comply with the provisions of Rule 91, but a pretrial conference, for the purpose of assisting the parties in entering into the stipulations called for by Rule 91, will be held by the Court where the party requesting such pretrial conference has in good faith attempted without success to obtain such stipulation from his adversary. Nor will any pretrial conference be held where the Court is satisfied that the request therefor is frivolous or is made for purposes of delay.

(e) Order: The Court may, in its discretion, issue appropriate pretrial orders.

TITLE XII—DECISION WITHOUT TRIAL

Rule 120. Judgment on the pleadings

(a) General: After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. Such motion shall be disposed of before trial unless the Court determines otherwise.

(b) Matters Outside Pleadings: If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and shall be disposed of as provided in Rule 121, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 121.

Rule 121. Summary judgment

(a) General: Either party may move, with or without supporting affidavits, for a summary adjudication in his favor upon all or any part of the legal issues in controversy. Such motion may be made at any time commencing 30 days after the pleadings are closed but within such time as not to delay the trial.

(b) Motion and Proceedings Thereon: The motion shall be filed and served in accordance with the requirements otherwise applicable. See Rules 50 and 54. An opposing written response, with or without supporting affidavits, shall be filed within such period as the Court may direct. A decision shall thereafter be rendered if the pleadings, answers to interrogatories, depositions, admissions, and any other acceptable materials, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that a decision may be rendered as a matter of law. A partial summary adjudication may be made which does not dispose of all the issues in the case.

(c) Case Not Fully Adjudicated on Motion: If, on motion under this Rule, decision is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court may ascertain, by examining the pleadings and the evidence before it and by interrogating counsel, what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It may thereupon make an order specifying the facts that appear to be without substantial controversy, including the extent to which the relief sought is not in controversy, and directing such further proceedings in the case as are just. Upon the trial of the case, the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(d) Form of Affidavits; Further Testimony; Defense Required: Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or filed therewith. The Court may permit affidavits to be supplemented or opposed by answers to interrogatories, depositions, further affidavits, or other acceptable materials, to the extent that other applicable conditions in these Rules are satisfied for utilizing such procedures. When a motion for summary judgment is made and supported as provided in this Rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this Rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, a decision, if appropriate, may be entered against him.

(e) When Affidavits Are Unavailable: Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the Court may deny the motion or may order a continuance to permit affidavits to be obtained or other steps to be taken or may make such other order as is just. Where it appears from the affidavits of a party opposing the motion that his only legally available method of controverting the facts set forth in the supporting affidavits of the moving party is through cross-examination of such affiants or the testimony of third parties from whom affidavits cannot be secured, such a showing may be deemed sufficient to establish that the facts set forth in such supporting affidavits are genuinely disputed.

(f) Affidavits Made In Bad Faith: Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this Rule are presented in bad faith or for the purpose of delay, the Court may order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable counsel's fees, and any offending party or counsel may be adjudged guilty of contempt or otherwise disciplined by the Court.

Rule 122. Submission without trial

(a) General: Any case not requiring a trial for the submission of evidence (as, for example, where sufficient facts have been admitted, stipulated, established by deposition, or included in the record in some other way), may be submitted at any time by motion of the parties filed with the Court. The parties need not wait for the case to be calendared for trial and need not appear in Court. The Chief Judge will assign such a case to a Judge or Special Trial Judge, who will fix a time for filing briefs or for oral argument.

(b) Burden of Proof: The fact of submission of a case, under paragraph (a) of this Rule, does not alter the burden of proof, or the requirements otherwise applicable with respect to adducing proof, or the effect of failure of proof.

Rule 123. Default and dismissal

(a) Default: When any party has failed to plead or otherwise proceed as provided by these Rules or as required by the Court, he may be held in default by the Court either on motion of another party or on the initiative of the Court. Thereafter, the Court may enter a decision against the defaulting party, upon such terms and conditions as the Court may deem proper, or may impose such sanctions (see, e.g., Rule 104) as the Court may deem appropriate. The Court may, in its discretion, conduct hearings to ascertain whether a default has been committed, to determine the decision to be entered or the sanctions to be imposed, or to ascertain the truth of any matter.

(b) Dismissal: For failure of a petitioner properly to prosecute or to comply with these Rules or any order of the Court or for other cause which the Court deems sufficient, the Court may dismiss a case at any time and enter a decision against the petitioner. The Court may, for similar reasons, decide against any party any issue as to which he has the burden of proof; and such decision shall be treated as a dismissal for purposes of paragraphs (c) and (d) of this Rule.

(c) Setting Aside Default or Dismissal: For reasons deemed sufficient by the Court and upon motion expeditiously made, the Court may set aside a default or dismissal or the decision rendered thereon.

(d) Effect of Decision on Default or Dismissal: A decision rendered upon a default or in consequence of a dismissal, other than a dismissal for lack of jurisdiction, shall operate as an adjudication on the merits.

TITLE XIII—CALENDARS AND CONTINUANCES

Rule 130. Motions and other matters

(a) Calendars: If a hearing is to be held on a motion or other matter, apart from a trial on the merits, such hearing ordinarily will be held at Washington, D.C., on a motion calendar called on Wednesday throughout the year, unless the Court, on its own motion or on the motion of a party, shall direct otherwise. As to hearings at other places, see Rule 50(b)(2). The parties will be given notice of the place and time of hearing.

(b) Failure to Attend: The Court may hear a matter ex parte where a party fails to appear at such a hearing. With respect to attendance at such hearings, see Rule 50(c).

Rule 131. Report calendars

On a calendar specifically set for the purpose or on a trial calendar, and after notice to the parties of the time and place, any case at issue may be listed and called, first, for report as to whether the case is to be tried or otherwise disposed of, and if the latter, for report as to its status; and, secondly, if it is to be tried, for report on the status of preparations for trial, with particular reference to the stipulation requirements of Rule 91. With respect to any case on such a calendar, the Court may consider other matters and take such action as it deems appropriate.

Rule 132. Trial calendars

(a) General: Each case, when at issue, will be placed upon a calendar for trial at the place designated in accordance with Rule 140. The Clerk shall notify the parties of the place and time for which the calendar is set. Such notice ordinarily will be given not less than 90 days in advance of the trial calendar.

(b) Calendar Call: Each case appearing on a trial calendar will be called at the time and place scheduled. At the call, counsel or the parties shall indicate their estimate of the time required for trial. The cases for trial will thereupon be tried in due course, but not necessarily in the order listed.

Rule 133. Special or other calendars

Special or other calendars may be scheduled by the Court, upon motion or at its own initiative, for any purpose which the Court may deem appropriate. The parties involved shall be notified of the place and time of such calendars.

Rule 134. Continuances

A case or matter scheduled on a calendar may be continued by the Court upon motion or at its own initiative. A motion for continuance shall inform the Court of the position of the other parties with respect thereto, either by endorsement thereon by the other parties or by a representation of the moving party. Court action, on cases or matters set for hearing or trial or other consideration, will not be delayed by a motion for continuance unless it is timely, sets forth good and sufficient cause, and complies with all applicable Rules. Conflicting engagements of counsel or employment of new counsel will not be regarded as ground for continuance unless the motion for continuance, in addition to otherwise satisfying this Rule, is filed promptly after notice is given of the hearing or trial or other scheduled matter, or unless extenuating circumstances for later filing are shown which the Court deems adequate. A motion for continuance, filed 30 days or less prior to the date to which it is directed, may be set for hearing on that date, but ordinarily will be deemed dilatory and will be denied unless the ground therefor arose during that period or there was good reason for not making the motion sooner. As to the extensions of time, see Rule 25(c).

TITLE XIV—TRIALS

Rule 140. Place of trial

(a) Designation of Place of Trial: The petitioner, at the time of filing the petition, shall file a designation of place of trial showing the place at which he would prefer the trial to be held. If the petitioner has not filed such designation, the Commissioner at the time he files his answer, shall file a designation showing the place of trial preferred by him. The parties shall be notified of the place at which the trial will be held. For a list of places at which the Court has held trial sessions, see Appendix IV.

(b) Form: Such designation shall be filed separately from the petition or answer, shall be subject to the requirements of form applicable to motions, see Rule 50(a), and shall consist of an original and two copies. See Form 4, Appendix I.

(c) Motion to Change Place of Trial: If either party desires a change in the designation of the place of trial, he shall file a motion to that effect, stating fully his reasons therefor. Such motions, made after the notice of the time of trial has been issued, will not be deemed to have been timely filed.

Rule 141. Consolidation; separate trials

(a) Consolidation: When cases involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial of any or all the matters in issue; it may order all the cases consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay or duplication. Similar action may be taken where cases involve different tax liabilities of the same parties, notwithstanding the absence of a common issue. Unless otherwise permitted by the Court for good cause shown, a motion to consolidate cases may be filed only, after all the cases sought to be consolidated have become at issue. As to joinder of parties, see Rule 61(a).

(b) Separate Trials: The Court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition or economy, may order a separate trial of any one or more claims or defenses or issues, or of the tax liability of any party or parties. The Court may enter appropriate orders or decisions with respect to any such claims, defenses, issues, or parties that are tried separately. As to severance of parties or claims, see Rule 61(b).

Rule 142. Burden of proof

(a) General: The burden of proof shall be upon the petitioner, except as otherwise provided by statute or determined by the Court; and except that, in respect of any new matter, increases in deficiency, and affirmative defenses, pleaded in his answer, it shall be upon the respondent. As to affirmative defenses, see Rule 39.

(b) Fraud: In any case involving the issue of fraud with intent to evade tax, the burden of proof in respect of that issue is on the respondent, and that burden of proof is to be carried by clear and convincing evidence. Code Section 7454(a).

(c) Foundation Managers: In any case involving the issue of the knowing conduct of a foundation manager as set forth in the provisions of Code Section 4941, 4944, or 4945, the burden of proof in respect of such issue is on the respondent, and such burden of proof is to be carried by clear and convincing evidence. Code Section 7454(b).

(d) **Transferee Liability:** The burden of proof is on the respondent to show that a petitioner is liable as a transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax. Code Section 6902(a).

(e) **Accumulated Earnings Tax:** Where the notice of deficiency is based in whole or in part on an allegation of accumulation of corporate earnings and profits beyond the reasonable needs of the business, the burden of proof with respect to such allegation is determined in accordance with Code Section 534. If the petitioner has submitted to the respondent a statement which is claimed to satisfy the requirements of Code Section 534(c), the Court will ordinarily on timely motion filed after the case has been calendared for trial, rule prior to the trial on whether such statement is sufficient to shift the burden of proof to the respondent to the limited extent set forth in Code Section 534(a)(2).

Rule 143. Evidence

(a) **General:** Trials before the Court will be conducted in accordance with the rules of evidence applicable in trials without a jury in the United States District Court for the District of Columbia. See Code Section 7453. To the extent applicable to such trials, those rules include the rules of evidence in the Federal Rules of Civil Procedure and any rules of evidence generally applicable in the Federal courts (including the United States District Court for the District of Columbia). Evidence which is relevant only to the issue of a party's entitlement to reasonable litigation costs shall not be introduced during the trial of the case. As to claims for reasonable litigation costs, see Rules 231 and 232.

(b) **Ex Parte Statements:** Ex parte affidavits, statements in briefs, and unadmitted allegations in pleadings do not constitute evidence. As to allegations in pleadings not denied, see Rules 36(c), 37(c) and (d).

(c) **Depositions:** Testimony taken by deposition shall not be treated as evidence in a case until offered and received in evidence. Error in the transcript of a deposition may be corrected by agreement of the parties, or by the Court on proof it deems satisfactory to show an error exists and the correction to be made, subject to the requirements of Rules 81(h)(1) and 85(e). As to the use of a deposition, see Rule 81(i).

(d) **Documentary Evidence:** (1) *Copies:* A *clearly legible* copy of any book, record, paper, or document may be offered directly in evidence in lieu of the original, where there is no objection, or where the original is available but admission of a copy is authorized by the Court; however, unless impractical, the Court may require the submission of the original. Where the original is admitted in evidence, a *clearly legible* copy may be substituted later for the original or such part thereof as may be material or relevant, upon leave granted in the discretion of the Court.

(2) *Return of Exhibits:* Exhibits may be disposed of as the Court deems advisable. A party desiring the return at his expense of any exhibit belonging to him, shall, within 90 days after the decision of the case by the Court has become final, make written application to the Clerk, suggesting a practical manner of delivery. If such application is not timely made, the exhibits in the case will be destroyed.

(e) **Interpreters:** The parties ordinarily will be expected to make their own arrangements for obtaining and compensating interpreters. However, the Court may appoint an interpreter of its own selection and may fix his reasonable compensation, which compensation shall be paid by one or more of the parties or otherwise as the Court may direct.

(f) **Expert Witness Reports:** For provisions regarding the submission and exchange of expert witness reports, see Rule 71(d)(2).

Rule 144. Exceptions unnecessary

Formal exceptions to rulings or orders of the Court are unnecessary. It is sufficient that a party at the time the ruling or order of the Court is made or sought, makes known to the Court the action which he desires the Court to take or his objection to the action of the Court and his grounds therefor; and, if a party has no opportunity to object to a ruling or order at the time it is made, the absence of an objection does not thereafter prejudice him.

Rule 145. Exclusion of proposed witnesses

(a) **Exclusion:** At the request of a party, the Court shall order witnesses excluded so that they cannot hear the testimony of other witnesses and it may make the order of its own motion. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to the presentation of his cause.

(b) **Contempt:** Among other measures which the Court may take in the circumstances, it may punish as for a contempt (i) any witness who remains within hearing of the proceedings after such exclusion has been directed, that fact being noted in the record; and (ii) any person (witness, counsel, or party) who willfully violates instructions issued by the Court with respect to such exclusion.

Rule 146. Determination of foreign law

A party who intends to raise an issue concerning the law of a foreign country shall give notice in his pleadings or other reasonable written notice. The Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or otherwise admissible. The Court's determination shall be treated as a ruling on a question of law.

Rule 147. Subpoenas

(a) **Attendance of Witnesses; Form; Issuance:** Every subpoena shall be issued under the seal of the Court, shall state the name of the Court and the caption of the case, and shall command each person to whom it is directed to attend and give testimony at a time and place therein specified. A subpoena, including a subpoena for the production of documentary evidence, signed and sealed but otherwise in blank, shall be issued to a party requesting it, who shall fill it in before service. Subpoenas may be obtained at the Office of the Clerk in Washington, D.C., or from a deputy clerk at a trial session. See Code Section 7456(a).

(b) Production of Documentary Evidence: A subpoena may also command the person to whom it is directed to produce the books, papers, documents, or tangible things designated therein; but the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may (1) quash or modify the subpoena if it is unreasonable and oppressive, or (2) condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, documents, or tangible things.

(c) Service: A subpoena may be served by a United States marshal, or by his deputy, or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and by tendering to him the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the Commissioner, fees and mileage need not be tendered. See Rule 148 for fees and mileage payable. The person making service of a subpoena shall make his return thereon in accordance with the form appearing in the subpoena.

(d) Subpoena for Taking Depositions: (1) *Issuance and Response:* The order of the Court approving the taking of a deposition pursuant to Rule 81(b)(2), or the executed stipulation pursuant to Rule 81(d), or the service of the notice of deposition pursuant to Rule 74(b) or 75(c), constitutes authorization for issuance of subpoenas for the persons named or described therein. The subpoena may command the person to whom it is directed to produce and permit inspection and copying of designated books, papers, documents, or tangible things, which come within the scope of the order or stipulation pursuant to which the deposition is taken. Within 10 days after service of the subpoena or such earlier time designated therein for compliance, the person to whom the subpoena is directed may serve upon the party on whose behalf the subpoena has been issued written objections to compliance with the subpoena in any or all respects. Such objections should not include objections made, or which might have been made, to the application to take the deposition pursuant to Rule 81(b)(2) or to the notice of deposition under Rule 74(c) or 75(d). If an objection is made, the party serving the subpoena shall not be entitled to compliance therewith to the extent of such objection, except as the Court may order otherwise upon application to it. Such application for an order may be made, with notice to the other party and to any other objecting persons, at any time before or during the taking of the deposition, subject to the time requirements of Rule 70(a)(2) or Rule 81(b)(2). As to availability of protective orders, see Rule 103; and, as to enforcement of such subpoenas, see Rule 104.

(2) *Place of Examination:* The place designated in the subpoena for examination of the deponent shall be the place specified in the notice of deposition served pursuant to Rule 74(b) or 75(c) or in the order of the Court referred to in Rule 81(b)(2) or in the executed stipulation referred to in Rule 81(d). With respect to a deposition to be taken in a foreign country, see Rules 74(e), 81(e)(2), and 84(a).

(e) Contempt: Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the Court.

Rule 148. Fees and mileage

(a) Amount: Any witness summoned to a hearing or trial, or whose deposition is taken, shall receive the same fees and mileage as witnesses in the United States District Courts.

(b) Tender: No witness, other than one for the Commissioner, shall be required to testify until he shall have been tendered the fees and mileage to which he is entitled according to law. With respect to witnesses for the Commissioner, see Code Section 7457(b)(1).

(c) Payment: The party at whose instance a witness appears shall be responsible for the payment of the fees and mileage to which that witness is entitled.

Rule 149. Failure to appear or to adduce evidence

(a) Attendance at Trials: The unexcused absence of a party or his counsel when a case is called for trial will not be ground for delay. The case may be dismissed for failure properly to prosecute, or the trial may proceed and the case be regarded as submitted on the part of the absent party or parties.

(b) Failure of Proof: Failure to produce evidence, in support of an issue of fact as to which a party has the burden of proof and which has not been conceded by his adversary, may be ground for dismissal or for determination of the affected issue against that party. Facts may be established by stipulation in accordance with Rule 91, but the mere filing of such stipulation does not relieve the party, upon whom rests the burden of proof, of the necessity of properly producing evidence in support of facts not adequately established by such stipulation. As to submission of a case without trial, see Rule 122.

Rule 150. Record of proceedings

(a) General: Hearings and trials before the Court shall be stenographically reported or otherwise recorded, and a transcript thereof shall be made if, in the opinion of the Court or the Judge presiding at a hearing or trial, a permanent record is deemed appropriate. Transcripts shall be supplied to the parties and other persons at such charges as may be fixed or approved by the Court.

(b) Stenographic Transcript as Evidence: Whenever the testimony of a witness at a trial or hearing which was stenographically reported or otherwise recorded is admissible in evidence at a later trial or hearing, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

Rule 151. Briefs

(a) General: Briefs shall be filed after trial or submission of a case, except as otherwise directed by the presiding Judge. In addition to or in lieu of briefs, the presiding Judge may permit or direct the parties to make oral argument or file memoranda or statements of authorities.

(b) Time for Filing Briefs: Briefs may be filed simultaneously or seriatim, as the presiding Judge directs. The following times for filing briefs shall prevail in the absence of any different direction by the presiding Judge:

(1) *Simultaneous Briefs:* Opening briefs within 60 days after the conclusion of the trial, and answering briefs 30 days thereafter.

(2) *Seriatim Briefs:* Opening brief within 60 days after the conclusion of the trial, answering brief within 30 days thereafter, and reply brief within 20 days after the due date of the answering brief.

A party who fails to file an opening brief is not permitted to file an answering or reply brief except on leave granted by the Court. A motion for extension of time for filing any brief shall be made prior to the due date and shall recite that the moving party has advised his adversary and whether or not he objects to the motion. As to the effect of extensions of time, see Rule 25(c).

(c) Service: Each brief will be served by the Clerk promptly upon the opposite party after it is filed, except where it bears a notation that it has already been served by the party submitting it, and except that, in the event of simultaneous briefs, such brief will not be served until the corresponding brief of the other party has been filed, unless the Court directs otherwise. Delinquent briefs will not be accepted unless accompanied by a motion setting forth reasons deemed sufficient by the Court to account for the delay. In the case of simultaneous briefs, the Court may refuse to receive a delinquent brief from a party after his adversary's brief has been served upon him.

(d) Number of Copies: A signed original and two copies of each brief, plus an additional copy for each person to be served, shall be filed.

(e) Form and Content: All briefs shall contain the following in the order indicated:

(1) On the first page, a table of contents with page references, followed by a list of all citations arranged alphabetically as to cited cases and stating the pages in the brief at which cited. Citations shall be in italics when printed and underscored when typewritten.

(2) A statement of the nature of the controversy, the tax involved, and the issues to be decided.

(3) Proposed findings of fact (in the opening brief or briefs), based on the evidence, in the form of numbered statements, each of which shall be complete and shall consist of a concise statement of essential fact and not a recital of testimony nor a discussion or argument relating to the evidence or the law. In each such numbered statement, there shall be inserted references to the pages of the transcript or the exhibits or other sources relied upon to support the statement. In an answering or reply brief, the party shall set forth his objections, together with his reasons therefor, to any proposed findings of any other party, showing the numbers of the statements to which his objections are directed; in addition, he may set forth alternative proposed findings of fact.

(4) A concise statement of the points on which the party relies.

(5) The argument, which sets forth and discusses the points of law involved and any disputed questions of fact.

(6) The signature of counsel or the party submitting the brief. As to signature, see Rule 23(a)(3).

Rule 152. Oral findings of fact or opinion

(a) General: Except in actions for declaratory judgment or for disclosure (see Titles XXI and XXII), the Judge, or the Special Trial Judge in any case in which he is authorized to make the decision of the Court pursuant to Code Section 7456(d)(2) or (3), may, in his discretion, orally state his findings of fact or opinion if he is satisfied as to the factual conclusions to be reached in the case and that the law to be applied thereto is clear.

(b) Transcript: Oral findings of fact or opinion shall be recorded in the transcript of the trial. The pages of the transcript that contain such findings of fact or opinion (or a written summary thereof) shall be served by the Clerk upon all parties.

(c) Citation: Opinions stated orally in accordance with paragraph (a) of this Rule shall not be cited or relied upon as precedent. However, such opinions (including findings of fact) may be referred to for purposes of the application of the doctrine of res judicata, collateral estoppel, or law of the case.

TITLE XV—DECISION*

Rule 155. Computation by parties for entry of decision

(a) Agreed Computations: Where the Court has filed or stated its opinion determining the issues in a case, it may withhold entry of its decision for the purpose of permitting the parties to submit computations pursuant to the Court's determination of the issues, showing the correct amount of the deficiency, liability, or overpayment to be entered as the decision. If the parties are in agreement as to the amount of the deficiency or overpayment to be entered as the decision pursuant to the findings and conclusions of the Court, they or either of them shall file promptly with the Court an original and two copies of a computation showing the amount of the deficiency, liability, or overpayment and that there is no disagreement that the figures shown are in accordance with the findings and conclusions of the Court. The Court will then enter its decision.

(b) Procedure in Absence of Agreement: If, however, the parties are not in agreement as to the amount of the deficiency, liability, or overpayment to be entered as the decision in accordance with the findings and conclusions of the Court, either of them may file with the Court a computation of the deficiency, liability, or overpayment believed by him to be in accordance with the Court's findings and conclusions. The Clerk will serve upon the opposite party a notice of such filing accompanied by a copy of such computation. If the opposite party fails to file objection, accompanied or preceded by an alternative computation, on or before a date specified in the Clerk's notice, the Court may enter decision in accordance with the computation already submitted. If in accordance with this Rule computations are submitted by the parties which differ as to the amount to be entered as the decision of the Court, the parties may, at the Court's discretion, be afforded an opportunity to be heard in argument thereon and the Court will determine the correct deficiency, liability, or overpayment and will enter its decision accordingly.

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*For statutory provisions relating to entry, date, and finality of decision, see Code Sections 7459, 7463(b), and 7481.

(c) **Limit on Argument:** Any argument under this Rule will be confined strictly to consideration of the correct computation of the deficiency, liability, or overpayment resulting from the findings and conclusions made by the Court, and no argument will be heard upon or consideration given to the issues or matters disposed of by the Court's findings and conclusions or to any new issues. This Rule is not to be regarded as affording an opportunity for retrial or reconsideration.

Rule 156. Estate tax deduction developing at or after trial

If the parties in an estate tax case are unable to agree under Rule 155, or under a remand, upon a deduction involving expenses incurred at or after the trial, any party may move to reopen the case for further trial on that issue.

TITLE XVI—POST-TRIAL PROCEEDINGS

Rule 160. Harmless error

No error in either the admission or exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court of by any of the parties, is ground for granting a new trial or for vacating, modifying, or otherwise disturbing a decision or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of a case will disregard any error or defect which does not affect the substantial rights of the parties.

Rule 161. Motion for reconsideration of findings or opinion

Any motion for reconsideration of an opnion or findings of fact, with or without a new or further trial, shall be filed within 30 days after a written opinion or the pages of the transcript that contain findings of fact or opinion stated orally pursuant to Rule 152 (or a written summary thereof) have been served, unless the Court shall otherwise permit.

Rule 162. Motion to vacate or revise decision

Any motion to vacate or revise a decision, with or without a new or further trial, shall be filed within 30 days after the decision has been entered, unless the Court shall otherwise permit.

Rule 163. No joinder of motions under Rules 161 and 162

Motions under Rules 161 and 162 shall be made separately from each other and not joined to or made part of any other motion.

TITLE XVII—SMALL TAX CASES[*]

Rule 170. General

The Rules of this Title XVII, referred to herein as the "Small Tax Case Rules," set forth the special provisions which are to be applied to small tax cases as defined in Rule 171. See Code Section 7463 (Appendix II). Except as otherwise provided in these Small Tax Case Rules, the other rules of practice of the Court are applicable to such cases.

Rule 171. Small tax case defined

The term "small tax case" means a case in which:

(a) Neither the amount of the deficiency, nor the amount of any claimed overpayment, placed in dispute (including any additions to tax, additional amounts, and penalties) exceeds—

(1) $10,000 for any one taxable year in the case of income taxes,

(2) $10,000 in the case of estate taxes,

(3) $10,000 for any one calendar year in the case of gift taxes, or

(4) $10,000 for any one taxable period or, if there is no taxable period, for any taxable event in the case of excise taxes under Chapter 41, 42, 43, or 44 of the Code (taxes on certain organizations and persons dealing with them) or under Chapter 45 of the Code (windfall profit tax);

(b) The petitioner has made a request in accordance with Rule 172 to have the proceedings conducted under Code Section 7463; and

(c) The Court has not entered an order in accordance with Rule 172(d) or Rule 173, discontinuing the proceedings in the case under Code Section 7463.

Rule 172. Election of small tax case procedure

With respect to classification of a case as a small tax case under Code Section 7463, the following shall apply:

(a) A petitioner who wishes to have the proceedings in his case conducted under Code Section 7463 may so request at the time he files his petition. See Rule 175.

(b) A petitioner may, at any time after the petition is filed and before trial, request that the proceedings be conducted under Code Section 7463.

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[*] The maximum amount of the deficiency in dispute, for a taxable or calendar year, has been increased from $5,000 to $10,000, effective July 18, 1984 [See Rule 171 and section 7463 of this title]. See Section 461 of the Tax Reform Act of 1984, Public Law 98–369 (July 18, 1984) [amending section 7463 of this title, and enacting a provision set out as a note under that section].

(c) If such request is made in accordance with the provisions of this Rule 172, the case will be docketed as a small tax case. The Court, on its own motion or on the motion of a party to the case, may, at any time before the trial commences, enter an order directing that the small tax case designation shall be removed and that the proceedings shall not be conducted under the Small Tax Case Rules. If no such order is entered, the petitioner will be considered to have exercised his option and the Court shall be deemed to have concurred therein, in accordance with Code Section 7463, at the commencement of the trial.

Rule 173. Discontinuance of proceedings

After the commencement of a trial of a small tax case, but before the decision in the case becomes final, the Court may order that the proceedings be discontinued under Code Section 7463, and that the case be tried under the rules of practice other than the Small Tax Case Rules, but such order will be issued only if (1) there are reasonable grounds for believing that the amount of the deficiency, or the claimed overpayment, in dispute will exceed $10,000 and (2) the Court finds that justice requires the discontinuance of the proceedings under Code Section 7463, taking into consideration the convenience and expenses for both parties that would result from the order.

Rule 174. Representation

A petitioner in a small tax case may appear for himself without representation or may be represented by any person admitted to practice before the Court. As to representation, see Rule 24.

Rule 175. Pleadings

(a) Petition: (1) *Form and Content:* The petition in a small tax case shall be substantially in accordance with Form 2 shown in Appendix I, or shall, in the alternative, comply with the requirements of Rule 34(b), and contain additionally (A) the location of the office of the Internal Revenue Service which issued the deficiency notice, (B) the taxpayer identification number (e.g., social security number) of each petitioner, and (C) a request that the proceedings be conducted under Code Section 7463.

(2) *Filing Fee:* The fee for filing a petition shall be $10, payable at the time of filing. The payment of any fee under this paragraph may be waived if the petitioner establishes to the satisfaction of the Court by an affidavit containing specific financial information that he is unable to make such payment.

(3) *Verification Not Required:* The petition need not be verified, unless the Court directs otherwise.

(b) Answer: No answer is required to be filed in a small tax case, except where there is an issue on which the Commissioner bears the burden of proof or where the Court otherwise directs. Where an answer is filed, the provisions of Rule 36 shall apply. In a case where no answer is filed, the allegations of error and facts relating thereto set forth in the petition shall be deemed denied.

(c) Reply: A reply to the answer shall not be filed unless the Court, on its own motion or upon motion of the Commissioner, shall otherwise direct. Any reply shall conform to the requirements of Rule 37(b). In the absence of a requirement of a reply, the provisions of the second sentence of Rule 37(c) shall not apply and the affirmative allegations of the answer will be deemed denied.

Rule 176. Preliminary hearings

If, in a small tax case, it becomes necessary to hold a hearing on a motion or other preliminary matter, the parties may submit their views in writing and may, but shall not ordinarily be required to, appear personally at such hearing. However, if the Court deems it advisable for the petitioner or his counsel to appear personally, the Court will so notify the petitioner or his counsel and will make every effort to schedule such a hearing at a place convenient to them.

Rule 177. Trial

(a) Place of Trial: At the time of filing the petition, the petitioner may, in accordance with Form 4 in Appendix I or by other separate writing, designate the place where he would prefer the trial to be held. If the petitioner has not filed such a designation, the Commissioner shall, within 30 days after the date of service of the petition, file a designation showing the place of trial preferred by him. The Court will make every effort to conduct the trial at the location most convenient to that designated where suitable facilities are available.

(b) Conduct of Trial and Evidence: Trials of small tax cases will be conducted as informally as possible consistent with orderly procedure, and any evidence deemed by the Court to have probative value shall be admissible.

(c) Briefs: Neither briefs nor oral arguments will be required in small tax cases, but the Court on its own motion or upon request of either party may permit the filing of briefs or memorandum briefs.

Rule 178. Transcripts of proceedings

The hearing in, or trial of, a small tax case shall be stenographically reported or otherwise recorded but a transcript thereof need not be made unless the Court otherwise directs.

Rule 179. Number of copies of papers

Only an original and two conformed copies of *any* paper need be filed in a small tax case. An additional copy shall be filed for each additional docketed case which has been, or is requested to be, consolidated.

TITLE XVIII—SPECIAL TRIAL JUDGES [*]

Rule 180. Assignment

The Chief Judge may from time to time designate a Special Trial Judge (see Rule 3(d)) to deal with any matter pending before the Court in accordance with these Rules and such directions as may be prescribed by the Chief Judge.

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[*] The maximum amount of the deficiency in dispute, for a taxable or calendar year, in cases in which the Special Trial Judges are authorized to made the decision of the Court, has been increased from $5,000 to $10,000, effective October 25, 1982. See Section 463 of the Tax Reform Act of 1984, Public Law 98-369 (July 18, 1984) [amending section 7456 of this title and enacting a provision set out as a note under that section].

Rule 181. Powers and duties

Subject to the specifications and limitations in the order designating a Special Trial Judge and in accordance with the applicable provisions of these Rules, the Special Trial Judge has and shall exercise the power to regulate all proceedings in any matter before him, including the conduct of trials, pretrial conferences, and hearing on motions, and to do all acts and take all measures necessary or proper for the efficient performance of his duties. He may require the production before him of evidence upon all matters embraced within his assignment, including the production of all books, papers, vouchers, documents, and writings applicable thereto, and he has the authority to put witnesses on oath and to examine them. He may rule upon the admissibility of evidence, in accordance with provisions of Code Sections 7453 and 7463, and may exercise such further and incidental authority, including ordering the issuance of subpoenas, as may be necessary for the conduct of trials or other proceedings.

Rule 182. Cases involving $10,000 or less

Except as otherwise directed by the Chief Judge, the following procedure shall be observed in small tax cases (as defined in Rule 171) and in all other cases where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds $10,000:

(a) Small Tax Cases: Except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a Special Trial Judge who conducts the trial of a small tax case shall, as soon after such trial as shall be practicable, prepare a summary of the facts and reasons for his proposed disposition of the case, which then shall be submitted promptly to the Chief Judge, or, if the Chief Judge shall so direct, to a Judge or Division of the Court.

(b) Other Cases Involving $10,000 or Less: Except in cases where findings of fact or opinion are stated orally pursuant to Rule 152, a Special Trial Judge who conducts the trial of a case (other than a small tax case) where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds $10,000 shall, as soon after such trial as shall be practicable, prepare proposed findings of fact and opinion, which shall then be submitted promptly to the Chief Judge.

(c) Decision: Subject to the provisions of paragraphs (a) and (b) of this Rule, the Special Trial Judge is authorized to make the decision of the Court in any small tax case (as defined in Rule 171) and in any other case where neither the amount of the deficiency placed in dispute (within the meaning of Code Section 7463), nor the amount of any claimed overpayment, exceeds $10,000.

Rule 183. Cases involving more than $10,000

Except in cases subject to the provisions of Rule 182 or as otherwise provided, the following procedure shall be observed in cases tried before a Special Trial Judge:

(a) Trial and Briefs: A special Trial Judge shall conduct the trial of any such case assigned to him for such purpose. After such trial, the parties shall submit their briefs in accordance with the provisions of Rule 151. Unless otherwise directed, no further briefs shall be filed.

(b) Special Trial Judge's Report: After all the briefs have been filed by all the parties or the time for doing so has expired, the Special Trial Judge shall submit his report, including his findings of fact and opinion, to the Chief Judge, and the Chief Judge will assign the case to a Division of the Court.

(c) Action on the Report: The Division to which the case is assigned may adopt the Special Trial Judge's report or may modify it or may reject it in whole or in part, or may direct the filing of additional briefs or may receive further evidence or may direct oral argument, or may recommit the report with instructions. Due regard shall be given to the circumstance that the Special Trial Judge had the opportunity to evaluate the credibility of witnesses, and the findings of fact recommended by the Special Trial Judge shall be presumed to be correct.

TITLE XIX—APPEALS

Rule 190. How appeal taken

(a) General: Review of a decision of the Court by a United States Court of Appeals is obtained by filing a notice of appeal with the Clerk of the Tax Court within 90 days after the decision is entered. If a timely notice of appeal is filed by one party, any other party may take an appeal by filing a notice of appeal within 120 days after the Court's decision is entered. Code Section 7483. For other requirements governing such an appeal, see Rules 13 and 14 of the Federal Rules of Appellate Procedure. A suggested form of the notice of appeal is contained in Appendix I. See Code Section 7482(a).

(b) Venue: For the circuit of the Court of Appeals to which the appeal is to be taken, see Code Section 7482(b).

Rule 191. Preparation of the record on appeal

The Clerk will prepare the record on appeal and forward it to the Clerk of the Court of Appeals pursuant to the notice of appeal filed with the Court, in accordance with Rules 10 and 11 of the Federal Rules of Appellate Procedure. In addition, at the time the Clerk forwards the record on appeal to the Clerk of the Court of Appeals, he shall forward to each of the parties a copy of the index to the record on appeal.

Rule 192. Bond to stay assessment and collection

The filing of a notice of appeal does not stay assessment or collection of a deficiency determined by the Court unless, on or before the filing of the notice of appeal, a bond is filed with the Court in accordance with Code Section 7485. For forms of bonds, see Appendix I; for forms of power of attorney used with United States Bonds as collateral, see Appendix I.

TITLE XX—PRACTICE BEFORE THE COURT

Rule 200. Admission to practice *

(a) Qualifications: (1) *General:* An applicant for admission to practice before the Court must establish to the satisfaction of the Court that he is of good moral character and repute and is possessed of the requisite qualifications to represent others in the preparation and trial of cases. In addition, the applicant must satisfy the further requirements of this Rule 200.

(2) *Attorneys:* An attorney at law may be admitted to practice upon filing with the Admissions Clerk a completed application accompanied by a fee of $25 and a current certificate from the Clerk of the appropriate court, showing that the applicant has been admitted to practice before and is a member in good standing of the Bar of the Supreme Court of the United States, or of the highest or appropriate court of any State or of the District of Columbia, or any commonwealth, territory, or possession of the United States. A current court certificate is one executed within 60 calendar days preceding the date of the filing of the application.

(3) *Other Applicants:* An applicant, not an attorney at law, must file with the Admissions Clerk a completed application accompanied by a fee of $25. In addition, such an applicant, as a condition of being admitted to practice, must give evidence of his qualifications satisfactory to the Court by means of a written examination given by the Court, and the Court may require such person, in addition, to give similar evidence by means of an oral examination. Any person who has thrice failed to give such evidence by means of such written examination shall not thereafter be eligible to take another examination for admission.

(b) Application: An application for admission to practice before the Court must be on the form provided by the Court. Application forms and other necessary information will be furnished upon request addressed to the Admissions Clerk, United States Tax Court, 400 Second St., N.W., Washington, D.C. 20217.

(c) Sponsorship: An applicant for admission by examination must be sponsored by at least three persons theretofore admitted to practice before this Court, and each sponsor must send a letter of recommendation directly to the Admissions Clerk of the Court, where it will be treated as a confidential communication. The sponsor shall send his letter promptly, stating therein fully and frankly the extent of his acquaintance with the applicant, his opinion of the moral character and repute of the applicant, and his opinion of the qualifications of the applicant to practice before this Court. The Court may in its discretion accept such an applicant with less than three such sponsors.

(d) Written Examinations: Written examinations, for applicants other than attorneys at law, will be held no less often than every two years. By public announcement at least six months prior to the date of the examination, the Court will announce the time and place of such examination. The Court will notify each applicant, whose application is in order, of the time and place at which he is to present himself for examination, and the applicant must present that notice to the examiner as his authority for taking such an examination.

(e) Checks and Money Orders: Where the application fee is paid by check or money order, it shall be made payable to the order of the "Clerk, United States Tax Court."

(f) Admission: Upon approval of an application for admission and satisfaction of the other applicable requirements, an applicant will be admitted to practice before the Court upon taking and subscribing the oath or affirmation prescribed by the Court. Such an applicant shall thereupon be entitled to a certificate of admission.

(g) Change of Address: Each person admitted to practice before the Court shall promptly notify the Admissions Clerk of any change in office address for mailing purposes. See also Rule 21(b)(4) regarding the filing of a separate notice for each docket number in which such person has entered an appearance.

(h) Corporations and Firms Not Eligible: Corporations and firms will not be admitted to practice or recognized before the Court.

Rule 201. Conduct of practice before the Court **

(a) General: Practitioners before the Court shall carry on their practice in accordance with the letter and spirit of the Rules of Professional Conduct of the American Bar Association.

(b) Statement of Employment: The Court may require any practitioner before it to furnish a statement, under oath, of the terms and circumstances of his employment in any case.

Rule 202. Disqualification, suspension, or disbarment ***

(a) General: The Court may deny admission to its Bar to, or suspend, or disbar, any person who in its judgment does not possess the requisite qualifications to represent others, or who is lacking in character, integrity, or proper professional conduct. Upon the conviction of any practitioner admitted to practice before this Court for a criminal violation of any provision of the Internal Revenue Code or for any crime involving moral turpitude, or where any practitioner has been suspended or disbarred from the practice of his profession in any State or the District of Columbia, or any commonwealth, territory, or possession of the United States, the Court may, in the exercise of its discretion, forthwith suspend such practitioner from the Bar of this Court until further order of Court; but otherwise no person shall be suspended for more than 60 days or disbarred until he has been afforded an opportunity to be heard. A Judge of the Court may immediately suspend any person for not more than 60 days for contempt or misconduct during the course of any trial or hearing.

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* The amendment is effective as of January 1, 1974.

** The American Bar Association adopted new Model Rules of Professional Conduct on August 2, 1983.

*** The amendment is effective as of January 1, 1974.

(b) Disciplinary Proceedings: (1) *Referral to Counsel:* When misconduct or allegations of misconduct which, if substantiated, would warrant discipline of a practitioner shall come to the attention of the Court, whether by complaint or otherwise, and the applicable procedure is not otherwise mandated by these Rules (see paragraph (a) of this Rule), the Court, in its discretion, may refer the matter to counsel to the Court (appointed pursuant to the provisions of paragraph (d) of this Rule) for Investigation and the prosecution of a formal disciplinary proceeding or the formulation of such other recommendation as may be appropriate.

(2) *Investigation and Recommendation:* Should counsel conclude after investigation and review that a formal disciplinary proceeding should not be initiated against the practitioner because sufficient evidence is not present, or because there is pending another proceeding against the practitioner, the disposition of which in the jugement of the counsel should be awaited before further action by this Court is considered, or for any other valid reason, counsel shall file with the Court a recommendation for disposition of the matter, whether by dismissal, admonition, deferral, or otherwise, setting forth the reasons therefor.

(3) *Initiation of Proceedings:* To initiate formal disciplinary proceedings, the Court shall enter an order (or, where counsel is appointed, such counsel shall obtain an order of the Court upon a showing of probable cause) requiring the practitioner to show cause within 30 days after service of that order upon that practitioner, why the practitioner should not be disciplined.

(4) *Hearing:* Upon the practitioner's answer to the order to show cause, if any issue of fact is raised or the practitioner wishes to be heard in mitigation, this Court shall set the matter for prompt hearing before one or more Judges of this Court, provided, however, that if the disciplinary proceeding is predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge.

(5) *Right to Counsel:* In all proceedings conducted under the provisions of this Rule, the practitioner shall have the right to be represented by counsel.

(c) Reinstatement: (1) *After Disbarment or Suspension:* A practitioner suspended for 60 days or less shall be automatically reinstated at the end of the period of suspension. A practitioner suspended for more than 60 days or disbarred may not resume practice until reinstated by order of this Court.

(2) *Hearing on Application:* A petition for reinstatement by a disbarred or suspended practitioner under this Rule shall be filed with the Court. Upon receipt of the petition, the Court may promptly refer the petition to counsel and shall assign the matter for prompt hearing before one or more Judges of this Court, provided, however, that if the disciplinary proceeding was predicated upon the complaint of a Judge of this Court, the hearing shall be conducted before a panel of three other Judges of this Court appointed by the Chief Judge. The Judge or Judges assigned to the matter shall, as promptly as the Court's business shall permit, schedule a hearing at which the practitioner shall have the burden of demonstrating by clear and convincing evidence that he has the moral qualifications, competency and learning in the law required for admission to practice before this Court and that his resumption of such practice will not be detrimental to the integrity and standing of the Bar or to the administration of justice, or subversive of the public interest.

(3) *Successive Petitions:* No petition for reinstatement under this Rule shall be filed within one year following an adverse decision upon a petition for reinstatement filed by or on behalf of the same person.

(d) Presentation to the Court: When counsel is to be appointed pursuant to this Rule to investigate allegations of misconduct or prosecute disciplinary proceedings or in conjunction with a reinstatement petition filed by a practitioner, this Court shall appoint as counsel to the Court a member of the Bar of this Court who is a resident of or who practices in the same Federal judicial circuit (see 28 U.S.C. section 41), except the Federal circuit, as the Federal judicial circuit which includes the practitioner's place of residence or practice, provided, however, that the practitioner may move to disqualify a person so appointed for cause, for example, if such person is or has been engaged as an adversary of the practitioner in any matter. Counsel, once appointed, may not resign unless permission to do so is given by the Court.

(e) Jurisdiction: Nothing contained in this Rule shall be construed to deny to this Court such powers as are necessary for the Court to maintain control over proceedings conducted before it, such as proceedings for contempt under Code Section 7456.

TITLE XXI—DECLARATORY JUDGMENTS

Rule 210. General

(a) Applicability: The Rules of this Title XXI set forth the special provisions which apply to declaratory judgment actions, relating to the qualification of retirement plans, exchanges described in Code Section 367(a)(1), the status of certain governmental obligations, and the initial or continuing qualification of certain exempt organizations or the initial or continuing classification of certain private foundations. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for declaratory judgment.

(b) Definitions: As used in the Rules in this Title—

(1) "Retirement plan" has the meaning provided by Code Section 7476(d).

(2) "Exchange" is an exchange described in Code Section 367(a)(1).

(3) "Governmental obligation" means an obligation the status of which under Code Section 103(a) is in issue.

(4) "Exempt organization" is an organization described in Code Section 501(c)(3) which is exempt from tax under Code Section 501(a) or is an organization described in Code Section 170(c)(2).

(5) "Private foundation" is an organization described in Code Section 509(a).

(6) "Private operating foundation" is an organization described in Code Section 4942(j)(3).

(7) An "organization" is any organization whose qualification as an exempt organization, or whose classification as a private foundation or a private operating foundation, is in issue.

(8) A "determination" means—

(i) A determination with respect to the initial or continuing qualification of a retirement plan;

(ii) A determination as to whether an exchange is in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes, or made with respect to the terms and conditions on which an exchange will be deemed not to be in pursuance of such a plan;

(iii) A determination as to whether prospective governmental obligations are described in Code Section 103(a); or

(iv) A determination with respect to the initial or continuing qualification of an organization as an exempt organization, or with respect to the initial or continuing classification of an organization as a private foundation or a private operating foundation.

(9) A "revocation" is a determination that a retirement plan is no longer qualified, or that an organization, previously qualified or classified as an exempt organization or as a private foundation or private operating foundation, is no longer qualified or classified as such an organization.

(10) "Action for declaratory judgment" is either a retirement plan action, a Section 367 action, a governmental obligation action, or an exempt organization action, as follows:

(i) A "retirement plan action" means an action for declaratory judgment provided for in Code Section 7476 with respect to the initial or continuing qualification of a retirement plan.

(ii) A "Section 367 action" means an action for declaratory judgment provided for in Code Section 7477 with respect to an exchange.

(iii) A "governmental obligation action" means an action for declaratory judgment provided for in Code Section 7478 with respect to the status of certain prospective governmental obligations.

(iv) An "exempt organization action" means a declaratory judgment action provided for in Code Section 7428 with respect to the initial or continuing qualification of an organization as an exempt organization, or with respect to the initial or continuing classification of an organization as a private foundation or a private operating foundation.

(11) "Administrative record" includes the request for determination, all documents submitted to the Internal Revenue Service by the applicant in respect of the request for determination, all protests and related papers submitted to the Internal Revenue Service, all written correspondence between the Internal Revenue Service and the applicant in respect of the request for determination or such protests, all pertinent returns filed with the Internal Revenue Service, and the notice of determination by the Commissioner. In addition—

(i) In the case of a determination relating to a retirement plan, the administrative record shall include the retirement plan and any related trust instruments, any written modifications thereof made by the applicant during the proceedings in respect of the request for determination before the Internal Revenue Service, and all written comments (and related correspondence) submitted to the Internal Revenue Service in those proceedings (see Section 3001(b) of the Employee Retirement Income Security Act of 1974).

(ii) In the case of a determination relating to an exempt organization or a private foundation or a private operating foundation, the administrative record shall include the charter or articles of incorporation or association, or trust indenture or agreement, and any similar or related documents of the organization and any modifications thereof.

(12) "Party" includes a petitioner and the respondent Commissioner of Internal Revenue. In a retirement plan action, an intervenor is also a party. In an exempt organization action, only the organization may be a petitioner; and in a governmental obligation action, only the prospective issuer may be a petitioner.

(13) "Declaratory judgment" is the decision of the Court in a retirement plan action, a Section 367 action, a governmental obligation action, or an exempt organization action.

(c) **Jurisdictional Requirements:** The Court does not have jurisdiction of an action for declaratory judgment under this Title unless the following conditions are satisfied:

(1) The Commissioner has issued a notice of determination, or has been requested to make a determination and failed to do so for a period of at least 270 days (180 days in the case of a request for determination as to status of prospective governmental obligations) after the request for such determination was made. In the case of a retirement plan action, the Court has jurisdiction over an action brought because of the Commissioner's failure to make a determination with respect to the continuing qualification of the plan only if the controversy arises as a result of an amendment or termination of such plan. See Code Section 7476(a)(2)(B).

(2) There is an actual controversy. In that connection—

(i) In the case of a retirement plan action, the retirement plan or amendment thereto in issue has been put into effect before commencement of the action.

(ii) In the case of a Section 367 action, the exchange has begun before commencement of the action.

(iii) In the case of a governmental obligation action, the prospective issuer has, prior to the commencement of the action, adopted an appropriate resolution in accordance with State or local law authorizing the issuance of such obligations.

(iv) In the case of an exempt organization action, the organization must be in existence before commencement of the action.

(3) A petition for declaratory judgment is filed with the Court within the period specified by Code Section 7476(b)(5) with respect to a retirement plan action, or the period specified by Code Section 7477(b)(4) with respect to a Section 367 action, or the period specified in Code Section 7478(b)(3) with respect to a governmental obligation action, or the period specified by Code Section 7428(b)(3) with respect to an exempt organization action. See Code Section 7502.

(4) The petitioner has exhausted all administrative remedies which were available to the petitioner within the Internal Revenue Service.

(d) Form and Style of Papers: All papers filed in an action for declaratory judgment, with the exception of documents included in the administrative record, shall be prepared in the form and style set forth in Rule 23; except that whenever any party joins or intervenes in the action in those instances in which joinder or intervention is permitted, then thereafter, in addition to the number of copies required to be filed under such Rule, an additional copy shall be filed for each party who joins or intervenes in the action.

Rule 211. Commencement of action for declaratory judgment

(a) Commencement of Action: An action for declaratory judgment shall be commenced by filing a petition with the Court. See Rule 22, relating to the place and manner of filing the petition, and Rule 32, relating to form of pleadings.

(b) Contents of Petition: Every petition shall be entitled "Petition for Declaratory Judgment (Retirement Plan)" or "Petition for Declaratory Judgment (Section 367 Exchange)" or "Petition for Declaratory Judgment (Governmental Obligation)" or "Petition for Declaratory Judgment (Exempt Organization)." Each such petition shall contain the allegations described in paragraph (c), (d), (e), or (f) of this Rule.

(c) Petition in Retirement Plan Action: The petition in a retirement plan action shall contain:

(1) *All Petitions:* All petitions in retirement plan actions shall contain the following:

(i) The petitioner's name and address, and the name and principal place of business, or principal office or agency of the employer at the time the petition is filed; and

(ii) The office of the Internal Revenue Service with which the request for determination, if any, was filed and the date of such filing.

(2) *Employer Petitions:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by an employer shall also contain:

(i) A separate numbered paragraph stating that he has complied with the requirements of the regulations issued under Code Section 7476(b)(2) with respect to notice to other interested parties;

(ii) A separate numbered paragraph stating that he has exhausted his administrative remedies within the Internal Revenue Service;

(iii) A separate numbered paragraph stating that the retirement plan has been put into effect in accordance with Code Section 7476(b)(4);

(iv) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify—

(A) the date of the notice of his determination,

(B) a copy of such notice of determination,

(C) in a separate numbered paragraph, a clear and concise assignment of each error, set forth in a separate lettered subparagraph, which he alleges to have been committed by the Commissioner in the determination, and

(D) a statement of facts upon which petitioner relies to support each such claim;

(v) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, separate numbered paragraphs stating that—

(A) the requested determination is of the type described in Code Section 7476(a)(1) or (2),

(B) no determination has been made by the Commissioner in response thereto, and

(C) the retirement plan does qualify;

(vi) An appropriate prayer for relief; and

(vii) The signature, mailing address, and telephone number of each petitioner or his counsel.

(3) *Petitions Filed by Plan Administrators:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by a plan administrator shall contain:

(i) The name, address, and principal place of business, or principal office or agency, of each employer who is required to contribute under the plan; and

(ii) In separate numbered paragraphs, the statements or information required in the case of employer petitions in paragraph (c)(2) of this Rule.

(4) *Employee Petitions:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by an employee shall also contain:

(i) A separate numbered paragraph setting forth a statement that he has qualified as an interested party in accordance with the regulations issued under Code Section 7476(b)(1);

(ii) In separate numbered paragraphs, the statements described in subparagraph (2)(ii) and (iii) of paragraph (c) of this Rule;

(iii) Where the Commissioner has issued a notice of determination that the retirement plan does not qualify, a copy of such notice of determination, and in separate numbered paragraphs, the statements described in subparagraph (2)(iv)(A), (C) and (D) of paragraph (c) of this Rule;

(iv) Where the Commissioner has issued a notice of determination that a retirement plan does qualify, a copy of such notice of determination, and in separate numbered paragraphs, the date of such notice of determination, and a clear and concise statement of each ground, set forth in a separate lettered subparagraph, upon which he relies to assert that such plan does not qualify and the facts to support each ground;

(v) Where the Commissioner has not issued a notice of determination with respect to the qualification of the retirement plan, a statement, in a separate numbered paragraph, as to whether the retirement plan qualifies—

(A) if he alleges that the retirement plan does qualify, such paragraph shall also include the statements described in paragraph (c)(2)(v) of this Rule, or

(B) if he alleges that the retirement plan does not qualify, in addition to the statements described in paragraph (c)(2)(v) of this Rule, such paragraph shall also include a clear and concise statement of each ground, in a separate lettered subparagraph, upon which he relies to support his allegation that such plan does not qualify and the facts upon which he relies to support each ground; and

(vi) In separate numbered paragraphs, the statements described in paragraph (c)(2)(vi) and (vii) of this Rule.

(5) *Petitions Filed by the Pension Benefit Guaranty Corporation:* In addition to including the information specified in paragraph (c)(1) of this Rule, a petition filed by the Pension Benefit Guaranty Corporation shall also contain in separate numbered paragraphs the statements described in paragraph (c)(4)(ii), (iii), (iv), (v), and (vi) of this Rule.

(d) Petition in Section 367 Action: The petition in a Section 367 action shall contain:

(1) The petitioner's name and legal residence, in the case of a petitioner other than a corporation; in the case of a corporate petitioner, its name and principal place of business or principal office or agency;

(2) The office of the Internal Revenue Service with which the request for determination was filed and the date of such filing;

(3) A statement that the petitioner is a transferor or transferee of stock, securities, or property transferred in an exchange described in Code Section 367(a)(1);

(4) Separate numbered paragraphs stating—

(i) that the petitioner has exhausted his administrative remedies within the Internal Revenue Service;

(ii) that the exchange has begun in accordance with Code Section 7477(b)(3); and

(iii) the date on which the exchange began;

(5) Where the Commissioner has issued a determination—

(i) the date of the notice of determination;

(ii) a copy of such notice of determination;

(iii) in a separate numbered paragraph, a clear and concise statement of each reason, in separate lettered subparagraphs, why the determination was not reasonable; and

(iv) a statement of facts upon which petitioner relies to support each of such reasons;

(6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating—

(i) that no such determination has been made by the Commissioner;

(ii) that the exchange is not in pursuance of a plan having as one of its principal purposes the avoidance of Federal income taxes; and

(iii) the terms and conditions, if any, which he deems reasonable;

(7) An appropriate prayer for relief; and

(8) The signature, mailing address, and telephone number of each petitioner or his counsel.

(e) Petition in a Governmental Obligation Action: The petition in a governmental obligation action shall contain:

(1) The petitioner's name and address;

(2) The office of the Internal Revenue Service with which the request for determination was filed and the date of such filing;

(3) A statement that the petitioner is a prospective issuer of governmental obligations described in Code Section 103(a) which has adopted an appropriate resolution in accordance with State or local law authorizing the issuance of such obligations;

(4) A statement that the petitioner has exhausted its administrative remedies;

(5) Where the Commissioner has issued a determination—

(i) the date of the notice of determination;

(ii) a copy of such notice of determination;

(iii) in a separate numbered paragraph, a clear and concise statement of each error, in separate lettered subparagraphs, which the petitioner alleges to have been committed by the Commissioner in the determination; and

(iv) a statement of facts upon which the petitioner relies to support each such claim;

(6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating—

(i) that no such determination has been made by the Commissioner; and

(ii) that the prospective governmental obligations are described in Code Section 103(a);

(7) An appropriate prayer for relief; and

(8) The signature, mailing address, and telephone number of the petitioner or its counsel.

(f) Petition in Exempt Organization Action: The petition in an exempt organization action shall contain:

(1) The petitioner's name and principal place of business or principal office or agency;

(2) The date upon which the request for determination, if any, was mailed to the Internal Revenue Service, and the office to which it was mailed;

(3) A statement that the petitioner is an exempt organization or a private foundation or a private operating foundation, as the case may be, the qualification or classification of which is at issue;

(4) A statement that the petitioner has exhausted its administrative remedies within the Internal Revenue Service;

(5) Where the Commissioner has issued a determination—

(i) the date of the notice of determination;

(ii) a copy of such notice of determination;

(iii) in a separate numbered paragraph, a clear and concise statement of each reason, in separate lettered subparagraphs, why the determination is erroneous; and

(iv) a statement of facts upon which petitioner relies to support each of such reasons;

(6) Where the Commissioner has not issued a notice of determination, separate numbered paragraphs stating that—

(i) no such determination has been made by the Commissioner; and

(ii) the organization is qualified under Code Section 501(c)(3) or 170(c)(2), or should be classified with respect to Code Section 509(a) or 4942(j)(3) in the manner set forth by the petitioner in its request for determination;

(7) An appropriate prayer for relief; and

(8) The signature, mailing address, and telephone number of the petitioner or its counsel.

A claim for reasonable litigation costs shall not be included in the petition in an exempt organization action. For the requirements as to claims for reasonable litigation costs, see Rule 231.

(g) Service: For the provisions relating to service of the petition and other papers, see Rule 21.

Rule 212. Designation of place for submission to the Court

At the time of filing a petition for a declaratory judgment, a designation of place for submission to the Court shall be filed in accordance with Rule 140. In addition to including in the designation the information specified in Rule 140, the petitioner shall also include the date on which he expects the action will be ready for submission to the Court and his estimate of the time required therefor. In cases involving a revocation or involving the status of a governmental obligation, the Commissioner shall, at the time of filing his answer, also set forth in a separate statement the date on which he expects the action will be ready for submission to the Court and an estimate of the time required therefor. After the action becomes at issue (see Rule 214), it will ordinarily, without any further request by the Court for information as to readiness for submission, be placed on a calendar for submission to the Court. See Rule 217(b).

Rule 213. Other pleadings

(a) Answer: (1) *Time to Answer or Move:* The Commissioner shall have 60 days from the date of service of the petition within which to file an answer, or 45 days from that date within which to move with respect to the petition. With respect to an amended petition or amendments to the petition, the Commissioner shall have like periods from the date of service of those papers within which to answer or move in response thereto, except as the Court may otherwise direct.

(2) *Form and Content:* The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation of the petition. If the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation as to jurisdictional facts or as to inferences or conclusions that may be drawn from materials in the administrative record or as to facts involved in a revocation, he may so state, and such statement shall have the effect of a denial. Facts other than jurisdictional facts, and other than facts involved in a revocation or in a governmental obligation action, may be admitted only for purposes of the pending action for declaratory judgment. If the Commissioner intends to qualify or to deny only a part of an allegation, he shall specify so much of it as is true and shall qualify or deny only the remainder. In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the Commissioner relies and has the burden of proof. Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate.

(3) *Index to Administrative Record:* In addition, the answer shall contain an affirmative allegation that attached thereto is a complete index of the contents of the administrative record to be filed with the Court. See Rule 217(b). There shall be attached to the answer such complete index.

(4) *Effect of Answer:* Every material allegation set out in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted.

(b) Reply: Each petitioner shall file a reply in every action for declaratory judgment.

(1) *Time to Reply or Move:* The petitioner shall have 60 days from the date of service of the answer within which to file a reply, or 30 days from that date within which to move with respect to the answer. With respect to an amended answer or amendments to the answer, the petitioner shall have like periods from the date of service of those papers within which to reply or move in response thereto, except as the Court may otherwise direct.

(2) *Form and Content:* In response to each material allegation in the answer and the facts in support thereof on which the Commissioner has the burden of proof, the reply shall contain a specific admission or denial; however, if the petitioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state, and such statement shall have the effect of a denial. If the petitioner denies the affirmative allegation in the answer that a complete index of the contents of the administrative record is attached to the answer, he shall specify the reasons for such denial. In addition, the reply shall contain a clear and concise statement of every ground, together with the facts in support thereof, on which the petitioner relies affirmatively or in avoidance of any matter in the answer on which the Commissioner has the burden of proof. In other respects, the requirements of pleading applicable to the answer provided in paragraph (a)(2) of this Rule shall apply to the reply. The paragraphs of the reply shall be designated to correspond to those of the answer to which they relate.

(3) *Effect of Reply or Failure Thereof:* Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed admitted.

(4) *New Material:* Any new material contained in the reply shall be deemed to be denied.

Rule 214. Joinder of issue in action for declaratory judgment

An action for declaratory judgment shall be deemed at issue upon the filing of the reply or at the expiration of the time for doing so.

Rule 215. Joinder of parties

(a) Joinder in Retirement Plan Action: The joinder of parties in retirement plan actions shall be subject to the following requirements, and in other respects, to the extent relevant, shall be subject to Rules 61 and 62:

(1) *Permissive Joinder:* Any person who, under Code Section 7476(b)(1), is entitled to commence an action for declaratory judgment with respect to the qualification of a retirement plan may join in filing a petition with any other such person in such an action with respect to the same plan. If the Commissioner has issued a notice of determination with respect to the qualification of the plan, any person joining in the petition must do so within the period specified in Code Section 7476(b)(5). If more than one petition is filed with respect to the qualification of the same retirement plan, see Rule 141 (relating to the possibility of consolidating the actions with respect to the plan).

(2) *Joinder of Additional Parties:* Any party to an action for declaratory judgment with respect to the qualification of a retirement plan may move to have joined in the action any employer who established or maintains the plan, plan administrator, or any person in whose absence complete relief cannot be accorded among those already parties. Unless otherwise permitted by the Court, any such motion must be filed not later than 30 days after joinder of issue (see Rule 214). Such motion shall be served on the parties to the action (other than the movant). See Rule 21(b). The movant shall cause personal service to be made on each person sought to be joined by a United States marshal or by his deputy, or by any other person who is not a party and is not less than 18 years of age, who shall make a return of service, see Form 13, Appendix I. Such return of service shall be filed with the motion, but failure to do so or otherwise to make proof of service does not affect the validity of the service. Unless otherwise permitted by the Court, any objection to such motion shall be filed within 30 days after the service of the motion. The motion will be granted whenever the Court finds that in the interests of justice such person should be joined. If the motion is granted, such person will thereupon become a party to the action, and the Court will enter such orders as it deems appropriate as to further pleading and other matters. See Rule 50(b) with respect to actions on motions.

(3) *Nonjoinder of Necessary Parties:* If the Court determines that any person described in subparagraph (2) of this paragraph is a necessary party to an action for declaratory judgment and that such person has not been joined, the Court may, on its own motion or on the motion of any party or any such person, dismiss the action on the ground that the absent person is necessary and that justice cannot be accomplished in his absence, or direct that any such person be made a party to the action. An order dismissing a case for nonjoinder of a necessary party may be conditional or absolute.

(b) Joinder of Parties in Section 367 Action: A person may join in a Section 367 action only if he is a transferor or transferee of stock, securities, or property transferred in the same exchange in respect of which the declaratory judgment is sought, and only upon satisfying the jurisdictional requirements of Rule 210(c). In other respects, to the extent relevant, joinder of parties shall be subject to Rules 61 and 62. With respect to consolidation of actions, see Rule 141.

(c) Joinder of Parties in Exempt Organization and in Governmental Obligation Actions: Joinder of parties is not permitted in an exempt organization action or in a governmental obligation action. See Code Sections 7428(b)(1) and 7478(b)(1). With respect to consolidation of actions, see Rule 141.

Rule 216. Intervention in retirement plan actions

(a) Who May Intervene: The Pension Benefit Guaranty Corporation and, if entitled to intervene pursuant to the provisions of Section 3001(c) of the Employee Retirement Income Security Act of 1974, the Secretary of Labor, or either of them, shall be permitted to intervene in a retirement plan action in accordance with the provisions of Code Section 7476.

(b) Procedure: If either of the persons mentioned in paragraph (a) of this Rule desires to intervene, he shall file a pleading, either a petition in intervention or an answer in intervention, not later than 30 days after joinder of issue (see Rule 214) unless the Court directs otherwise. All new matters of claim or defense in a pleading in intervention shall be deemed denied.

Rule 217. Disposition of actions for declaratory judgment

(a) General: Disposition of an action for declaratory judgment, which does not involve either a revocation or the status of a governmental obligation, will ordinarily be made on the basis of the administrative record, as defined in Rule 210(b)(11). Only with the permission of the Court, upon good cause shown, will any party be permitted to introduce before the Court any evidence other than that presented before the Internal Revenue Service and contained in the administrative record as so defined. Disposition of an action for declaratory judgment involving a revocation may be made on the basis of the administrative record alone only where the parties agree that such record contains all the relevant facts and that such facts are not in dispute. Disposition of a governmental obligation action will be made on the basis of the administrative record, augmented by additional evidence to the extent that the Court may direct.

(b) Procedure: (1) *Disposition on the Administrative Record:* The Court expects that, within 30 days after service of the answer, the parties will file with the Court the entire administrative record (or so much thereof as either party may deem necessary for a complete disposition of the action for declaratory judgment), stipulated as to its genuineness. If, however, the parties are unable to file such a stipulated administrative record, then, not sooner than 30 days nor later than 45 days after service of the answer, the Commissioner shall file with the Court the entire administrative record, as defined in Rule 210(b)(11), appropriately certified as to its genuineness by the Commissioner or by an official authorized to act for him in such situation. See Rule 212, as to the time and place for submission of the action to the Court. The Court will thereafter issue an opinion and declaratory judgment in the action. Except in a case involving a revocation or the status of a governmental obligation, the Court's decision will be based upon the assumption that the facts as represented in the administrative record as so stipulated or so certified are true and upon any additional facts as found by the Court if the Court deems that a trial is necessary. In the case of a revocation or a governmental obligation action, the Court may, upon the basis of the evidence presented, make findings of fact which differ from the administrative record. In the case of a governmental obligation action, see the last sentence of paragraph (a) of this Rule. See subparagraph (3) of this paragraph.

(2) *Other Dispositions Without Trial:* In addition, an action for declaratory judgment may be decided on a motion for a judgment on the pleadings under Rule 120 or on a motion for summary judgment under Rule 121 or such an action may be submitted at any time by notice of the parties filed with the Court in accordance with Rule 122.

(3) *Disposition Where Trial Is Required:* Whenever a trial is required in an action for declaratory judgment, such trial shall be conducted in accordance with the Rules contained in Title XIV, except as otherwise provided in this Title.

(c) Burden of Proof: The burden of proof in declaratory judgment actions shall be as follows:

(1) *Retirement Plan Actions:* (i) *Parties Petitioner:* In all cases, the burden of proof shall be upon the petitioner as to jurisdictional requirements. The burden of proof shall be upon the petitioner, and upon any party joining or intervening on his side, as to those grounds set forth in the respondent's notice of determination that a retirement plan does not qualify. Where the respondent has determined that a retirement plan does qualify, the petitioner, and any party joining or intervening on his side, shall bear the burden of proof as to every ground on which he relies to sustain his position that such plan does not qualify. Where the Commissioner has failed to issue a notice of determination—

(A) the petitioner who contends that the retirement plan does qualify, and any party joining or intervening on his side, shall bear the burden of proof as to the jurisdictional requirements described in Rule 210(c) and also with respect to the date on which the request for determination, if any, was mailed to the Internal Revenue Service and the office to which it was mailed, and that no notice of determination has been issued by the Commissioner; but

(B) the petitioner who contends that the retirement plan does not qualify, and any party joining or intervening on his side, shall bear the burden of proof as to the matters set forth in subparagraph (1)(i)(A) of this paragraph (c) and also as to the grounds and supporting facts on which he relies for his claim that the plan does not qualify.

(ii) *Parties Respondent:* The burden of proof shall be upon the respondent, and upon any party joining or intervening on his side, as to any ground not stated in the notice of determination upon which either relies to sustain the respondent's determination that a retirement plan does not qualify. If the respondent has not issued a notice of determination, he, and any party joining or intervening on his side, shall bear the burden of proof as to every ground upon which either relies to sustain his position that such plan does not qualify. See also subparagraph (1)(i)(B) of this paragraph (c).

(2) *Other Actions:* (i) *Petitioner:* The burden of proof shall be upon the petitioner as to jurisdictional requirements and as to the grounds set forth in the notice of determination. Where the Commissioner has failed to issue a notice of determination, the burden of proof shall be on the petitioner with respect to jurisdictional requirements, and also with respect to the date on which the request for determination, if any, was mailed to the Internal Revenue Service and the office to which it was mailed, and that no notice of determination has been issued by the Commissioner.

(ii) *Respondent:* The burden of proof shall be upon the respondent as to any ground upon which he relies and which is not stated in the notice of determination. If the respondent has not issued a notice of determination, he shall bear the burden of proof as to every ground upon which he relies to sustain his position, other than those matters as to which the burden is on the petitioner under subparagraph (2)(i) of this paragraph (c) where such a notice is not issued.

Rule 218. Procedure in actions heard by a Special Trial Judge of the Court

(a) Where Special Trial Judge Is to Make the Decision: When an action for declaratory judgment is assigned to a Special Trial Judge and he is authorized in the order of assignment to make the decision, the opinion of the Special Trial Judge and his proposed decision shall be submitted to and approved by the Chief Judge or by another Judge designated by the Chief Judge for that purpose, prior to service of the opinion and decision upon the parties.

(b) Where Special Trial Judge Is Not to Make the Decision: Where an action for declaratory judgment is assigned to a Special Trial Judge but he is not authorized in the order of assignment to make the decision, the procedure provided in Rule 183 shall be followed.

TITLE XXII—DISCLOSURE ACTIONS

Rule 220. General

(a) Applicability: The Rules of this Title XXII set forth the special provisions which apply to the three types of disclosure actions relating to written determinations by the Internal Revenue Service and their background file documents, as authorized by Code Section 6110. They consist of (1) actions to restrain disclosure, (2) actions to obtain additional disclosure, and (3) actions to obtain disclosure of identity in the case of third party contacts. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such disclosure actions.

(b) Definitions: As used in the Rules in this Title—

(1) A "written determination" means a ruling, determination letter, or technical advice memorandum. See Code Section 6110(b)(1).

(2) A "prior written determination" is a written determination issued pursuant to a request made before November 1, 1976.

(3) A "background file document" has the meaning provided in Code Section 6110(b)(2).

(4) A "notice of intention to disclose" is the notice described in Code Section 6110(f)(1).

(5) "Party" includes a petitioner, the respondent Commissioner of Internal Revenue, and any intervenor under Rule 225.

(6) A "disclosure action" is either an "additional disclosure action," and "action to restrain disclosure," or a "third party contact action," as follows:

(i) An "additional disclosure action" is an action to obtain disclosure within Code Section 6110(f)(4).

(ii) An "action to restrain disclosure" is an action within Code Section 6110(f)(3) or (h)(4) to prevent any part or all of a written determination, prior written determination, or background file document from being opened to public inspection.

(iii) A "third party contact action" is an action to obtain disclosure of the identity of a person to whom a written determination pertains in accordance with Code Section 6110(d)(3).

(7) "Third party contact" means the person described in Code Section 6110(d)(1) who has communicated with the Internal Revenue Service.

(c) Jurisdictional Requirements: The Court does not have jurisdiction of a disclosure action under this Title unless the following conditions are satisfied:

(1) In an additional disclosure action, the petitioner has exhausted all administrative remedies available within the Internal Revenue Service. See Code Section 6110(f)(2)(A) and (4)(A).

(2) In an action to restrain disclosure—

(i) The Commissioner has issued a notice of intention to disclose or, in the case of a prior written determination, the Commissioner has issued public notice in the Federal Register that the determination is to be opened to public inspection.

(ii) In the case of a written determination, the petition is filed with the Court within 60 days after mailing by the Commissioner of a notice of intention to disclose; or, in the case of a prior written determination, the petition is filed with the Court within 75 days after the date of publication of the notice in the Federal Register.

(iii) The petitioner has exhausted all administrative remedies available within the Internal Revenue Service. See Code Section 6110(f)(2)(B) and (3)(A)(iii).

(3) In a third party contact action—

(i) The Commissioner was required to make a notation on the written determination in accordance with Code Section 6110(d)(1).

(ii) A petition is filed within 36 months after the first date on which the written determination is open to public inspection.

(d) Form and Style of Papers: All papers filed in a disclosure action shall be prepared in the form and style set forth in Rule 23; except that whenever any party joins or intervenes in the action, then thereafter, in addition to the number of copies required to be filed under such Rule, an additional copy shall be filed for each party who joins or intervenes in the action. In the case of anonymous parties, see Rule 227.

Rule 221. Commencement of disclosure action

(a) Commencement of Action: A disclosure action shall be commenced by filing a petition with the Court. See Rule 22, relating to the place and manner of filing the petition, and Rule 32, relating to the form of pleadings.

(b) Contents of Petition: Every petition shall be entitled "Petition for Additional Disclosure" or "Petition to Restrain Disclosure" or "Petition to Disclose Identity." Subject to the provisions of Rule 227, dealing with anonymity, each petition shall contain the petitioner's name and address, an appropriate prayer for relief, and the signature, mailing address, and telephone number of the petitioner or his counsel. In addition, each petition shall contain the allegations described in paragraph (c), (d), or (e) of this Rule.

(c) Petition in Additional Disclosure Action: The petition in an additional disclosure action shall contain:

(1) A brief description (including any identifying number or symbol) of the written determination, prior to written determination, or background file document, as to which petitioner seeks additional disclosure. A copy of any such determination or document, as it is then available to the public, shall be appended.

(2) The date of the petitioner's request to the Internal Revenue Service for additional disclosure, with a copy of such request appended.

(3) A statement of the Commissioner's disposition of the request, with a copy of such disposition appended.

(4) A statement that the petitioner has exhausted all administrative remedies available within the Internal Revenue Service.

(5) In separate lettered subparagraphs, a clear and concise statement identifying each portion of the written determination, prior written determination, or background file document as to which petitioner seeks additional disclosure together with any facts and reasons to support disclosure. See Rule 229 with respect to the burden of proof in an additional disclosure action.

(d) Petition in Action to Restrain Disclosure: The petition in an action to restrain disclosure shall contain:

(1) A statement that the petitioner is (i) a person to whom the written determination pertains, or (ii) a successor in interest, executor, or other person authorized by law to act for or on behalf of such person, or (iii) a person who has a direct interest in maintaining the confidentiality of the written determination or background file document or portion thereof, or (iv) in the case of a prior written determination, the person who received such prior written determination.

(2) A statement that the Commissioner has issued a notice of intention to disclose with respect to a written determination or a background file document, stating the date of mailing of the notice of intention to disclose and appending a copy of it to the petition; or, in the case of a prior written determination, a statement that the Commissioner has issued public notice in the Federal Register that the determination is to be opened to public inspection, and stating the date and citation of such publication in the Federal Register.

(3) A brief description (including any identifying number or symbol) of the written determination, prior written determination, or background file document, as to which petitioner seeks to restrain disclosure.

(4) The date of petitioner's request to the Internal Revenue Service to refrain from disclosure, with a copy of such request appended.

(5) A statement of the Commissioner's disposition of the request, with a copy of such disposition appended.

(6) A statement that petitioner has exhausted all administrative remedies available within the Internal Revenue Service.

(7) In separate lettered subparagraphs, a clear and concise statement identifying each portion of the written determination, prior written determination, or background file document as to which petitioner seeks to restrain disclosure together with any facts and reasons to support his position. See Rule 229 with respect to the burden of proof in an action to restrain disclosure.

(e) Petition in Third Party Contact Action: The petition in a third party contact action shall contain:

(1) A brief description (including any identifying number or symbol) of the written determination to which the action pertains. There shall be appended a copy of such determination, and the background file document (if any) reflecting the third party contact, as then available to the public.

(2) The date of the first day that the written determination was open to public inspection.

(3) A statement of the disclosure sought by the petitioner.

(4) A clear and concise statement of the impropriety alleged to have occurred or the undue influence alleged to have been exercised with respect to the written determination or on behalf of the person whose identity is sought, and the public interest supporting any other disclosure. See Rule 229 with respect to the burden of proof in a third party contact action.

(f) Service: For the provisions relating to service of the petition and other papers, see Rule 21.

(g) Anonymity: With respect to anonymous pleading, see Rule 227.

Rule 222. Designation of place of hearing

At the time of filing a petition in a disclosure action, a designation of a place of hearing shall be filed in accordance with Rule 140. In addition, the petitioner shall include the date on which he believes the action will be ready for submission to the Court and his estimate of the time required therefor. The Commissioner shall, at the time of filing his answer, also set forth in a separate statement the date on which he expects the action will be ready for submission to the Court and an estimate of the time required therefor. An intervenor shall likewise furnish such information to the Court in a separate statement filed with his first pleading in the case. After the action is at issue (see Rule 224), it will ordinarily, without any further request by the Court for information as to readiness for submission, be placed on a calendar for submission to the Court. See also Rule 229.

Rule 223. Other pleadings

(a) Answer: (1) *Time to Answer or Move:* The Commissioner shall have 30 days from the date of service of the petition within which to file an answer or move with respect to the petition, or, in an action for additional disclosure, to file an election not to defend pursuant to Code Section 6110(f)(4)(B), in which event he shall be relieved of the obligation of filing an answer or any subsequent pleading. With respect to intervention when the Commissioner elects not to defend, see Rule 225.

(2) *Form and Content:* The answer shall be drawn so that it will advise the petitioner and the Court fully of the nature of the defense. It shall contain a specific admission or denial of each material allegation in the petition. If the Commissioner shall be without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state, and such statement shall have the effect of a denial. If the Commissioner intends to qualify or to deny only a part of an allegation, he shall specify so much of it as is true and shall qualify or deny only the remainder. In addition, the answer shall contain a clear and concise statement of every ground, together with the facts in support thereof on which the Commissioner relies and has the burden of proof. Paragraphs of the answer shall be designated to correspond to those of the petition to which they relate.

(3) *Effect of Answer:* Every material allegation set out in the petition and not expressly admitted or denied in the answer shall be deemed to be admitted.

(b) Reply: Each petitioner may file a reply or move with respect to the answer within 20 days from the date of service of the answer. Where a reply is filed, every affirmative allegation set out in the answer and not expressly admitted or denied in the reply, shall be deemed to be admitted. Where a reply is not filed, the affirmative allegations in the answer will be deemed denied. Any new material contained in the reply shall be deemed denied.

Rule 224. Joinder of issue

A disclosure action shall be deemed at issue upon the filing of the reply or at the expiration of the time for doing so.

Rule 225. Intervention

(a) Who May Intervene: The persons to whom notice is required to be given by the Commissioner pursuant to Code Section 6110(d)(3), (f)(3)(B), or (f)(4)(B) shall have the right to intervene in the action as to which the notice was given. The Commissioner shall append a copy of the petition to any such notice.

(b) Procedure: If a person desires to intervene, he shall file an initial pleading, which shall be a petition in intervention or an answer in intervention, not later than 30 days after mailing by the Commissioner of the notice referred to in paragraph (a) of this Rule. In an action for additional disclosure where the Commissioner elects not to defend pursuant to Code Section 6110(f)(4)(B), the Commissioner shall mail to each person, to whom he has mailed the notice referred to in paragraph (a) of this Rule, a notice of his election not to defend, and any such person desiring to intervene shall have 30 days after such mailing within which to file a petition in intervention or an answer in intervention. The initial pleading of an intervenor, whether a petition or answer, shall show the basis for the right to intervene and shall include, to the extent appropriate, the same elements as are required for a petition under Rule 221 or an answer under Rule 223. An intervenor shall otherwise be subject to the same rules of procedure as apply to other parties. With respect to anonymous intervention, see Rule 227.

Rule 226. Joinder of parties

The joinder of parties in a disclosure action shall be subject to the following requirements, and in other respects, to the extent relevant, to Rules 61 and 62:

(a) Commencement of Action: Any person who meets the requirements for commencing such an action may join with any other such person in filing a petition with respect to the same written determination, prior written determination, or background file document. But see Code Section 6110(f)(3)(B) and (h)(4).

(b) Consolidation of Actions: If more than one petition is filed with respect to the same written determination, prior written determination, or background file document, see Rule 141 with respect to the consolidation of the actions.

Rule 227. Anonymous parties

(a) Petitioners: A petitioner in an action to restrain disclosure relating to either a written determination or a prior written determination may file the petition anonymously, if appropriate.

(b) Intervenors: An intervenor may proceed anonymously, if appropriate, in any disclosure action.

(c) Procedure: A party who proceeds pursuant to this Rule shall be designated as "Anonymous." In all cases where a party proceeds anonymously pursuant to paragraph (a) or (b) of this Rule, such party shall set forth in a separate paper his name and address and the reasons why he seeks to proceed anonymously. Such separate paper shall be filed with his initial pleading. Anonymity, where appropriate, shall be preserved to the maximum extent consistent with the proper conduct of the action. See Rule 13(c), relating to contempt of court. With respect to confidential treatment of pleadings and other papers, see Rule 228.

Rule 228. Confidentiality

(a) Confidentiality: The petition and all other papers submitted to the Court in any disclosure action shall be placed and retained by the Court in a confidential file and shall not be open to inspection unless otherwise permitted by the Court.

(b) Publicity of Court Proceedings: On order of the Court, portions or all of the hearings, testimony, evidence, and reports in any action under this title may be closed to the public or to inspection by the public, to the extent deemed by the Court to be appropriate in order to preserve the anonymity, privacy, or confidentiality of any person involved in an action within Code Section 6110. See Code Section 6110(f)(6).

Rule 229. Burden of proof

The burden of proof shall be upon the petitioner as to the jurisdictional requirements described in Rule 220(c). As to other matters, the burden of proof shall be determined consistently with Rule 142(a), subject to the following:

(a) In an action for additional disclosure, the burden of proof as to the issue of whether disclosure should be made shall be on the Commissioner and on any other person seeking to deny disclosure. See Code Section 6110(f)(4)(A).

(b) In an action to restrain disclosure, the burden of proof as to the issue of whether disclosure should be made shall be upon the petitioner.

(c) In a third party contact action, the burden of proof shall be on the petitioner to establish that one could reasonably conclude that an impropriety occurred or undue influence was exercised with respect to the written determination by or on behalf of the person whose identity is sought.

Rule 229A. Procedure in actions heard by a Special Trial Judge of the Court

(a) Where Special Trial Judge Is to Make the Decision: When a disclosure action is assigned to a Special Trial Judge and he is authorized in the order of assignment to make the decision, the opinion of the Special Trial Judge and his proposed decision shall be submitted to and approved by the Chief Judge, or by another Judge designated by the Chief Judge for that purpose, prior to service of the opinion and decision upon the parties.

(b) Where Special Trial Judge Is Not to Make the Decision: When a disclosure action is assigned to a Special Trial Judge but he is not authorized in the order of assignment to make the decision, the procedure provided in Rule 183 shall be followed.

TITLE XXIII—CLAIMS FOR LITIGATION COSTS

Rule 230. General

(a) Applicability: The Rules of this Title XXIII set forth the special provisions which apply to claims for reasonable litigation costs authorized by Code Section 7430. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such claims for reasonable litigation costs.

(b) Definitions: As used in the Rules in this Title—

(1) "Reasonable litigation costs" include the items described in Code Section 7430(c).

(2) A "deficiency action" is an action to redetermine a deficiency determined by the Commissioner in income, gift, or estate tax or in the taxes under Chapter 41, 42, 43, or 44 of the Code (relating to the excise taxes on certain organizations and persons dealing with them), or in the tax under Chapter 45 of the Code (relating to the windfall profit tax), or in any other taxes which are the subject of a notice of deficiency by the Commissioner.

(3) A "liability action" is an action to redetermine fiduciary or transferee liability determined by the Commissioner.

(4) A "partnership action" is an action for readjustment of partnership items under Code Section 6226 or adjustment of partnership items under Code Section 6228.

(5) A "revocation action" is an action for declaratory judgment involving the revocation of a determination that an organization is described in Code Section 501(c)(3).

(6) In the case of a partnership action, the term "party" includes partners who are treated as parties under Code Section 6226(c) or Code Section 6228(a)(4).

(7) "Attorney's fees" include fees paid or incurred for the services of attorneys and fees paid or incurred for the services of an individual (whether or not an attorney) admitted to practice before the Court. For the procedure for admission to practice, see Rule 200.

Rule 231. Claims for litigation costs

(a) Time and Manner of Claim: (1) *Agreed Cases:* Where the parties have reached a settlement which disposes of all issues in the case including litigation costs, an award of reasonable litigation costs, if any, shall be included in the stipulated decision submitted by the parties for entry by the Court.

(2) *Unagreed Cases:* Where a party has substantially prevailed and wishes to claim reasonable litigation costs, and there is no agreement as to that party's entitlement to such costs, a claim shall be made by motion filed—

(i) Within 30 days after the service of a written opinion determining the issues in the case;

(ii) Within 30 days after the service of the pages of the transcript that contain findings of fact or opinion stated orally pursuant to Rule 152 (or a written summary thereof); or

(iii) After the parties have settled all issues in the case other than litigation costs. See paragraphs (b)(2) and (c) of this Rule regarding the filing of a stipulation of settlement with the motion in such cases.

(b) Content of Motion: A motion for an award of reasonable litigation costs shall be in writing and shall contain the following:

(1) A statement that the moving party is a party to a deficiency or liability action, a partnership action, or a revocation action, and that any such action was commenced after February 28, 1983;

(2) A statement sufficient to demonstrate that the moving party has substantially prevailed with respect to either the amount in controversy or the most significant issue or set of issues presented in that action, including a stipulation in the form prescribed by paragraph (c) of this Rule as to any settled issues;

(3) A clear and concise statement of each reason why the moving party alleges that the position of the Commissioner in that action was unreasonable, and a statement of the facts on which the moving party relies to support each of such reasons;

(4) A statement that the moving party has exhausted the administrative remedies available to such party within the Internal Revenue Service;

(5) A statement of the specific litigation costs for which the moving party claims an award, supported by an affidavit in the form prescribed in paragraph (d) of this Rule;

(6) If the moving party requests a hearing on the motion, a statement of the reasons why the motion cannot be disposed of by the Court without a hearing (see Rule 232(a)(3) regarding the circumstances in which the Court will direct a hearing); and

(7) An appropriate prayer for relief.

(c) Stipulation as to Settled Issues: Where some or all of the issues in a case (other than litigation costs) have been settled by the parties, a motion for an award of reasonable litigation costs shall be accompanied by a stipulation, signed by the parties or by their counsel, setting forth the terms of the settlement as to each such issue (including the amount of tax involved). A stipulation of settlement shall be binding upon the parties unless otherwise permitted by the Court or agreed upon by those parties.

(d) Affidavit in Support of Costs Claimed: A motion for an award of reasonable litigation costs shall be accompanied by a detailed affidavit by the moving party or counsel for the moving party which sets forth distinctly the nature and amount of each item of costs paid or incurred for which an award is claimed.

Rule 232. Disposition of claims for litigation costs

(a) General: A motion for reasonable litigation costs may be disposed of in one or more of the following ways, in the discretion of the Court:

(1) The Court may take such action as it deems appropriate, on such prior notice, if any, which it may consider reasonable. The action of

the Court may be taken without written response or hearing.

(2) The Court may take action after directing that a written response be filed. In that event, the motion shall be served upon the Commissioner, who shall file such response within 60 days after service of the motion.

(3) After receiving the Commissioner's response, the Court may direct a hearing, which will be held at a location that services the convenience of the parties and the Court. A motion for reasonable litigation costs ordinarily will be disposed of without a hearing unless it is clear from the motion and the Commissioner's written response that there is a bona fide factual dispute that cannot be resolved without an evidentiary hearing.

(b) Conference Required: Where the Court directs the Commissioner to file a written response, counsel for the Commissioner and the moving party or his counsel shall confer prior to the date for filing such response and attempt to reach an agreement as to each of the allegations by the moving party. The Court expects that, at such conference, the moving party or his counsel shall make available to counsel for the Commissioner substantially the same information relating to any claim for attorney's fees which, in the absence of an agreement, he would be required to file with the Court pursuant to paragraph (d) of this Rule.

(c) Response by the Commissioner: Where the Court directs the Commissioner to file a written response, such response shall specifically state:

(1) Whether the Commissioner agrees that the moving party has substantially prevailed;

(2) Whether the Commissioner agrees that the position of the Commissioner was unreasonable;

(3) Whether the Commissioner agrees that the moving party has exhausted the administrative remedies available to such party within the Internal Revenue Service;

(4) Whether the Commissioner agrees that the amounts of costs claimed are reasonable; and

(5) The basis for the Commissioner's disagreeing with any such allegations by the moving party.

If the Commissioner agrees with the moving party's request for a hearing, or if the Commissioner requests a hearing, such response shall include a statement of the Commissioner's reasons why the motion cannot be disposed of without a hearing. If the Commissioner opposes the moving party's request for a hearing, such response shall include a statement of the reasons why no hearing is required.

(d) Additional Affidavit: Where the Commissioner's response indicates that he and the moving party are unable to agree as to the amount of attorney's fees which is reasonable, counsel for the moving party shall, within 30 days after service of the Commissioner's response, file an additional affidavit which shall include:

(1) A detailed summary of the time expended by each individual for whom fees are sought, including a description of the nature of the services performed during each period of time summarized. Each such individual is expected to maintain contemporaneous, complete, and standardized time records which accurately reflect the work done by such individual. Where the reasonableness of the hours claimed becomes an issue, counsel is expected to make such time records available for inspection by the Court or by counsel for the Commissioner upon request.

(2) The customary fee for the type of work involved. Counsel shall provide specific evidence of the prevailing community rate for the type of work involved as well as specific evidence of his actual billing practice during the time period involved. Counsel may establish the prevailing community rate by affidavits of other counsel with similar qualifications reciting the precise fees they have received from clients in comparable cases, by evidence of recent fees awarded by the courts or through settlement to counsel of comparable reputation and experience performing similar work, or by reliable legal publications.

(3) A description of the fee arrangement with the client. If any part of the fee is payable only on condition that the Court award such fee, the description shall specifically so state.

(4) The preclusion of other employment by counsel, if any, due to acceptance of the case.

(5) Any time limitations imposed by the client or by the circumstances.

(6) Any other problems resulting from the acceptance of the case.

(7) The professional qualifications and experience of each individual for whom fees are sought.

(8) The nature and length of the professional relationship with the client.

(9) Awards in similar cases, if any.

(10) Any other information counsel believes will assist the Court in evaluating his claim, which may include, but shall not be limited to, information relating to the novelty and difficulty of the questions presented, the skill required to perform the legal services properly, and any efforts to settle the case.

Where there are several counsel of record, all of whom are members of or associated with the same firm, an affidavit filed by first counsel of record or his designee (see Rule 21(b)(2)) shall satisfy the requirements of this paragraph, and an affidavit by each counsel of record shall not be required.

(e) Burden of Proof: The moving party shall have the burden of proving that he has substantially prevailed, that he has exhausted the administrative remedies available to him within the Internal Revenue Service, that the position of the Commissioner was unreasonable, and that the amount of costs claimed is reasonable.

(f) Disposition: The Court's disposition of a motion for reasonable litigation costs shall be included in the decision entered in the case. Where the Court in its opinion states that the decision will be entered under Rule 155, or where the parties have settled all of the issues other than litigation costs, the Court will enter an order granting or denying the motion and determining the amount of reasonable litigation costs, if any, to be awarded. The parties, or either of them, shall thereafter submit a proposed decision including an award of any such costs, or a denial thereof, for entry by the Court.

Rule 233. Miscellaneous

For provisions prohibiting the inclusion of a claim for reasonable litigation costs in the petition, see Rules 34(b) (petition in a deficiency or liability action) and 211(f) (petition in a revocation action). For provisions regarding discovery, see Rule 70(a)(2). For provisions prohibiting the introduction of evidence regarding a claim for reasonable litigation costs at the trial of the case, see Rule 143(a).

TITLE XXIV—PARTNERSHIP ACTIONS[*]

Rule 240. General

(a) Applicability: The Rules of this Title XXIV set forth the special provisions which apply to actions for readjustment of partnership items under Code Section 6226 and actions for adjustment of partnership items under Code Section 6228. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such partnership actions.

(b) Definitions: As used in the Rules of this Title—

(1) The term "partnership" means a partnership as defined in Code Section 6231(a)(1).

(2) A "partnership action" is either an "action for readjustment of partnership items" under Code Section 6226 or an "action for adjustment of partnership items" under Code Section 6228.

(3) The term "partnership item" means any item described in Code Section 6231(a)(3).

(4) The term "tax matters partner" means the person who is the tax matters partner under Code Section 6231(a)(7).

(5) A "notice of final partnership administrative adjustment" is the notice described in Code Section 6223(a)(2).

(6) The term "administrative adjustment request" means a request for an administrative adjustment of partnership items filed by the tax matters partner on behalf of the partnership under Code Section 6227(b).

(7) The term "partner" means a person who was a partner as defined in Code Section 6231(a)(2) at any time during any partnership taxable year at issue in a partnership action.

(8) The term "notice partner" means a person who is a notice partner under Code Section 6231(a)(8).

(9) The term "5-percent group" means a 5-percent group as defined in Code Section 6231(a)(11).

(c) Jurisdictional Requirements: The Court does not have jurisdiction of a partnership action under this Title unless the following conditions are satisfied:

(1) *Actions for Readjustment of Partnership Items:* (i) The Commissioner has issued a notice of final partnership administrative adjustment. See Code Section 6226(a) and (b).

(ii) A petition for readjustment of partnership items is filed with the Court by the tax matters partner within the period specified in Code Section 6226(a), or by a partner other than the tax matters partner subject to the conditions and within the period specified in Code Section 6226(b).

(2) *Actions for Adjustment of Partnership Items:* (i) The Commissioner has not allowed all or some of the adjustments requested in an administrative adjustment request. See Code Section 6228(a).

(ii) A petition for adjustment of partnership items is filed with the Court by the tax matters partner subject to the conditions and within the period specified in Code Section 6228(a)(2) and (3).

(d) Form and Style of Papers: All papers filed in a partnership action shall be prepared in the form and style set forth in Rule 23, except that the caption shall state the name of the partnership and the full name and surname of any partner filing the petition and shall indicate whether such partner is the tax matters partner, as for example, "ABC Partnership, John Doe, Tax Matters Partner, Petitioner" or "ABC Partnership, Richard Roe, A Partner Other Than the Tax Matters Partner, Petitioner."

Rule 241. Commencement of partnership action

(a) Commencement of Action: A partnership action shall be commenced by filing a petition with the Court. See Rule 22, relating to the place and manner of filing the petition, Rule 32, relating to form of pleadings, and Rule 34(d), relating to number of copies to be filed.

(b) Contents of Petition: Each petition shall be entitled either "Petition for Readjustment of Partnership Items under Code Section 6226" or "Petition for Adjustment of Partnership Items under Code Section 6228." Each such petition shall contain the allegations described in paragraph (c) of this Rule, and the allegations described in paragraph (d) or (e) of this Rule.

(c) All Petitions: All petitions in partnership actions shall contain the following:

(1) The name and address of the petitioner.

(2) The name, employer identification number, and principal place of business of the partnership at the time the petition is filed.

(3) The office of the Internal Revenue Service with which the partnership's return for the period in controversy was filed.

A claim for reasonable litigation costs shall not be included in the petition in a partnership action. For the requirements as to claims for reasonable litigation costs, see Rule 231.

(d) Petition for Readjustment of Partnership Items: In addition to including the information specified in paragraph (c) of this Rule, a petition for readjustment of partnership items shall also contain:

(1) *All Petitions:* All petitions for readjustment of partnership items shall contain:

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[*] Title XXIV sets forth procedures for partnership actions under Code Section 6226 (action for readjustment of partnership items) and Code Section 6228 (action for adjustment of partnership items), enacted by Section 402(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248 (September 3, 1982). For the effective date of such provisions, see Section 407(a) of such act [set out as a note under section 6221 of this title].

(i) The date of the notice of final partnership administrative adjustment and the City and State of the office of the Internal Revenue Service which issued the notice.

(ii) The year or years or other periods for which the notice of final partnership administrative adjustment was issued.

(iii) Clear and concise statements of each and every error which the petitioner alleges to have been committed by the Commissioner in the notice of final partnership administrative adjustment. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issues not raised in the assignments of error, or in the assignments of error in any amendment to the petition, shall be deemed to be conceded. Each assignment of error shall be set forth in a separately lettered subparagraph.

(iv) Clear and concise lettered statements of the facts on which the petitioner bases the assignments of error, except with respect to those assignments of error as to which the burden of proof is on the Commissioner.

(v) A prayer setting forth relief sought by the petitioner.

(vi) The signature, mailing address, and telephone number of each petitioner or his counsel.

(vii) A copy of the notice of final partnership administrative adjustment, which shall be appended to the petition, and with which there shall be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of final partnership administrative adjustment or an accompanying statement incorporates by reference any prior notices, or other material furnished by the Internal Revenue Service, such parts thereof as are material to the assignments of error likewise shall be appended to the petition.

(2) *Petitions by Tax Matters Partner:* In addition to including the information specified in paragraph (d)(1) of this Rule, a petition filed by a tax matters partner shall also contain:

(i) A separate numbered paragraph stating that he is the tax matters partner.

(ii) There shall be appended to the petition a copy of one of the notices required by subparagraph (1) of paragraph (f) of this Rule with a certificate by the petitioner or his counsel that service of such a notice has been made as required therein, including in such certificate the names and addresses of the partners so served.

(3) *Petitions by Other Partners:* In addition to including the information specified in paragraph (d)(1) of this Rule, a petition filed by a partner other than the tax matters partner shall also contain:

(i) A separate numbered paragraph stating that he is a notice partner or a representative of a 5-percent group (see Code Section 6226(b)(1)).

(ii) A separate numbered paragraph setting forth facts establishing that he satisfies the requirements of Code Section 6226(d).

(iii) A separate numbered paragraph stating that the tax matters partner has not filed a petition for readjustment of partnership items within the period specified in Code Section 6226(a).

(iv) There shall be appended to the petition a certificate by the petitioner or his counsel that service of a copy of the petition has been made on the tax matters partner in accordance with the requirements of subparagraph (2) of paragraph (f) of this Rule.

A single petition may be filed by two or more partners; however, each such partner must satisfy all requirements of this Title with respect to himself in order for the petition to be treated as filed by or for him.

(e) Petition for Adjustment of Partnership Items: In addition to including the information specified in paragraph (c) of this Rule, a petition for adjustment of partnership items shall also contain:

(1) A statement that the petitioner is the tax matters partner.

(2) The date that the administrative adjustment request was filed and other proper allegations showing jurisdiction in the Court in accordance with the requirements of Code Section 6228(a)(1) and (2).

(3) The year or years or other periods to which the administrative adjustment request relates.

(4) The City and State of the office of the Internal Revenue Service with which the administrative adjustment request was filed.

(5) A clear and concise statement describing each partnership item on the partnership return that is sought to be changed, and the basis for each such requested change. Each such statement shall be set forth in a separately lettered subparagraph.

(6) Clear and concise lettered statements of the facts on which the petitioner relies in support of such requested changes in treatment of partnership items.

(7) A prayer setting forth relief sought by the petitioner.

(8) The signature, mailing address, and telephone number of the petitioner or his counsel.

(9) A copy of the administrative adjustment request shall be appended to the petition.

(10) There shall be appended to the petition a copy of one of the notices required by subparagraph (1) of paragraph (f) of this Rule with a certificate by the petitioner or his counsel that service of such a notice has been made as required therein, including in such certificate the names and addresses of the partners so served.

(f) Notice of Filing: (1) *Petitions by Tax Matters Partner:* On or before the day the petition is delivered to the Court, or, if the petition is mailed to the Court, on or before the day of mailing, the tax matters partner shall serve notice of the filing of the petition on each partner in the partnership as referred to in Code Section 6231(a)(2)(A).

(2) *Petitions by Other Partners:* On or before the day the petition is delivered to the Court, or, if the petition is mailed to the Court, on or before the day of mailing, the petitioner shall serve a copy of the petition on the tax matters partner. Upon notification thereof by the Clerk, the petitioner shall notify the tax matters partner of the docket number assigned the case by the Court (see Rule 35). Within 15 days from the date of service of the petition, the tax

matters partner shall serve notice of the filing of the petition on each partner in the partnership as referred to in Code Section 6231(a)(2)(A).

(g) Copy of Petition to Be Provided All Partners: Upon request by any partner in the partnership as referred to in Code Section 6231(a)(2)(A), the tax matters partner shall, within 10 days of receipt of such request, make available to such partner a copy of any petition filed by the tax matters partner or by any other partner, which copy shall contain the docket number assigned by the Court.

Rule 242. Designation of place of trial

At the time of filing a petition in a partnership action, a designation of place of trial shall be filed in accordance with Rule 140.

Rule 243. Other pleadings

(a) Answer: The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in and in accordance with the provisions of Rule 36.

(b) Reply: For provisions relating to the filing of a reply, see Rule 37.

Rule 244. Intervention and participation

(a) Tax Matters Partner: The tax matters partner may intervene in an action for readjustment of partnership items brought by another partner or partners by filing a notice of election to intervene with the Court. Such notice shall state that the intervenor is the tax matters partner and shall be filed within 210 days from the date of the mailing of the notice of final partnership administrative adjustment to the tax matters partner.

(b) Other Partners: Any other partner who satisfies the requirements of Code Section 6226(d) or 6228(a)(4)(B) may participate in the action by filing a notice of election to participate with the Court. Such notice shall set forth facts establishing that such partner satisfies the requirements of Code Section 6226(d) in the case of an action for readjustment of partnership items or Code Section 6228(a)(4)(B) in the case of an action for adjustment of partnership items and shall be filed:

(1) In an action for readjustment of partnership items, within 210 days from the date of the mailing of the notice of final partnership administrative adjustment to the tax matters partner;

(2) In an action for adjustment of partnership items, within 60 days from the date of service of the notice of filing of the petition described in Rule 241(f)(1).

A single notice may be filed by two or more partners; however, each such partner must satisfy all requirements of this paragraph with respect to himself in order for the notice to be treated as filed by or for him.

(c) Enlargement of Time: The Court may grant leave to file a notice of election to intervene or a notice of election to participate out of time upon a showing of sufficient cause.

(d) Pleading: No assignment of error, allegation of fact, or other statement in the nature of a pleading shall be included in a notice of election to intervene or notice of election to participate.

(e) Amendments to the Petition: A party other than the petitioner who is authorized to raise issues not raised in the petition may do so by filing an amendment to the petition. Such an amendment may be filed, without leave of Court, in an action for readjustment of partnership items at any time within the period specified in Rule 244(b)(1) and in an action for adjustment of partnership items at any time within the period specified in Rule 244(b)(2). Otherwise, such an amendment may be filed only by leave of Court. See Rule 36(a) for time for responding to amendments to the petition.

Rule 245. Service of papers

All petitions, and all papers issued by the Court, shall be served by the Clerk. All other papers required to be served (see Rule 21(a)) shall be served by the parties. Whenever a paper (other than a petition) is required by these Rules to be filed with the Court, the original paper shall be filed with the Court with certificates by the party or his counsel that service of that paper has been made on each of the other parties to the case or his counsel.

Rule 246. Parties

For purposes of these Rules, only the partner who filed the petition, a tax matters partner who has elected to intervene in the action (see Rule 244(a)), and any other partner who has elected to participate in the action (see Rule 244(b), shall be treated as parties to the action.

Rule 247. Action for adjustment of partnership items treated as action for readjustment of partnership items

(a) Amendment to Petition: If, after the filing of a petition for adjustment of partnership items (see Code Section 6228(a) and Rule 241(a)) but before the hearing of such petition, the Commissioner mails to the tax matters partner a notice of final partnership administrative adjustment for the partnership taxable year to which the petition relates, such petition shall be treated as a petition in an action for readjustment of the partnership items to which such notice relates. The petitioner, within 90 days after the date on which the notice of final partnership administrative adjustment is mailed to the tax matters partner, shall file an amendment to the petition, setting forth every error which the petitioner alleges to have been committed by the Commissioner in the notice of final partnership administrative adjustment, and the facts on which the petitioner bases the assignments of error. A copy of the notice of final partnership administrative adjustment shall be appended to the amendment to the petition.

(b) Participation: Any partner who has filed a timely notice of election to participate in the action for adjustment of partnership items shall be deemed to have elected to participate in the action for readjustment of partnership items and need not file another notice of election to do so. Any other partner may participate in the action by filing a notice of election to participate within 210 days from the date of the mailing of the notice of final partnership administrative adjustment to the tax matters partner. See Rule 244(b)(1).

APPENDIX I

FORMS

The following forms are listed in this Appendix:

Form 1. Petition (Other Than In Small Tax Case)
*Form 2. Petition (Small Tax Case)
*Form 3. Entry of Appearance
*Form 4. Designation of Place of Trial
*Form 5. Subpoena
*Form 6. Application For Order To Take Deposition
Form 7. Certificate On Return
Form 8. Notice of Appeal To Court Of Appeals
Form 9. Appeal Bond, Corporate Surety
Form 10. Appeal Bond, Approved Collateral
Form 11. Power of Attorney and Agreement By Corporation
Form 12. Power of Attorney and Agreement by Individuals
Form 13. Certificate of Service

The forms marked by an asterisk(*) (Forms 2, 3, 4, 5, and 6) have been printed and are available upon request from the Clerk of the Court. All the forms may be typewritten, except that the subpoena (Form 5) must be obtained from the Court. When preparing papers for filing with the Court, attention should be given to the applicable requirements of Rule 23 in regard to form, size, type, and number of copies, as well as to such other Rules of the Court as may apply to the particular item.

FORM 1

PETITION (Other Than In Small Tax Case)

(See Rules 30 through 34)

UNITED STATES TAX COURT

____
Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent
Docket No.

PETITION

The petitioner hereby petitions for a redetermination of the deficiency (or liability) set forth by the Commissioner of Internal Revenue in his notice of deficiency (or liability) [Service symbols] dated _____, 19__, and as the basis for his case alleges as follows:

1. The petitioner is [set forth whether an individual, fiduciary, corporation, etc., as provided in Rule 60] with legal residence (or principal office) now at ______________(Street), ______________(City), __________(State), ______________(Zip Code). Petitioner's taxpayer identification number (e.g., Social Security or employer identification number is ________. The return for the period here involved was filed with the Office of the Internal Revenue Service at ______________ (City),______________(State).

2. The notice of deficiency (or liability) (a copy of which, including so much of the statement and schedules accompanying the notice as is material, is attached and marked Exhibit A) was mailed to the petitioner on _____, 19__, and was issued by the Office of the Internal Revenue Service at ______________City and State.

3. The deficiencies (or liabilities) as determined by the Commissioner are in income (estate, gift, or certain excise) taxes for the calendar (or fiscal) year 19__, in the amount of $_______, of which $_______, is in dispute.

4. The determination of tax set forth in the said notice of deficiency (or liability) is based upon the following errors: [Here set forth specifically in lettered subparagraphs the assignments of error in a concise manner and avoid pleading facts which properly belong in the succeeding paragraph.]

5. The facts upon which the petitioner relies, as the basis of his case, are as follows: [Here set forth allegations of fact, but not the evidence, sufficient to inform the Court and the Commissioner of the positions taken and the bases therefor, in orderly and logical sequence, with subparagraphs lettered, so as to enable the Commissioner to admit or deny each allegation. See Rules 31(a) and 34(b)(5).]

WHEREFORE, petitioner prays that [here set forth the relief desired.]

(Signed) ______________________
(Petitioner or Counsel)

____
(Post Office Address)

____
Telephone No. (include area code)

Dated: __________, 19__

FORM 2

PETITION (Small Tax Case)

(Available—Ask for Form 2)

(See Rules 170 through 179)

UNITED STATES TAX COURT

____
Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent
Docket No.

PETITION

1. Petitioner(s) request(s) the Court to redetermine the tax deficiency(ies) for the year(s) _______, as set forth in the notice of deficiency dated _______, A COPY OF WHICH IS ATTACHED. The notice was issued by the Office of the Internal Revenue Service at __________ ______________________________.
(City and State)

2. Petitioner(s) taxpayer identification (e.g. social security) number(s) is(are) __________ ______________________________.

3. Petitioner(s) make(s) the following claims as to his tax liability:

Year	Amount of Deficiency Disputed	Addition to Tax [Penalty], if any, Disputed	Amount of Overpayment Claimed

4. Set forth those adjustments, i.e. changes, in the notice of deficiency with which you disagree and why you disagree.

Petitioner(s) request(s) that the proceedings in this case be conducted as a "small tax case" under section 7463 of the Internal Revenue Code of 1954, as amended, and Rule 172 of the Rules of Practice and Procedure of the United States Tax Court. *(See page 8 of the enclosed booklet.) A decision in a "small tax case" is final and cannot be appealed by either party.

Signature of Petitioner	Present Address—Street, City, State, Zip Code—Telephone No. (include area code)
Signature of Petitioner (Spouse)	Present Address—Street, City, State, Zip Code—Telephone No. (include area code)

Signature and address of counsel, if retained by petitioner(s)

*If you do not want to make this request, you should place an "X" in the following box. ☐

FORM 3

ENTRY OF APPEARANCE

(Available—Ask for Form 3)

(See Rule 24)

UNITED STATES TAX COURT

Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent
Docket No.

ENTRY OF APPEARANCE

The undersigned, being duly admitted to practice before the United States Tax Court, hereby enters his appearance for the petitioner in the above-entitled case.

Dated: ______________

(Signed)

(Type signature)

(Office address)

(City) State

Telephone No. (include area code)

A SEPARATE ENTRY OF APPEARANCE MUST BE FILED IN DUPLICATE FOR EACH DOCKET NUMBER.

FORM 4

DESIGNATION OF PLACE OF TRIAL

(Available—Ask for Form 4)

(See Rule 140)

UNITED STATES TAX COURT

Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent
Docket No.

DESIGNATION OF PLACE OF TRIAL

Petitioner(s) hereby designate(s) ______________ (City and State) as the place of trial of this case.

Signature of petitioner or counsel

Dated: ______________, 19___

FORM 5

SUBPOENA

(Available—Ask for Form 5)

(See Rule 147)

UNITED STATES TAX COURT

Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent
Docket No.

SUBPOENA

To______________________________

YOU ARE HEREBY COMMANDED to appear before the United States Tax Court

(or the name and official title of a person authorized to take depositions) at ________(Time) on the ________(Date) day of __________(Month) 19____ (Year) at

____

______________ (Place) then and there to testify on behalf of ______________ (Petitioner) or (Respondent), in the above-entitled case, and to bring with you ______________

____

____

______________ (Use reverse if necessary) and not to depart without leave of the Court.

Date: ________ (Seal of Court)

____

Attorney for (Petitioner) (Title)
(Respondent)

Return on Service

The above-named witness was summoned on the ______ day of __________, 19__, at ______________ by delivering a copy of this subpoena to h___, and, if a witness for the petitioner, by tendering fees and mileage to h___ pursuant to Rule 148 of the Rules of Practice and Procedure of the Tax Court.

Dated ________ Signed ________
Subscribed and sworn to before me this ______ day of ________, 19__.

______________ [SEAL]
(Name and Title)

FORM 6

APPLICATION FOR ORDER TO TAKE DEPOSITION*

(Available—Ask for Form 6)

(See Rules 81 through 84)

UNITED STATES TAX COURT

____
Petitioner(s)
v. } Docket No.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

APPLICATION FOR ORDER TO TAKE DEPOSITION*

To the United States Tax Court:

1. Application is hereby made by the above-named ______________ (Petitioner or respondent), for an order to take the deposition(s) of the following-named person(s) who has (have) been served with a copy of this application, as evidenced by the attached certificate of service:

	Name of witness	Post-office address
(a)	______________	______________
(b)	______________	______________
(c)	______________	______________
(d)	______________	______________

2. It is desired to take the deposition(s) of the above-named person(s) for the following reasons (With respect to each of the above-named persons, set forth the reasons for taking the depositions rather than waiting until trial to introduce the testimony or other evidence.):

3. The substance of the testimony, to be obtained through the deposition(s)—, is as follows (With respect to each of the above-named persons, set forth briefly the substance of the expected testimony or other evidence.):

4. The following books, papers, documents, or other tangible things to be produced at the deposition, are as follows (With respect to each of the above-named persons, describe briefly all things which the applicant desires to have produced at the deposition.):

5. The expected testimony or other evidence is material to one or more matters in controversy, in the following respects:

6. (a) This deposition (will) (will not) be taken on written questions (see Rule 84).

(b) All such written questions are annexed to this application (attach such questions pursuant to Rule 84).

7. The petition in this case was filed with the Court on ______________ (month, day, year). The pleadings in this case (are) (are not) closed. This case (has) (has not) been placed on a trial calendar.

8. An arrangement as to payment of fees and expenses of the deposition is desired which departs from the Rules 81(g) and 103, as follows:

____

____

9. It is desired to take the testimony of ______________ on the ______ day of ______, 19__, at the hour of ___ o'clock __M., at ______________ (room number, street number, street name, city and state), before ______________ (name and official title).

10. ______________________________ (name of person before whom deposition is to be taken), is a person who is authorized to administer an oath, in his capacity as ______________. Such person is not a relative or employee or counsel of any party, or a relative or employee or associate of such counsel, nor is he financially interested in the action. (For possible waiver of this requirement, see Rule 81(e)(3).)

11. It is desired to record the testimony of ______________ before ______________ by videotape. The name and address of the videotape operator and the name and address of his employer are ______________

______________________________.

Dated ________, 19__.

(Signed) ______________
(Petitioner or Counsel)

____
(Post Office Address)

---

*Applications must be filed at least 45 days prior to the date set for trial. When the applicant seeks to take depositions upon written questions, the title of the application shall so indicate and the application shall be accompanied by an original and five copies of the proposed questions. The taking of depositions upon written questions is not favored, except when the depositions are to be taken in foreign countries, in which case any depositions taken must be upon written questions, except as otherwise directed by the Court for cause shown. (See Rule 84(a).) If the parties so stipulate, depositions may be taken without application to the Court. (See Rule 81(d).)

FORM 7

CERTIFICATE ON RETURN

UNITED STATES TAX COURT

____
Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent
} Docket No.

CERTIFICATE ON RETURN OF DEPOSITION

To the United States Tax Court:

I, ____________, the person named in an order of this Court dated ________, to take depositions in this case, hereby certify:

1. I proceeded, on the ___ day of ________, A.D. 19__, at the office of ________ ____________________, in the city of ________________, State of ____________, at ___ o'clock __m., under the said order and in the presence of ____________ and ____________ the counsel of the respective parties, to take the following depositions, viz:

____________, a witness produced on behalf of the ____________(Petitioner or respondent).

____________, a witness produced on behalf of the ____________(Petitioner or respondent).

____________, a witness produced on behalf of the ____________(Petitioner or respondent).

2. Each witness was examined under oath at such times and places as conditions of adjournment required, and the testimony of each witness (or his answers to the questions filed) was taken stenographically or otherwise recorded and reduced to typewriting by me or under my direction.

3. After the said testimony of each witness was reduced to writing, the transcript of the testimony was read and signed by the witness and was acknowledged by him to be his testimony, in all respects truly and correctly transcribed except as otherwise stated.

4. All exhibits introduced during the deposition are transmitted herewith, except to the following extent agreed to by the parties or directed by the Court (state disposition of exhibits if not transmitted with the deposition):

5. This deposition (was)(was not) taken on written questions pursuant to Rule 84 of the Rules of Practice and Procedure of the United States Tax Court. All such written questions are annexed to the deposition.

6. After the signing of the deposition, no alterations or changes were made therein.

7. I am not a relative or employee or counsel of any party, or a relative or employee or associate of such counsel, nor am I financially interested in the action.

____
(Signature of person taking deposition)

____
(Official title)

NOTE.—This form, when properly executed, should be attached to and bound with the transcript preceding the first page thereof. It should then be delivered to the party taking the deposition or his counsel.

FORM 8

NOTICE OF APPEAL TO COURT OF APPEALS

(See Rules 190 and 191)

UNITED STATES TAX COURT

____
Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent
} Docket No.

NOTICE OF APPEAL

Notice is hereby given that ____________ hereby appeals to the United States Court of Appeals for the ____________ Circuit from [that part of] the decision of this court entered in the above-captioned proceeding on the ______ day of ________, 19__ [relating to ________].

____
(Party or Counsel)

____
(Post Office Address)

FORM 9

APPEAL BOND, CORPORATE SURETY

(See Rule 191)

The following is a satisfactory form of bond for use in case bond with a corporate surety approved by the Treasury Department is to be furnished to stay the assessment and collection of tax involved in an appeal from a decision of the Tax Court. The original bond and one copy are required. There are no printed forms. Each petitioner must execute the bond, and the corporate seal or a designation of seal in the case of individuals must be affixed.

UNITED STATES TAX COURT

____
Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent
} Docket No.

BOND

KNOW ALL MEN BY THESE PRESENTS that we ____________as principal, and ____________, as surety, are held and firmly bound unto the above-named COMMISSIONER OF INTERNAL REVENUE and/or the UNITED STATES OF AMERICA, in the sum of $________, (double the deficiency or such sum as the Tax Court has fixed upon petitioner's prior motion), to be paid to the said

Commissioner of Internal Revenue and/or the United States of America for the payment of which well and truly to be made we bind ourselves and each of us and our successors and assigns jointly and severally firmly by these presents.

Signed, sealed, and dated this ______ day of__________, 19__.

WHEREAS, the above-named______________is filing or is about to file with the United States Tax Court, an appeal from the said Court's decision in respect of the tax liability of the above petitioner for the taxable year or years______________, by the United States Court of Appeals for the__________Circuit to reverse the decision rendered in the above-entitled cause.

NOW, THEREFORE, the condition of this Obligation is such that if the above-named ______ __________shall file its appeal and shall prosecute said appeal to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

[SEAL]

____

(for an individual petitioner)

____

(for a corporate petitioner)

By ______________________________

Title

(Corporate Seal)
Attest:

____

Surety

By ______________________________

Title (surety corporate seal)

____

Secretary

FORM 10

APPEAL BOND, APPROVED COLLATERAL

(See Rule 191)

A satisfactory form of bond for use in case an appellant desires to furnish approved collateral (Treasury Department Circular No. 154, Revised), instead of furnishing a corporate surety bond, and also forms of powers of attorney covering the pledged collateral are shown below. The original and one copy are required in either case. There are no printed forms. Each petitioner must execute the bond, and the corporate seal or a designation of seal in the case of individuals must be affixed.

UNITED STATES TAX COURT

____

Petitioner(s)
v.
COMMISSIONER OF INTERNAL REVENUE,
Respondent
} Docket No.

BOND

KNOW ALL MEN BY THESE PRESENTS that ______________________is held and firmly bound unto the above-named Commissioner of Internal Revenue and/or the United States of America in the sum of__________ ($__________) Dollars, to be paid to the said COMMISSIONER OF INTERNAL REVENUE, and/or the UNITED STATES OF AMERICA, for the payment of which, well and truly to be made, the__________binds itself and its successors, firmly by these presents.

Signed, sealed, and dated this______day of__________, 19__.

WHEREAS, the above-named______________is filing or is about to file with the United States Tax Court, an appeal from the said Court's decision in respect of the tax liability of the above petitioner for the taxable year or years__________ ______, by the United States Court of Appeals for the__________Circuit to reverse the decision rendered in the above-entitled cause.

NOW, THEREFORE, the condition of this obligation is such that if the above-named __________shall file its appeal and shall prosecute said appeal to effect and shall pay the deficiency as finally determined, together with any interest, additional amounts or additions to the tax provided for by law, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

The above-bounded obligor, in order the more fully to secure the Commissioner of Internal Revenue and/or the United States in the payment of the aforementioned sum, hereby pledges as security therefor bonds/notes of the United States in a sum equal as their par value to the aforementioned sum, to wit: ______________dollars ($__________), which said bonds/notes are numbered serially and are in the denominations and amounts, and are otherwise more particularly described as follows:

____

____

which said bonds/notes have this day been deposited with the Clerk of the United States Tax Court and his receipt taken therefor.

Contemporaneously herewith the undersigned has also executed and delivered an irrevocable power of attorney and agreement in favor of the Clerk of the United States Tax Court, authorizing and empowering him, as such attorney to collect or sell or transfer or assign, the above-described bonds/notes so deposited, or any part thereof, in case of any default in the performance of any of the above-named conditions or stipulations.

[SEAL]

____

(for an individual petitioner)

____

(for a corporate petitioner)

(Corporate Seal)
Attest:

By ______________________________

Title

____

Secretary

FORM 11

POWER OF ATTORNEY AND AGREEMENT BY CORPORATION

(See Rule 191)

KNOW ALL MEN BY THESE PRESENTS: That ________, a corporation duly incorporated under the laws of the State of ________ and having its principal office in the city of ________, State of ________, in pursuance of a resolution of the Board of Directors of said corporation, passed on the ____ day of ________, 19__, a duly certified copy of which resolution is hereto attached, does hereby constitute and appoint the Clerk of the United States Tax Court as attorney for said corporation, for and in the name of said corporation to collect or to sell, assign, and transfer certain United States Liberty bonds or other bonds or notes of the United States, the property of said corporation, described as follows:

Title of bonds/ notes	Total face amount	Denomination	Serial No.	Interest dates

such bonds/notes having been deposited by it, pursuant to the Act of July 30, 1947, c. 390, 61 Stat. 646, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by it with (here enter "the Commissioner of Internal Revenue and/or the United States") under date of________, which is hereby made a part thereof, and the undersigned agrees that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, its said attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and the undersigned further agrees that the authority herein granted is irrevocable.

And said corporation hereby for itself, its successors and assigns, ratifies and confirms whatever its said attorney shall do by virtue of these presents.

In witness whereof, the ________ ________, the corporation hereinabove named, by________(Name and title of officer), duly authorized to act in the premises, has executed this instrument and cause the seal of the corporation to be hereto affixed this____day of________, 19__.

____

(Corporate seal) Secretary

By________________

Title

State of ________,
SS:
County of ________

Before me, the undersigned, a notary public within and for the said county and State, personally appeared ________ (Name and title of officer), and for and in behalf of said ________, corporation, acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this____day of________, 19__.

[Notarial seal]

____

Notary Public

My Commission expires________

FORM 12

POWER OF ATTORNEY AND AGREEMENT BY INDIVIDUALS

(See Rule 191)

KNOW ALL MEN BY THESE PRESENTS: That I (we)________, do hereby constitute and appoint the Clerk of the United States Tax Court as attorney for me (us), and in my (our) name to collect or to sell, assign, and transfer certain United States Liberty bonds, or other bonds or notes of the United States, being my (our) property described as follows:

Title of bonds/ notes	Total face amount	Denomination	Serial No.	Interest dates

such bonds/notes having been deposited by me (us) pursuant to the Act of July 30, 1947, c. 390, 61 Stat. 646, as security for the faithful performance of any and all of the conditions or stipulations of a certain obligation entered into by me (us) with (here enter "the Commissioner of Internal Revenue and/or the United States") under date of ________, which is hereby made a part thereof, and I (we), agree that, in case of any default in the performance of any of the conditions and stipulations of such undertaking, my (our) attorney shall have full power to collect said bonds/notes or any part thereof, or to sell, assign, and transfer said bonds/notes or any part thereof without notice, at public or private sale, or to transfer or assign to another for the purpose of effecting either public or private sale, free from any equity of redemption and without appraisement or valuation, notice and right to redeem being waived, and the proceeds of such sale or collection, in whole or in part to be applied to the satisfaction of any damages, demands, or deficiency arising by reason of such default, as may be deemed best, and I (we) further agree that the authority herein granted is irrevocable.

And for myself (ourselves), my (our several) administrators, executors, and assigns, I (we) hereby ratify and confirm whatever my (our) said attorney shall do by virtue of these presents.

In witness whereof, I (we) hereinabove named, have executed this instrument and affixed my (our) seal this______day of________, 19__.

________________[SEAL]

State of ________________ }
County of ________________ } SS:

Before me, the undersigned, a notary public within and for the said county and State, personally appeared ______________(Name of obligor), and acknowledged the execution of the foregoing power of attorney.

Witness my hand and notarial seal this______day of ________, 19__.

[Notarial seal]

____
Notary Public

My Commission expires__________

FORM 13

CERTIFICATE OF SERVICE

(See Rule 21)

This is to certify that a copyof the foregoing paper was served on ________ by (delivering the same to him at ________ on ________) or (mailing the same on ________ in a postage-paid wrapper addressed to him at ________).

Dated:

____
Party or Counsel

APPENDIX II

Code Section 7463

DISPUTES INVOLVING $5,000 OR LESS

(See Rules 170 through 179)

(a) In General.—In the case of any petition filed with the Tax Court for a redetermination of a deficiency where neither the amount of the deficiency placed in dispute, nor the amount of any claimed overpayment, exceeds:

(1) $5,000 for any one taxable year, in the case of the taxes imposed by subtitle A,

(2) $5,000, in the case of the tax imposed by chapter 11,

(3) $5,000 for any one calendar year, in the case of the tax imposed by chapter 12, or

(4) $5,000 for any 1 taxable period (or, if there is no taxable period, taxable event) in the case of any tax imposed by subtitle D which is described in section 6212(a) (relating to a notice of deficiency),

at the option of the taxpayer concurred in by the Tax Court or a division thereof before the hearing of the case, proceedings in the case shall be conducted under this section. Notwithstanding the provisions of section 7453, such proceedings shall be conducted in accordance with such rules of evidence, practice, and procedure as the Tax Court may prescribe. A decision, together with a brief summary of the reasons therefor, in any such case shall satisfy the requirements of sections 7459(b) and 7460.

(b) Finality of Decisions.—A decision entered in any case in which the proceedings are conducted under this section shall not be reviewed in any other court and shall not be treated as a precedent for any other case.

(c) Limitation of Jurisdiction.—In any case in which the proceedings are conducted under this section, notwithstanding the provisions of sections 6214(a) and 6512(b), no decision shall be entered redetermining the amount of a deficiency, or determining an overpayment, except with respect to amounts placed in dispute within the limits described in subsection (a) and with respect to amounts conceded by the parties.

(d) Discontinuance of Proceedings.—At any time before a decision entered in a case in which the proceedings are conducted under this section becomes final, the taxpayer or the Secretary may request that further proceedings under this section in such case be discontinued. The Tax Court, or the division thereof hearing such case, may, if it finds that (1) there are reasonable grounds for believing that the amount of the deficiency placed in dispute, or the amount of an overpayment, exceeds the applicable jurisdictional amount described in subsection (a), and (2) the amount of such excess is large enough to justify granting such request, discontinue further proceedings in such case under this section. Upon any such discontinuance, proceedings in such case shall be conducted in the same manner as cases to which the provisions of sections 6214(a) and 6512(b) apply.

(e) Amount of Deficiency in Dispute.—For purposes of this section, the amount of any deficiency placed in dispute includes additions to the tax, additional amounts, and penalties imposed by chapter 68, to the extent that the procedures described in subchapter B of chapter 63 apply.

(f) Qualified State Individual Income Taxes.—For purposes of this section, a deficiency placed in dispute or claimed overpayment with regard to a qualified State individual income tax to which subchapter E of chapter 64 applies, for a taxable year, shall be treated as a portion of a deficiency placed in dispute or claimed overpayment of the income tax for that taxable year.

APPENDIX III

FEES AND CHARGES

(See Rule 148)

(a) Fees and charges payable to the Court:

1. Filing petition	
a. Small tax case	$10.00
b. All other cases	60.00
2. Application for admission to practice	25.00
3. Photocopies (plain)—per page	.25
4. Photocopies (certified)—per page	.50
5. Transmitting record on appeal	*

*Actual cost of insurance and postage

(b) Charges for copies of transcripts of proceedings:

Transcripts of proceedings before the Tax Court are supplied to the parties and to the public by the official reporter at such rates as may be fixed by contract between the Court and the reporter. Information as to those rates may be obtained from the Clerk of the Court or from the trial clerk at a trial session.

APPENDIX IV

PLACES OF TRIAL

(See Rules 140 and 177)

A partial list of cities in which regular sessions of the Court are held appears below.* This list is published to assist parties in making designations under Rules 140 and 177. If sufficient cases are not ready for trial in a city designated by a taxpayer, or if suitable courtroom facilities are not available in that city, the Court may find it necessary to calendar cases for trial in some other city within reasonable proximity of the designated place.

Alabama: Birmingham, Mobile.
Alaska: Anchorage.
Arizona: Phoenix.
Arkansas: Little Rock.
California: Los Angeles, San Diego, San Francisco.
Colorado: Denver.
Connecticut: New Haven.
District of Columbia: Washington.
Florida: Jacksonville, Miami, Tampa.
Georgia: Atlanta.
Hawaii: Honolulu.
Idaho: Boise.
Illinois: Chicago.
Indiana: Indianapolis.
Iowa: Des Moines.
Kansas: Kansas City.
Kentucky: Louisville/Frankfort.
Louisiana: New Orleans.
Maryland: Baltimore.
Massachusetts: Boston.
Michigan: Detroit.
Minnesota: St. Paul.
Mississippi: Biloxi, Jackson.
Missouri: Kansas City, St. Louis.
Montana: Helena.
Nebraska: Omaha.
Nevada: Las Vegas/Reno.
New Jersey: Newark.
New Mexico: Albuquerque.
New York: Buffalo, New York City.
North Carolina: Winston-Salem.
Ohio: Cleveland, Cincinnati, Columbus.
Oklahoma: Oklahoma City, Tulsa.
Oregon: Portland.
Pennsylvania: Philadelphia, Pittsburgh.
South Carolina: Columbia.
Tennessee: Knoxville, Memphis, Nashville.
Texas: Dallas, El Paso, Houston, Lubbock, San Antonio.
Utah: Salt Lake City.
Virginia: Richmond.
Washington: Seattle, Spokane.
West Virginia: Charleston/Huntington.
Wisconsin: Milwaukee.

*The Court sits in about 35 other cities to hear Small Tax Cases. A list of such cities is contained in a pamphlet entitled "Election of Small Tax Case Procedure and Preparation of Petitions," a copy of which may be obtained from the Clerk of the Court.

TITLE 27—INTOXICATING LIQUORS

Cross References

Alcohol taxes, see section 5001 et seq. of Title 26, Internal Revenue Code.

National minimum drinking age, see section 158 of Title 23, Highways.